

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

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CWP No.5681 of 2015 (O&M)

Date of Decision: September 13, 2017

Lakhwinder Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Madhav Pokhrel, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

Petitioner who is serving as a JBT Teacher under the Punjab State School Education Department, has filed the instant petition assailing the order dated 08.12.2014 (Annexure P-11) whereby, his claim for promotion to the post of Social Studies Master (Master Cadre) has been rejected.

Brief facts emanating from the pleadings on record are that the petitioner who belongs to the General Category was selected and appointed as JBT Teacher vide order dated 21.12.2001. Petitioner possessed the qualifications of B.A. and B.Ed. prior to joining the post. During the course of his employment and with due permission from the employer, he pursued the Master's Degree and passed M.A. (History) Examination in the year 2002. Services of the petitioner as JBT Teacher were confirmed vide order

dated 24.05.2005.

Private respondent No.5 herein namely Napinder Singh had also participated in the same very recruitment process for the post of JBT Teacher along with the petitioner. Respondent No.5 was also selected and appointed as JBT Teacher and joined on identical date i.e. 31.12.2001. In the merit determined by the Departmental Selection Committee for appointment to the post of JBT Teacher, petitioner was at Merit No.5 whereas, private respondent No.5 was placed at Merit No.64.

Vide Letter dated 21.02.2005 (Annexure P-6) the cases of promotion from JBT to Master Cadre (Male) were forwarded by the District Education Officer (Elementary Education) Patiala to the Director Public Instructions (S.E.) Punjab. In such order dated 05.05.2005 (Annexure P-6), name of the petitioner figured at S.No.9 and name of private respondent No.10 figured at S.No.10.

It so transpires that the petitioner was not promoted to the Master Cadre whereas, private respondent No.5 was promoted to the Master Cadre vide order dated 10.05.2006 (Annexure P-9).

Petitioner having become aware of the promotion of his junior to the Master Cadre subsequently in point of time, filed CWP No.24502 of 2011 in this Court seeking the issuance of a writ of mandamus to direct the respondent-Education Department to promote him to the post of Social Studies Master/Master Cadre w.e.f. the date his junior namely Napinder Singh had been so promoted. CWP No.24502 of 2011 came to be disposed of in the light of order

dated 02.01.2012 (Annexure P-10) with a direction to the competent/appropriate authority to take a final decision on the petitioner's claim by passing a speaking order within a period of four months. In purported compliance of the directions issued by this Court, the impugned order dated 08.12.2014 at Annexure P-11, has been passed by the Director Public Instructions (Secondary Education) Punjab, rejecting the claim of the petitioner as regards promotion to the Master Cadre w.e.f. 10.05.2006 i.e. the date his junior had been so promoted. It is against such brief factual backdrop that the instant writ petition has been filed.

Counsel for the parties have been heard.

Perusal of the impugned order would reveal that the facts noticed hereinabove are not in dispute. Petitioner has been non-suited by observing that he had never submitted representation within a reasonable time frame and had kept silent as regards his claim for promotion to the Master Cadre for about five years prior to having approached the High Court by filing CWP No.24502 of 2011. It has been stated in the impugned order that there is an in-ordinate delay on the part of the petitioner to raise his claim for promotion to the Master Cadre and such delay is un-explained and as such, his claim for promotion cannot be considered at such a belated stage as it would amount to unsettling settled matters.

In the written statement filed to the writ petition, the prayer in the petition is opposed in terms of reiterating the reasoning furnished in the impugned order.

In the considered view of this Court, the claim of the petitioner for promotion to the Master Cadre w.e.f. the date his junior i.e. private respondent No.5 had been so promoted merits acceptance.

Promotion to the Master Cadre would be governed by the Punjab School Education Clause 3 (School Cadre) Rules 1978 as amended from time to time. Rule 9 Clause 3 of the 1978 Rules would be relevant to the issue at hand and reads as follows:-

*“(3) All promotions within the service shall be made by Selection based on merit and taking into consideration seniority but seniority alone shall not give any right of promotion to any person.
Provided that the promotion of teachers of the district cadre shall be made to the posts of masters or mistresses, as the case may be, by selection on the basis of merit and seniority to be determined with reference to the length of their service as teacher subject to the condition that if more than one person are promoted from one district cadre their inter-se seniority as master or of mistress shall be fixed on the basis of their seniority as a teacher in the district cadre.”*

Appendix B of the Rules insofar as the same relates to Social Studies Master/Mistress reads in the following terms:-

Sr. No.	Designation of Posts	Minimum qualifications and teaching experience	Method of recruitment	
			Direct appt.	Promotion
XX	XX	XX	XX	XX
3(i) (g)	Social Studies Master/Mistress	B.A. with subject combination as approved by	Seventy-five percent	Twenty-five percent: (i) 15% from

		Government from time to time with B.T. or B.Ed. OR Senior Basic Trained (including service of D.P.Ed. and B.P.Ed. as Master/ Mistress with at least three years actual teaching experience)	trained graduate amongst JBT or ETT and (ii) 10% from trained graduate from amongst the classical and vernacular teachers
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There is no dispute as regards the petitioner being eligible for consideration for promotion to the Master Cadre from amongst the Feeder Cadre of trained graduates amongst JBT or ETT teachers.

