

***IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH***

CWP No.18161 of 2016 (O&M)

Date of decision:08.09.2016

Prem Singh

... Petitioner

Vs.

Board of Governor & others

... Respondents

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

Present: Mr. Jagbir Malik, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

The petitioner who is serving as a Workshop Instructor (Machine Shop) under the Department of Technical Education, State of Haryana and presently serving at Government Polytechnic Education Society, Uttawar, District Palwal has filed the instant petition impugning a seniority list at Annexure P-4 of the Workshop Instructors and in which private respondent Nos.4 to 7 have been shown senior to the petitioner.

The sole ground for raising challenge to the seniority list is that a joint seniority has been framed for Workshop Instructors of different trades whereas it was obligatory upon the respondent/authorities to have framed separate seniority list for each cadre i.e. Workshop Instructors (Carpentry Shop), Workshop Instructors (Machine Shop) and Workshop Instructors (Fitting Shop) etc.

Having heard counsel for the petitioner at length, this Court is of the considered view that the instant petition is wholly misconceived and deserves to be dismissed.

The conditions of service as regards post of Workshop Instructor are governed by the statutory rules, namely, Haryana

Technical Education Department, Technical Field Staff (Group 'C') Service Rules, 1998 (hereinafter to be referred to as 'the 1998 Rules'). Rule 11 governs seniority inter se members of service and reads in the following terms:

“Seniority: 11. Seniority, inter se of the members of the Service shall be determined by the length of continuous service on any post in the service:

Provided that where there are different cadres in the service, the seniority shall be determined separately for each cadre:

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the Board or any other recruiting authority, as the case may be, shall not be disturbed in fixing the seniority:

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

(a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or transfer;

(b) a member appointed by promotion shall be senior to a member appointed by transfer;

(c) in the case of member appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) 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 grade of pay in his previous appointment; and if the rate of pay drawn are also the same, then by length of their Service in the appointments; and if the length of each service is also the same, the older member shall be senior to a younger member.”

Perusal of the Rule reproduced hereinabove would make it apparent that the seniority inter se members of service is determined by the length of continuous service on any post in the service and cadre. There are different cadres in the service and the seniority shall be determined separately for each cadre.

Counsel appearing for the petitioner has not been able to dispute that as per Appendix to the statutory rules, the cadre is that of Workshop Instructor. Amongst Workshop Instructors, there are different trades in the nature of Machine Shop, Fitting Shop, Sheet Metal Shop, Foundry Shop, Welding Shop, Turning Shop, Electrical Shop and Electronics Shop. These different trades cannot be construed to be separate cadres. The cadre under the rules is of unified Workshop Instructor. Merely because the petitioner was initially appointed as a Workshop Instructor for Machine Shop does not mean that he would have a right for separate seniority to be framed and determined for Workshop Instructors in the trade of (Machine Shop). Such a prayer if accepted would be in clear violation of the statutory rules which recognizes one unified cadre of Workshop Instructors.

Under Rule 11 of the 1998 Rules, it is categorically stipulated that for members appointed by direct recruitment, the order of merit determined by the Board or the Recruiting Agency would not be disturbed while fixing the seniority.

Counsel has very fairly conceded that at the stage of direct recruitment in the year 2007, private respondents had been assigned merit higher than the petitioner. On this count also, the prayer of the petitioner seeking seniority over and above private respondents is untenable.

There would also be the aspect of delay which goes against the

petitioner. The impugned seniority list was circulated in the year 2011. Challenge to the same is being laid after a period of 5 years by filing the instant writ petition in the year 2016.

In ***P. Sadasivaswamy Versus State of Tamil Nadu, AIR 1974 SC 2271***, the Hon'ble Supreme Court had clearly observed that in matters of seniority and promotion any employee aggrieved would be obligated to approach the Court within a period of six months or at the most within a period of one year.

For the reasons recorded above, there is no merit in the instant petition and the same is dismissed.

08.09.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |