

**Sr. No. 214
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.17988 of 2013 (O&M)
Date of Decision: 28.07.2016**

Rita Kumari

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Sudhir Kumar, Advocate,
for the petitioner.

Mr. Ravi Pratap Singh, Assistant Advocate General, Haryana.

TEJINDER SINGH DHINDSA, J.(ORAL)

The petitioner who is serving as Assistant under the Haryana State Education Department has filed the instant petition praying for the issuance of a writ of mandamus directing the respondent Department to consider her claim of promotion against the post of Deputy Superintendent. Apparently, the petitioner is aggrieved by the action whereby one Ravinder Kumar Assistant has been promoted as Deputy Superintendent on temporary basis vide order dated 31.07.2013 at Annexure P-1. Case made out on behalf of the petitioner is that she has been ignored and denied her vested right for consideration against the promotional post.

Upon notice of motion having been issued, a short reply of the Deputy Director Cadet Corps, Office of the Director Higher Education, Haryana has been filed and placed on record.

Even though there is no specific order reflecting the rejection of the claim of the petitioner as regards her claim for promotion to the post of Deputy Superintendent, but perusal of the preliminary submissions

contained in the written statement state that Sh. Ravinder Kumar is senior to the petitioner on the basis of length of service and by applying Rule 11 (d) of the Haryana Education Department, NCC Cadre (Group 'C'), Service Amendment Rules, 2013.

It would be apposite to refer to Rule 11 (d) and which reads as follows:-

“In the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment, and if the rate of pay drawn are also the same, then by the length of their service in the appointment and if the length of such service is also the same, the older member shall be senior to the younger member.”

A plain reading of the Rule would indicate that for purposes of determining seniority preference is to be given to a member who was drawing higher rate of pay in the previous appointment and it is only if the rate of pay being at par then length of service is to be reckoned. The Rule also takes care of the eventuality where if the length of service is also the same, the older member in terms of age would be treated as senior.

The stand taken on behalf of the State as regards applicability of Rule 11(d) in the present case indicates that the petitioner as also Ravinder Kumar are employees who have been appointed by transfer from different cadres.

The written statement is not clear as to on what manner the relevant rule has been applied to determine seniority.

In such a situation, the present writ petition is disposed of in

terms of granting liberty to the petitioner to approach the respondent authorities/competent authority as regards her claim qua the consideration to the post of Deputy Superintendent as also as regards fixation of her seniority qua Ravinder Kumar.

It is further directed that in the eventuality of the petitioner raising a claim by filing a comprehensive and detailed representation, the respondent authority would be obligated to examine the matter and to thereafter pass a well reasoned speaking order within a period of three months from the date of submission of such representation.

It is, however, made clear that the observations contained in this order shall not be construed as an opinion of this Court on the merits of the case.

Petition disposed of.

28.07.2016

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No