

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

Civil Writ Petition No.8046 of 2016

Date of Decision: April 29, 2016

Davinder Singh

...Petitioner

Versus

State of Punjab & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.A.D.S.Jattana, Advocate,
for the petitioner.

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. The dispute is with regard to seniority for a period when the petitioner served as Punjabi Teacher via direct recruitment process. The petitioner was one amongst many candidates who were appointed in excess of the advertised vacancies. He faced threat of termination of services. This happened in the year 1994 when the orders were passed by this court in CWP No.5985 of 1994 whereby the Court set aside the intake of extra candidates beyond the vacancies advertised. However, the petitioner was retained in service by converting his status to the one on ad hoc basis. He was not the only one who had this advantage. There were many others saved by

change of status to save them from ruin. This ad hoc position continued till he was regularly recruited in 1997 by due process. The claim for seniority by counting service rendered on ad hoc basis from 1994 to 1997 was sought to be added to regular service. To claim benefit and protection of this period of ad hoc service, the learned counsel for the petitioner relies on the judgment delivered in case of the petitioner in CWP No.2189 of 2015 decided on 10.02.2015 (Annex P-5) which is a short order deciding the case in terms of the previous judgment passed in CWP No.18673 of 2012 titled “**Kewal Singh vs. State of Punjab & Ors.**” and three other connected cases. The Co-ordinate Bench took the view as under:-

“Indisputably the petitioners had been in service since 1994/1995 followed by regular appointment. The offer of appointment in the year 1994/1995 was preceded by an advertisement soliciting the services of desirous candidates. Thus it cannot be construed to be a back door entry in the employment. The case of the petitioners would be thus squarely covered by the ratio of various judgments of the Hon'ble Supreme Court which have held that a person getting employment by following a valid procedure cannot be denied the benefits of such service rendered by him on ad hoc basis for the purposes of service benefits such as seniority etc.

Petitions are, therefore, accepted and the

petitioners are held entitled to be benefit of period of service benefits rendered w.e.f date of their first appointment in the year 1994 which was followed by regularization in the year 1997. All the petitioners shall be held entitled to similar benefits for the purposes of reckoning seniority and other related benefits in terms of ACP etc.”

2. Mr.Jattana, submits that Letters Patent Appeal No.589 of 2015 filed by the State of Punjab against the judgment is pending but there is no stay order passed therein. The contempt petition filed for non-implementation of the directives of the learned single judge has been tagged with the appeal and also remains pending decision.

3. Learned counsel points out that as per the seniority list (Annex P-6), the name of the petitioner has been wrongly downgraded to Sr.No.916 by showing his date of appointment as 04.12.1997 and this date has been recorded without hearing him and without taking into account the previous service rendered on ad hoc basis. He claims that he should be placed below Gurbachan Singh at Sr.No.210 and above Parbodh Singh at Sr.No.211 whose dates of appointment have been shown as 11.08.1994 and 27.08.1994 respectively whereas the petitioner was appointed on ad hoc basis on 16.08.1994 and was offered regular appointment on 10.02.1997 in continuation of past service. Mr.Jattana submits that defects if any in the first

appointment was cured by regular appointment at the first opportunity.

4. The complaint of the petitioner as presented in the instant case is that the process of promotions to the post of Lecturer are in progress and the petitioner will be gravely disadvantaged if his objections filed before the competent authority are not dealt with and considered on merits before promotions are ordered.

5. The petitioner has brought his grouse to the notice of the respondents by serving a legal notice dated 23.02.2016 (Annex P-9) on them intimating the filing of objections complaining of no action taken thereon. The petitioner asserts that he has a right to receive orders on his objections. There is no gainsaying that if the objections were invited and were filed they must be decided as this would be the minimum guarantee of reasonableness in the competent authority to take a final call by assigning reasons in writing as to whether the objections merit consideration or not and by deciding the petitioner's case one way or the other disclosing in writing what has weighed in the mind of the competent authority. Counsel is broadly right in advancing the argument since it is well settled that a seniority list at the provisional stage can be finalized only by deciding the objections, if any, received from aggrieved persons.

6. In the circumstances, instead of wasting time in

receiving response from the Govt. on the petition by summoning the respondents in a case of pending objections, when the view of the administrator on the objections is not known through order made in writing then it appears the more appropriate course to direct the competent authority to consider and decide the objections within 14 days from the date of receipt of the certified copy of this order. A member of the feeder cadre to the promotional post has a valuable right to know before final administrative actions are taken against him or his claim ignored by conveying the operating reason for ignoring the claim especially in the presence of objections called for by the department and remaining pending without decision.

7. Accordingly, and without expressing any opinion on the merits of the case, the writ petition is partially allowed with a direction issued to the respondents to consider and decide the objections submitted by the petitioner by passing a speaking order thereon within 14 days from the date of receipt of certified copy of this order. If the petitioner asks for personal hearing, the same shall be granted to him. In case the petitioner has anything further to say on his objections to support the relief prayed at the hearing, he would be free to cite any documents or judicial precedents before the competent authority if they support his case to determine how his past ad hoc service is to

be counted towards seniority as per rules. Hence the objections be decided and disposed of together with any other pending objection/s to the seniority list. It is needless to mention that it would be preferable if this exercise is carried out before finalizing the departmental promotion proceedings. This would alleviate any heartburn and ensure that the rhythm of the service is not disturbed by an aberration of keeping objections undecided. The necessity of recording reasons for executive actions taken by quasi judicial authorities affecting rights of the citizen is part of the apparatus of reasonableness in Article 14 of our Constitution to preserve the rule of law as emphasized by the Supreme Court in the landmark judgment in S.N.Mukherjee v. Union of India, AIR 1990 SC 1984: 1990 SCR Suppl. (1) 44 [CB].

April 29, 2016
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(RAJIV NARAIN RAINA)
JUDGE