

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

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CWP No.173 of 2015 (O&M)

Date of Decision: August 01, 2017

Sukhdev Kaur and others

....Petitioners

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. N.S. Bains, Advocate for
for the petitioners.

Mr. Sukhbir Singh, AAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

The instant writ petition was filed for seeking issuance of writ of mandamus for directing the respondents-Department of Health and Family Welfare, State of Punjab to consider the names of the petitioners for promotion to the post of Nursing Sister on the basis that their alleged juniors holding the post of Staff Nurses (respondents No.3 to 7) had already been promoted and the petitioners had been denied consideration for promotion.

The writ petition came up for preliminary hearing on 07.01.2015 and the following order was passed:-

“Learned counsel for the petitioner contends that petitioner No.1 is senior to Raj Pal Kaur and Raj

Kumari in the provisional seniority list but which has been made the working list for seniority for promotion to the post of Nursing Sisters from the feeder cadre of the post of Staff Nurse. All the 3 are members of the scheduled castes. All the 3 were recruited in the same selection process on regular basis on reserved quota. It appears from the representation dated 14th October, 2013 [P-5] that petitioner No.1 was appointed vide order dated 23rd July, 1987 but joined on 8th August, 1987. Therefore, the dates mentioned in the provisional seniority list in its last column appear to be dates of joining.

It is well settled that seniority cannot be based on dates of joining in a single recruitment process where number of posts are filled by direct recruitment through departmental selection committee. If the 3 are batchmates, their inter-se merit determined by the Selection Committee would determine the seniority inter-se unless rules speak otherwise. However, a right of consideration for promotion where candidate does not suffer from any disability which can hold up the promotion, then the department is bound to consider and decide the right of each candidate to a correct slot in the seniority list and for this, a final seniority list should be drawn. Besides, the petitioner has also served a legal notice [P-8] apart from making representations [P-5] and [P-6] all of which have not been addressed by the competent authority so far.

Notice of motion, returnable by 26.2.2015.

On the asking of this Court, Mr. Anshul Gupta, Assistant Advocate General, Punjab accepts notice on

behalf of respondents No.1 and 2 and waives service on them.

The Director, Department of Health & Family Welfare, Punjab respondent No.2 is directed to take a final decision on the representations within 30 days from the date of receipt of a certified copy of this order, hear the parties and pass a speaking order and place the same on the record of this case.

Notice to private respondents is dispensed with at this stage since they would have a right of hearing before the Administrator in making the order under Court directions. Mr. Bains to supply 3 sets of the paperbook to Mr. Gupta during the course of the day.

A copy of this order be given to the learned State counsel under the signatures of the Bench Secretary of this Court."

A short reply by way of affidavit of the Director, Health Services Family Welfare, Punjab, has been filed and placed on record and appended along with the reply is an order dated 19.05.2015 at Annexure R-1/T and which is stated to have been passed in purported compliance of the notice of motion order dated 07.01.2015.

A complete copy of the written statement along with Annexure R-I, has been furnished to counsel representing the petitioners in Court today.

Counsel appearing for the petitioners submits that he may be permitted to withdraw the instant petition with liberty to

raise a challenge to the order dated 19.05.2015, passed by the
Director, Health Services Family Welfare, Punjab on all grounds that
may be available in accordance with law.

Dismissed as withdrawn with liberty as prayed for.

(TEJINDER SINGH DHINDSA)
JUDGE

01.08.2017
anju rani

***Whether speaking/reasoned* : Yes/No**
***Whether reportable* : Yes/No**