Under the Statutory Service Rules, there is no specific provision governing seniority. Under such situation, the Punjab Civil Services (General and Common Conditions of Service) Rules 1994 would apply. Rule 8 of the 1994 Rules governs determination of seniority and reads as under:-

*“8. Seniority: The seniority inter-se of persons appointed to posts in each cadre of a Service shall be determined by the length of continuous service on such post of that cadre of the Service:
Provided that in the case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Commission or the Board, as the case may be, shall not be disturbed:*

Provided further that in a case a person is permitted to join the post after the expiry of the said period of four months in consultation with the Commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post:

Provided further that in a case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selection, who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows:

(a) a person appointed by direct appointment shall be senior to a person appointed otherwise;

(b) a person appointed by promotion shall be senior to a person appointed by transfer'

(c) in the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred; and

(d) in the case of persons appointed by transfer from different cadres, their seniority shall be determined accordingly to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by their length of service in these appointments and if the length of service is also the same, an older person shall be senior to a younger person.

Note: *Seniority of persons appointed on purely provisional basis or on ad hoc basis shall be*

determined as and when they are regularly appointed keeping in view the dates of such regular appointment.”

The uncontroverted factual premise that would emerge is that seniority *inter se* the petitioner and private respondent No.5 would be governed as per merit position in the common recruitment process and in pursuance to which they had been appointed as JBT Teachers in the year 2001. Petitioner is senior to private respondent No.5 in the Feeder Cadre of JBT/ETT. Even in the impugned order dated 08.12.2014, the State does not contest the petitioner's eligibility for consideration for promotion to the Master Cadre. Petitioner being senior to private respondent No.5 in the Feeder Cadre is also not disputed. The Director, Public Instructions (Secondary Education) Punjab in the impugned order dated 08.12.2014 merely observes that the promotional cases of the eligible Feeder Cadre Teachers including the present petitioner had been forwarded by the District Education Officer concerned and a promotion order dated 19.04.2006 was issued but the name of the petitioner did not appear in such promotion order. No justification/reasoning is coming forth to deny to the petitioner, the benefit of the promotion to the Master Cadre. It is not even the case of the respondent-State that the service record of the petitioner was unsatisfactory.

The solitary ground taken in the impugned order as also in the written statement is that of delay. Even such ground is not well founded. Petitioner's name had been forwarded by the District Education Officer (Elementary Education) Patiala along with other

officials for consideration of promotion to the Master Cadre on 05.05.2005. There was no order passed or for that matter served upon the petitioner apprising him of his fate as regards consideration of promotion to the Master Cadre. Concededly his junior Napinder Singh-respondent No.5 was promoted to the Master Cadre on 10.05.2006. There was no occasion for the petitioner to have come in knowledge of such promotion order immediately upon issuance of the same. It is not the reasoning furnished in the impugned order nor is there any averment in the written statement to the effect that promotion of the junior was in the knowledge of the petitioner. The pleaded case of the petitioner is that it was in pursuance to information having been supplied under the Right to Information Act and to a third party that the petitioner came in knowledge of his junior having been promoted. Under such circumstances it would not lie in the mouth of the State to nonsuit the petitioner on the ground of delay. After all petitioner had a vested right for a fair consideration for promotion to the Master Cadre under the relevant statutory rules. It would have been a different matter if the petitioner was aware of his junior having earned promotion to the Master Cadre and he having kept quiet and having slept over the issue.

In the facts of the present case the petitioner upon coming in knowledge of the promotion of a junior approached this Court first in point of time by filing CWP No.24502 of 2011. Directions were issued by the learned Single Judge to take a final decision on the claim of the petitioner vide order dated 02.01.2012. It has taken the

State Government almost three years thereafter to pass the impugned order on 08.12.2014 (Annexure P-11) to reject the claim of the petitioner for promotion to the Master Cadre and ironically on the ground of delay alone. On merits, claim of the petitioner as per contents of the impugned order stands virtually conceded. Under such circumstances, the judgments cited in the impugned order by the Director, Public Instructions (S.E.) Punjab would not apply.

For the reasons recorded above, the present petition is allowed. Impugned order dated 08.12.2014 (Annexure P-11), is set aside. Petitioner is held entitled to be promoted to the Master Cadre w.e.f. the date his junior/respondent No.5 was so promoted along with consequential benefits except for the financial benefits which would be granted on a notional basis. Necessary orders in this regard be issued within a period of two months from the date of receipt of a certified copy of this order.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

13.09.2017

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