

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20194 of 2012
Decided on : 23.02.2016

Gurpreet Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.K.S.Khehar, Advocate, for the petitioner.

Mr.Avinit Avasthi, A.A.G., Punjab.

G.S. Sandhawalia , J. (Oral)

Petitioners challenges the order dated 17.08.2012 (Annexure P5) and the endorsement dated 29.08.2012, vide which, the seniority in the cadre of Senior Assistants (Accounts) has been released wherein the petitioner has been shown at Sr.No.261. It is his case that the private respondents No.3 to 34 were beyond the quota of promotees and have been wrongly given seniority over and above him in an illegal and arbitrary manner.

Vide the impugned order, respondent No.1 decided the issue that the said respondents had continuous length of service and as per Rule 10 of the Punjab Rural Development & Panchayats (Class-III) Service Rules, 1988 (for short, the '1988 Rules), the Senior Assistants (Accounts), appointed by way of direct recruitment, who had raised objections, were not entitled for favourable consideration. Accordingly, the seniority list from Sr. No.157 to 387 was released.

The petitioner's case is that he was directly recruited as Senior Assistant (Accounts) in the year 2002 and there were approximately 170 posts in the Department. As per the 1988 Rules, 75% were to be filled up by promotion and 25% by direct recruitment. When the requisition was sent for the direct recruits in the year 2001, there were only 4 posts which had been filled up by direct recruitment and the remaining quota of direct recruitment posts were lying vacant. The promotees had been occupying the posts which had to be filled up. The petitioner was selected against the requisition of 13 posts and vide the seniority list, now released, respondents No.3 to 34 were beyond the quota when the petitioner was recruited in December, 2001 and joined in January, 2002. Resultantly, he sought the seniority, over and above the said respondents.

A categorical averment was, accordingly, made that seniority list had been issued in April, 2000 and in the said list, name of 157 persons had been mentioned out of which, there were only 4 direct recruits and all the other persons were promotees. Even in the said list, the employees were promoted much beyond their quota. Promotions had again been made in July, 2001 and after that, the promotions of private-respondents were made in September, 2001, which was again beyond the quota of the promotees and were made against the direct quota posts. The petitioner being recruited in January, 2002, was entitled for

promotion over the private-respondents and merely because they had a continuous length of service, they were not entitled to be placed over and above the petitioner.

In the written statement filed, plea taken was that the objections raised by the officials was not accepted on account of the fact that direct recruits could not claim deemed date of appointment for the benefit of seniority and it would depend upon the length of service and reliance was placed upon Rule 10 of the 1988 Rules. The factum of the Current Duty Charge being given on 25.02.1999 to the post of Senior Assistant (Accounts) of 48 officials, was admitted. It was averred that on 19.07.2001, regular promotions of 37 officials to the post of Senior Assistant (Accounts) was ordered, with immediate effect because 10 posts of Senior Assistant (Accounts) were meant to be filled up by direct recruits. Contents of para No.13 were admitted that the seniority list of Senior Assistant (Accounts) was earlier finalized and thereafter, the seniority list from Sr.No.158 to 387 had also been finalized. The plea taken was that there was no question of assigning seniority to the direct recruits on the posts earmarked to them or vice versa and the date of appointment would be the deciding factor. Thus, the categorical averments in para Nos.5, 13, 14, 16 & 17, the factum of promotees occupying the posts of direct recruits in excess of their quota, has not been denied.

It is a matter of fact that the petitioner had already

served a legal notice dated 07.11.2011 (Annexure P4) wherein also, he had raised his grievance regarding the excess promotions which have been made against the direct recruits. In such circumstances, if the private respondents, who have chosen not to contest, have been promoted in September, 2001, beyond their prescribed quota and in the absence of any vacancy in the promotee quota, they cannot claim seniority, over and above the petitioner. The petitioner, even though having been appointed on 18.12.2001, against the 25% quota of the posts, for direct recruitment and having joined in January, 2002, was entitled for seniority, over and above them.

Reference can be made to the judgment of a Three Judges Bench of the Apex Court in **D.Ganesh Rao Patnaik & others Vs. State of Jharkhand & others 2005 (4) RSJ 767.** Therein also, the issue was between the direct recruits and promotees. It was held that the period of service of the promotees against the quota earmarked for the direct recruits could not be taken into consideration and by treating the said promotees senior to the appellants, who were direct recruits, the period of officiation/service rendered by the contesting respondents, till a vacancy in their quota became available to them, could not be counted towards their seniority. Relevant paras read as under:

“21. After the decision in the case of Madan Mohan Singh by the High Court, which ruled that temporary posts have also to be counted for determining the one-third quota of

direct recruits, which decision, in our opinion, is legally correct and sound, there was absolutely no scope for giving promotion to the contesting respondents in the vacancies, which did not fall in the quota of promotees but fell within the quota earmarked for direct recruits. The High Court had issued clear directions in the case of K.P. Verma that vacancies meant for recruitment from amongst advocates should never be filled up by promotees even on the ground that the posts are lying vacant due to the delay caused by the appointment procedure and further if any post out of that lying vacant from the quota of direct recruits had been filled up or is filled up by promotion, such promotee will revert immediately to its original position in the service from which he had been promoted. The promotion order passed in favour of the contesting respondents on 30.4.1991 was, therefore, liable to be cancelled. However, instead of taking this decision, which would have naturally meant reverting the contesting respondents back to their original position, they were allowed to continue treating them as promoted against subsequent quota of promotees. In such circumstances there is absolutely no scope for treating the contesting respondents as senior to the appellants who are all direct recruits.

22. Shri Amarendra Sharan, learned senior counsel for the appellants, has also drawn the attention of the Court to following observations made in paragraph 27 of the judgment in O.P. Garg vs. State of U.P. (Supra): -

".....Since the recruitment to the service is from three sources the existence of a vacancy either permanent or temporary is the sine qua non for claiming benefit of continuous length of service towards seniority. The period of officiation/service which is not against a substantive vacancy (permanent or temporary) cannot be counted towards seniority....."

23. The aforesaid observations certainly support the

contention of the appellants that as no vacancy either permanent or temporary in the quota meant for promotees was available on 30.4.1991, the period of officiation/service rendered by the contesting respondents till a vacancy in their quota became available to them, cannot be counted towards their seniority.”

Thereafter, in **Uttaranchal Forest Rangers' Association (Direct Recruit) & others Vs. State of U.P. & others 2006 (10) SCC 346**, it was held that where there was a hardship in pushing down the promotees appointed in excess of their quota, it was unavoidable and the seniority has to be reckoned from the date of the quota, rendering the service to be fortuitous. Relevant observation reads as under:

“14. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to be adversely appointed validly in the meantime, as decided by this court in the case of K.C.Joshi & others v. Union of India, 1992 Suppl. (1) SCC 272 held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be

illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1) of the Constitution.”

In such circumstances, the impugned order cannot be held to be justified whereby the petitioner's seniority has been fixed at Sr.No.261. Resultantly, order dated 17.08.2012 (Annexure P5) is quashed and the respondents are directed to refix the seniority of the petitioner, over and above the private respondents, in view of the above observations.

Writ petition is allowed, in the above-said terms.

FEBRUARY 23, 2016

sailesh

**(G.S. SANDHAWALIA)
JUDGE**