

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

CWP No.16248 of 1994 (O&M)

Date of Decision: May 23, 2017

Raj Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Manish Dadwal, Advocate
for the petitioner.

Ms. Lavanya Paul, AAG Punjab.

JAISHREE THAKUR, J.

The petitioner herein seeks issuance of a writ in the nature of *certiorari* for quashing of order dated 20.10.1994, by which respondent No.3 stands promoted.

2. In brief, the facts are that the petitioner was appointed, after his name was recommended by the Employment Exchange to the post of Fisheries Officers in the pay scale of Rs.570-1080 on 02.08.1986. As per the list of names as recommended by the Departmental Selection Committee, the name of the petitioner stood reflected at Serial No.1, whereas, the name of respondent No.3 was reflected at Serial No.7. In the year 1988, a seniority list was prepared, wherein, the name of the petitioner

was shown senior to respondent No.3. Respondent No.3 filed objections to the seniority list, on the ground that he should be considered senior to the petitioner herein, as he belong to Scheduled Castes Category. The petitioner, who also belong to Scheduled Castes Category, was asked to submit his written objections, if he has any. The petitioner submitted a detailed representation and without considering the same, an order dated 05.06.1992 was issued, by which the petitioner was shown as junior to respondent No.3. Against the said order, the petitioner submitted an appeal. In the meantime, the petitioner stood promoted to the post of Senior Fisheries Officer and in the said seniority list of Senior Fisheries Officers, the petitioner was again shown senior to respondent No.3. The next avenue of promotion available to the petitioner is Assistant Director Fisheries, but instead of considering the case of the petitioner, again considered the representation of respondent No.3 and made him senior in the cadre of Senior Fisheries Officers also.

3. Mr. Manish Dadwal, learned counsel appearing on behalf of the petitioner contends that the impugned order Annexure P-9 has been issued, without giving the petitioner any opportunity of hearing, without considering the Govt. instructions, which provide guidelines for determining the seniority or considering the fact that as per the recommendation of the Department Selection Committee, the petitioner was shown at Serial No.1 and senior to respondent No.3. Moreover, even when promotions were made and the seniority list of the Senior Fisheries Officers was prepared, the petitioner herein was shown as senior.

4. Per contra, Ms. Lavanya Paul, learned AAG Punjab, appearing

on behalf of the respondents-State admitted that in the seniority list of the Senior Fisheries Officers that was circulated on 23.11.1993, the petitioner was shown to be senior, but in the seniority list it was specifically mentioned that dispute regarding seniority of the petitioner and respondent No.3 would be decided at a later stage.

5. I have heard learned counsel for the parties, apart from perusing the record of the case.

6. The short point that arises for determination of this court is, whether the impugned order Annexure P-9 would be sustainable, by which the seniority has been given to respondent No.3, over and above the petitioner.

7. Admittedly, the name of respondent No.3-Vidya Sagar and the petitioner herein were recommended through the Employment Exchange and an order dated 20.08.1986 issued by the Departmental Selection Committee came to be passed, offering appointment to the petitioner and respondent No.3-Vidya Sagar. In the order of appointment, the name of the petitioner is reflected at Serial No.1, whereas, respondent No.3 at serial No.7. Thereafter, the seniority list again reflected the petitioner at Serial No.61 and respondent No.3 at Serial No.64. A representation dated 19.12.1991 was filed by respondent No.3-Vidya Sagar against the seniority list and his seniority was changed on the ground that he had not been shown to be selected amongst the non-Scheduled Castes candidates. The petitioner filed his objections to the claim of Sh. Vidya Sagar contending that he had been shown senior to respondent No.3 at every occasion and even at the time of joining the service, no such objections had been raised that he

should be considered in the Scheduled Castes Category and given a seniority over the other selected candidates. The petitioner also claimed himself to be of the Scheduled Castes Category and therefore, submitted that no benefit could be given to respondent No.3 only on the basis of belonging to the Scheduled Castes Category.

8. In support of his contentions, learned counsel for the petitioner places reliance on Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, which determines the seniority. However, these Rules are prospective in nature and cannot be applied retrospectively to the seniority list of 1993.

9. The impugned order, which is annexed as Annexure P-9, changes the seniority of respondent No.3, showing him to be senior to the petitioner herein. There is no justification for doing so. The petitioner on completing his training on 31.05.1992 came to be promoted and respondent No.3 was promoted on 6.10.1992, later in time. By noting that Sh. Vidya Sagar was senior to Sh. Raj Kumar as Fisheries Officer, the representation made was accepted and once again, respondent No.3 was made senior to the petitioner herein. The action of the respondents in showing respondent No.3 as senior in the merit list is patently against the guidelines/instructions issued in 1969, which clearly provides that in case persons recruited by direct recruitment join on the same date, the order of merit is to be determined by the merit, as determined by the Commission/Board, which is reproduced as under:-

“Subject: Seniority of employees appointed through direct recruitment.

Sir,

I am directed to invite your attention to the Punjab Government circular letter No.946-4 G.S.-62/8282, dated 15th March, 1962 vide which besides other matters it was decided that if an employee was recommended by the Punjab Subordinate Service Section Board for regular absorption in an other Department, but in the interest of office work or upon his own request the concerned employee is adjusted in his parental department then his seniority for regular absorption be fixed with reference to the date of original recommendation of the Board. Now a question has arisen that in some cases appointment of candidate is not made in that department where his name was sponsored but later on the appointment of such candidate is made in such a department where candidates of his batch have already been appointed, then how should be fixed his seniority. This point has been considered carefully and it has been decided that in the above circumstances seniority of candidates recommended by the Board on the basis of same selection in one office be fixed in accordance with the merit list prepared by the Board though their date of appointment is not one and the same.....”

10. In the instant case, the Departmental Selection Committee, after it received the names from the Employment Exchange, put the petitioner at Serial No.1 and respondent No.3 at Serial No.7, therefore, in

terms of the guidelines/instructions, the seniority is to be determined from the recommendations as both were appointed by a common order.

11. The law regarding determination of seniority is well settled. The determination of the seniority must be based on some principles, which are just and equitable, which in turn would be in consonance with Article 14 of the Constitution of India. In ***P.Srinivas vs. M. Radhakrishna Murthy and others, 2004(1) SCT 861***, in which, it has been held that if candidates were selected in the same selection, the seniority is to be determined in order of the recommendations made. Apart from the recommendations made by the Departmental Selection Committee, placing petitioner at Serial No.1, the impugned order would not be sustainable on the ground that respondent No.3-Vidya Sagar has been treated as a Scheduled Castes candidate in order to give him a preference, while ignoring the fact that the petitioner herein too belongs to Schedules Castes Category. So, the benefits if any have to be given, should be in order of the merit, as determined by the Departmental Selection Committee.

12. In view of the foregoing discussion, the impugned order Annexure P-9 is not sustainable and is hereby set aside. The writ petition stands allowed accordingly, with all consequential benefits.

May 23, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No