

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3874 of 2016

Date of Decision: 21.03.2016

Kiran Saini

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. C.M. Chopra, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. Mr. Manuja has filed an affidavit of the DPI (SE), Punjab which is taken on record. Copy has been supplied to Mr. Chopra.

2. Heard learned counsel at length appearing on behalf of the petitioner and the State of Punjab in the presence of the DPI (SE), Punjab who is present in Court and who has passed the impugned order. Though the impugned order speaks of the seniority position inter se Kiran Saini and Tripta Devi but the order does not explain articulately the facts relating to service of both as Mistresses and thereafter on promotion to the post of Lecturer in school cadre of the education department. The fact that Tripta Devi was appointed in 1971 as a Mistress and the petitioner in 1988 is not disputed. It is also not disputed that the petitioner secured promotion in

1991 against available vacancy in the Lecturer cadre in her subject of teaching and Tripta Devi came to be promoted later as Lecturer in 1993 in her subject then what is the effect of it in the light of rules of service governing promotion and seniority inter se is also not known through the impugned order. The seniority list was finalized in the year 2000 vide order at Annex R-1 long after the promotions of the two contesting parties. All these things were required to be explained in the order which does not respond to determine rights of the parties which makes judicial review difficult in the absence of a self contained order passed on all the aspects on relevant material considered and dealt with by the competent authority.

3. To that extent, it cannot be said that the order is a speaking order, meaning thereby, as one containing reasons for conclusions arrived at. Mere reference to seniority positions is not sufficient in the understanding of the entire case. Moreover, the order has been passed on a legal notice served by the petitioner and the petitioner has not been granted an opportunity of hearing before the order adverse to her interest was passed. On both these counts, this Court is satisfied that the impugned order deserves to be set aside with a direction to the 2nd respondent to pass a fresh order in accordance with law after hearing the petitioner on her legal notice. The petitioner will accordingly be asked to opt whether she wishes to be heard in person or not and if she so opts, personal hearing will be given to her. The views of other persons likely to be affected, if any, would also be taken in case it is felt necessary.

4. Accordingly, the writ petition is partially allowed with the above directions. The case is remanded. Let the fresh order be passed within

two months from the date of receipt of certified copy of this order. This order will however not prejudice either of the parties to take up all available pleas and objections, in case, the final orders are brought for judicial review to this Court which challenge will, needless to add, be on merits. This order is also not intended to pass by issues of maintainability and entertainment of the fresh petition, in case filed, or an opinion on the question of delay and laches if found involved. The 2nd respondent will act independently and remain uninfluenced by this order when he revisits the case, as it expresses no final opinion of this Court on any of the controversies raised.

5. Before parting, it is well to remember that the requirement and the necessity of recording reasons in an administrative order is the heart of the rule of law of reasonableness and for the administrator/decision-maker to be ever guided by the law laid down by the Constitution Bench of the Supreme Court in **S. N. Mukherjee v. Union of India**, AIR 1990 SC 1984.

The Supreme Court observed thus:-

“The requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.”

6. In case third parties are required to be heard in the view of the 2nd respondent before fresh orders are passed then the period of two months shall stand extended by another one month to accommodate effective

hearing.

(RAJIV NARAIN RAINA)
JUDGE

21.03.2016
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