

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-879-LPA-2016 in/and
LPA-413-2016 (O&M)
Date of Decision: March 16, 2017

Punjab School Education Board

.....Appellant

Versus

Om Parkash and another

.....Respondents

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

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.ADS Bal, Advocate
for the appellant.

Mr.Pawan Kumar Goklaney, Advocate
for respondent No.1.

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SURYA KANT, J.

CM-879-LPA-2016

For the reasons mentioned in the application, the same is
allowed and delay of 46 days in filing the appeal is condoned.

CM stands disposed of.

LPA-413-2016

Punjab School Education Board (for brevity, 'the Board') has
preferred this *Intra-Court appeal* against the order dated December 11, 2015
whereby learned Single Judge has held the first respondent entitled to arrears
of salary and consequential benefits for the period for which he is deemed to

have served on the posts of Deputy Secretary and Joint Secretary. The appellant-Board had vide order dated 11.12.2013 (Annexure P-22) declined the arrears of pay while granting retrospective promotion to the first respondent on notional basis from the date his junior Varinder Kumar was promoted on such posts.

[2] The facts may be noticed briefly:-

[3] Two posts of Assistant Secretaries against 25% quota of direct recruitment were advertised by the appellant-Board in the year 1994. The respondent and one Varinder Kumar, who was P.A. to the Chairman of the Board, applied. It appears that since Varinder Kumar was not found eligible, no selection was made and the posts were re-advertised in the year 1996. Meanwhile, the Board took a decision that out of 25% quota of direct recruitment, 10% posts of Assistant Secretaries shall be given to the persons who are already working in the Board. Varinder Kumar was thereafter 'selected' against that 10% quota post on 01.10.1999 but no recruitment qua the remaining 15% still left for direct recruitment was made for which the first respondent was fully eligible and had applied.

[4] The selection and appointment of Varinder Kumar came to be challenged before this Court in CWP No.9619 of 1999 (**Santosh Gupta and others vs Punjab State Education Board and others**) decided on 22.05.2001 wherein the Board took a categorical stand that Varinder Kumar would not rank senior to the Assistant Secretaries to be appointed against 15% left out quota of direct recruitment. In the light of such a stand having been taken, his selection was conditionally approved and Varinder Kumar

15% was finalised and the first respondent came to be appointed. Thereafter issue arose with regard to compliance of the undertaking given by the Board before this Court, namely, that Varinder Kumar will not rank senior to other Assistant Secretaries appointed against 15% quota. It is only pursuant to the contempt of Court proceedings initiated against the Board authorities that the impugned order dated 11.12.2013 (Annexure P-22) was passed whereby the first respondent was assigned seniority above Varinder Kumar as Assistant Secretary, Deputy Secretary and then Joint Secretary, but on notional basis only.

[5] It is in this backdrop that the question which fell before learned Single Judge was whether or not the first respondent was entitled to arrears of pay?

[6] Learned Single Judge has answered it in affirmative and held the first respondent entitled to the actual arrears of pay and consequential benefits.

[7] We have heard learned counsel for the parties and gone through the record.

[8] It is undeniable that in **Santosh Gupta's** (supra), the appellant -Board itself had taken a stand that Varinder Kumar would not rank senior to the persons who would be appointed against two posts of direct quota of 15% and for which the selection process had already been initiated. Since the first respondent was selected against one of those posts of direct quota, he was entitled to restoration of his seniority as Assistant Secretary above Varinder Kumar. Had the Board-authorities made timely selection, the first

Secretary earlier than Varinder Kumar.

[9] It appears that the first respondent was denied the benefit of seniority and consequential promotion with a view to give undue benefit to Varinder Kumar, who was close to power corridors of the Board. Since the first respondent was denied the due service benefits as Assistant Secretary, Deputy Secretary and Joint Secretary for no fault on his part and contrary to the undertaking given before this Court, we are of the considered view that learned Single Judge has rightly held him entitled to the consequential benefits.

[10] No case to interfere with the order passed by learned Single Judge is made out.

[11] Dismissed.

**(SURYA KANT)
JUDGE**

March 16, 2017
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**(SUDIP AHLUWALIA)
JUDGE**

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |