

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

CWP No. 11378 of 2016

Date of Decision:-15.05.2018

Srishti Babber

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr. R.K. Malik, Sr. Advocate with
Mr. Mandeep Singh, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. R.D. Bawa, Advocate
for respondent No.3.

RAJIV NARAIN RAINA J.(Oral)

The petitioner and five others were selected and appointed as Assistants in the Municipal Corporation, Faridabad by way of direct recruitment. At the time of joining, the petitioner was not aware about the marks secured by her in the interview and in the written test. She would later discovered through the information sought under the Right to Information Act, 2005, that she was topper with 160.5 marks. She was about 30 marks ahead of candidate No.2. When the seniority list was being framed, the petitioner by ignorance filed objection and withdrew that but later filed a representation on the next day after finalisation of seniority that

her seniority be fixed according to rules. The rule governing seniority i.e. Rule 11 of the Haryana Municipal Corporation Employees (Recruitment & Conditions) Service Rules, 1998 (for short '1998 Rules'), is reproduced as under :-

“1. **Seniority** – Seniority inter se of members of the Service shall be determined by the length of continuous service on any post in the service;

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre;

Provided further that in the case of a member appointed by direct recruitment, the order of merit determined by the appointing authority shall not be disturbed in fixing the seniority;

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

- a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;
- b) a member appointed by promotion shall be senior to a member appointed by transfer;
- c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and
- d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member, 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 the length of their service in the appointments and if the length of such service is also the same, the older member shall be senior to the younger member.”

Second proviso to Rule 11 of 1998 Rules provides that in the case of a member appointed by direct recruitment, the order on merit determined by the appointing authority shall not be disturbed in fixing the seniority. It has come on record in the memo dated 20.8.2015 on the subject matter of representation against the mistake made and informed vide letters dated 26.11.2014 and 27.11.2014 being the comments of the Commissioner, Municipal Corporation, Faridabad furnished to the Director, Urban Local Bodies Department, Panchkula replying upon twice and admitting as follows :-

“After following an exhaustive process of selection, 5 persons were engaged by this Corporation to the post of Assistant by way of direct recruitment. The total marks obtained by the selected candidates have been shown correctly by the applicant, details of which as per office record are given as below :-

Sr. No.	Name of candidate	Marks in interview	Marks in written test	Total marks
1	Mrs. Srishti	41.5	119	160.5
2	Vinod Kumar	26	105	131
3	Deepa Arora	16	115	131
4	Suman	43.5	87	130.5
5	Vikas Kanhaiya	17.5	80.05	98

After this process, the then CMC had called them for

interview before him and had given no marks for the interview but had given the order of seniority/final merit as follows :-

1. Deepa Arora
2. Vinod Kumar
3. Srishti
4. Suman; and
5. Vikas.”

It is apparent that the mistake was committed by the Commissioner, Municipal Corporation by whimsically altering the merit and placing Deepa Arora and three others over and above to the petitioner although they were much lower in merit determined by the Selection Committee. The marks are not disputed . The result is given the effect of second proviso to Rule 11 of 1998 Rules has been given full effect and the seniority of the petitioner is restored to No.1 in her group consisting of herself, Vinod Kumar, Deepa Arora, Suman and Vikas.

Mr. Mohnish Sharma, filed the reply on behalf of respondent No.4 i.e. Deepa Pabbi. Vinod Kumar is served but not represented. The other two cannot resist the operation of the Rule and therefore they are not required to be heard. So long as they are defended by two of the private respondents and filed replies.

Having heard Mr. Malik, learned senior counsel and Mr. Bawa, counsel for respondent No.3 and none representing the private respondents herein, I am of the considered view that this petition deserves to be succeeded.

Accordingly, the impugned orders Annexures P-4 dated

21/26.11.2014, P-6 dated 27.11.2014 and P-9 dated 01.4.2016 are set aside and the petitioner is declared senior most in her group of direct recruits to the post of Assistant in the same selection process.

May 15, 2018
Vijay Asija

(**RAJIV NARAIN RAINA**)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No