

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.47 of 2015 (O&M)

Date of Decision: August 05, 2016

Hem Raj Ghai

.....Appellant

versus

The Punjab State Cooperative Supply and Marketing Federation Limited
and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDIP AHLUWALIA.**

Present: Mr.Sumeet Mahajan, Senior Advocate with
Ms.Ramneeq Kaur Jawanda, Advocate, for the appellant.
Mr.Nitin Kaushal, Advocate, for the respondents.

-. -

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J.

This letters patent appeal assails the order dated 03.10.2013 whereby learned Single Judge has dismissed the appellant's writ petition in which he sought quashing of the assignment of seniority to him in the cadre of Assistant Sales Officer/Field Representative.

[2] A brief reference to the facts may be made.

[3] The appellant alongwith private-respondent Nos.3 to 5 and some others joined the Punjab State Cooperative Supply and Marketing Federation Limited (for short, 'Markfed') as Field Representatives in the year 1981 by way of direct recruitment. The appellant joined on 21.09.1981.

[4] A tentative seniority list was circulated on 18.02.1988 and again on 16.08.1989. The appellant did not file objections against his placement in those seniority lists as, according to him, the same were not

circulated. Both these tentative seniority lists were declared final on 30.12.1994 (P-7).

[5] Against the final seniority list, the appellant made a representation which was duly considered and rejected vide order dated 18.01.1995 (P-8) for the following reasons:-

“.... As regard to your claim in the seniority list at serial No.1, the same has been examined. It is informed that the seniority list of Field Representatives dated 16.08.1989 was prepared on the basis of date of joining/date of birth. As you were placed on right place in view of your date of joining/date of birth, your representation for placing you at serial No.1 of seniority list of Field Representatives has no force and the same is rejected to this extent....”

(emphasis applied)

[6] The aggrieved appellant filed the writ petition in the year 1996 claiming, *inter-alia*, that merit list was duly prepared at the time of selection as Field Representatives and *inter-se* seniority ought to have been determined as per such merit list. He claimed himself higher in merit than the private-respondents.

[7] Learned Single Judge turned down the appellant's claim for his failure to bring any material on record to indicate the order of selection/merit assigned by the Administrative Committee at the time of recruitment. The only document placed on record by the appellant was an order of posting and not the merit list. Learned Single Judge further observed that the impugned seniority list was also not on record and the appellant has failed to point-out as to how the rules on seniority have been

violated.

[8] The appellant filed a Review Application which has also been dismissed by learned Single Judge on 09.10.2014. Hence, this intra-Court appeal.

[9] We have heard learned counsel for the parties at a considerable length and gone through the record.

[10] At the outset, it may be noticed that the seniority list of the appellant and other members of the cadre was required to be determined in accordance with Rule 2.7 of the Punjab State Supply and Marketing Cooperative Services (Common Cadre), Rules, 1967. Rule 2.7(2)(a) is the relevant rule and it reads as follows:-

“2.7 (2) Seniority of the employees appointed after the enforcement of these rules in each category of posts shall be determined as follows:-

(a) In case of employees appointed or promoted to a category of posts in one batch, in accordance with the order of seniority specified by the Administrative Committee at the time of making the appointment or promotion....”

(emphasis applied)

[11] It thus appear that if at the time of appointment, the Competent Authority had specified the order of merit, such order would determine the seniority as well. The crucial test in the case in hand, however, is whether any order of 'seniority', namely, order of 'merit' was prepared at the time of appointment of the appellant and other Field Representatives in the year

1981?

[12] The respondent-authorities have stated on oath that the merit-list prepared at the time of selection is not traceable and the documents said to have been obtained by the appellant under the Right to Information Act do not indicate any order of merit prepared by the Administrative Committee at the time of selection of Field Representatives. The additional affidavit filed by the Managing Director of the Markfed dated 21.02.2016 reads as follows:

“...3. That the record of merit list for the post of Field Representatives for the year 1981 is not traceable. The relevant file containing proceedings of selection committee alongwith merit list, if any, prepared at the relevant time, could not be located, though, thorough efforts have been made by office to locate the same but of no avail. Inadvertently, certain documents have been provided to the petitioner under the Right to Information Act, 2005. It is submitted that the letter qua the meeting of the selection committee pertains to the year 1980 and does not relate to the petitioner.

4. That the alleged merit list (Annexure III) cannot be considered as merit list as the same has neither been signed nor stamped by any officer/official preparing it. Moreover, a perusal of the same would reveal that it is a list of all the candidates who were considered eligible for selection to the various cadres and can by no stretch of imagination be construed to be a merit list prepared for the cadre of Field Representatives.....”

(emphasis applied)

[13] In the light of the above-reproduced stand taken by the official-respondents, the documents relied upon by the appellant at this belated stage are liable to be discarded.

the ground of delay and laches. It stands proved on record that the tentative seniority list was firstly issued on 18.02.1988 and again on 16.08.1989. The appellant did not file any objection and accepted his placement. No representation can be entertained against the final seniority list dated 30.04.1994. The appellant had apparently no grudge against the tentative seniority list for 6-7 years, hence, the order declaring such tentative seniority list to be the final seniority list did not revive the any cause of action, if any, in favour of the appellant.

[15] For the reasons afore-stated, we do not find any merit in this appeal which is accordingly dismissed.

[SURYA KANT]
JUDGE

August 05, 2016
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No