

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

CWP-690-2016

Date of decision : 14.01.2016

Ashwani Kumar

... Petitioner

Vs

State of Punjab & Ors.

... Respondents

Coram : Hon'ble Mr. Justice Rajiv Narain Raina

Present: Ms. Jyoti Sareen, Advocate,
for the petitioner.

Rajiv Narain Raina, J. (oral)

1. The petitioner is a general category candidate, who has been granted the benefit of the catch-up principle [Ajit Singh Janjua-II] restoring his seniority above his erstwhile juniors, the reserve category candidates, who had secured accelerated promotion to the higher post by virtue of the rule of reservation. The order granting him the benefit of restoration of seniority is at Annexure P-7 dated 20.11.2015. Consequently, the seniority list has been issued reflecting the correct position at level-I and in the promotional cadres (lecturers).

2. The petitioner is due to retire from service in about two months. He has approached this Court for directions to the respondents to give him notional promotion and difference of arrears of pay. This prayer can be regulated by instructions, if any, issued by the Punjab Government following the decisions of the Supreme Court in *Ajit Singh Janjua II Vs. State of Punjab*

and others, JT 1999 (7) SC 159, and M. Nagaraj & Others vs

Union of India & Others, AIR 2007 SC 71 cases. Since no order has been passed declaring the rights of the petitioner beyond the point of the relief already granted vide dated 20.11.2015, the primary view of the competent authority is not available and therefore, secondary review jurisdiction cannot be exercised in this petition brought at the stage it has.

3. Therefore, I would accept the prayer of Ms. Jyoti Sareen appearing for the petitioner as fair and reasonable and issue a direction to the respondents to consider and decide the legal notice dated 26.09.2015 (Annexure P5) submitted by the petitioner before the competent authority. The competent authority would hear the petitioner before passing a speaking order. Needless to say, in case benefit claimed is to be granted in terms of rules and instructions as prayed for, it would not be necessary to either pass a speaking order and to provide an opportunity of hearing to the petitioner and the dues, if any, can be given by office orders and due deposit in the accounts of the petitioner.

4. However, if an adverse order is contemplated then alone the necessity would arise of offering an opportunity of hearing to the petitioner and of passing a reasoned order disclosing the process of reasoning adopted to achieve the result. It is directed that this exercise be completed well before the petitioner retires from service on reaching the age of superannuation and the order passed be communicated to him

leaving him sufficient room to seek effective legal redress, if advised.

5. With these observations and directions this petition is disposed of.

(Rajiv Narain Raina)

Judge

14.01.2016

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