

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

CWP No.17232 of 2015

Date of Decision: 24.09.2018

Monica Malik

...Petitioner

Vs.

The State of Haryana and others

...Respondents

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

Present: Mr. Arjun Pratap Atma Ram, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

Mr. H.N. Mehtani, Advocate
for respondent No. 3.

Mr. G.C. Garg Dhuriwala, Advocate
for respondent No.4.

Mr. Nitin Rathee, Advocate
for respondent No.22

RAJIV NARAIN RAINA, J. (Oral)

1. The challenge in this petition is to the final seniority list of Lecturers (College Cadre) as on 01.12.2009 (Annex.P-2) downloaded from the website of the respondents on 30.04.2015 and the letter dated 17.06.2015 (Annex. P-4).

2. As per the written statement filed, the gradation list issued in the year 2004 contained some discrepancies. To examine the list and remove the discrepancies a committee was constituted. The tentative seniority list was drawn and issued on 01.12.2009 and list posted on the

website and objections were also called for from the stakeholders. Meanwhile, writ petitions were filed in this Court bearing CWP No. 9094 of 2009 & 3600 of 2010.

3. On 02.03.2010 notice of motion was issued and an interim order was passed directing the respondents not to finalize the proposal contained in the tentative seniority list (Annex. P-8). The writ petitions were disposed on 12.01.2011 by noting that both the parties were *ad idem* that the gradation list/tentative seniority list could not be finalized in view of the restraint order passed by this Court. After hearing the parties, learned Single Judge found that the restraint order was creating an impediment in the way of process of deciding the objections to the tentative seniority list. To clear the path, the writ petitions were disposed of with direction to the respondents to finalize the seniority list after considering the rival contentions and objections submitted by the affected persons within a time bound period. The exercise has led to settling the final inter se seniority list. The State has justified the final seniority list by stating that it took into account the following principles before finalizing the list.

(i) The persons who were appointed as Lecturers prior to 1982 and are presently working in the department will be shown in the order of seniority as it exists at present.

(ii) The inter-se seniority of the persons recruited on the basis of recommendations received from Haryana Public

Service Commission in 1982 and thereafter has been determined strictly in accordance with the recommendations sent by the Commission.

(iii) Some recruitments from time to time have been made through the departmental committees. The inter se seniority of the persons figuring on such lists has been determined in accordance with the following principles:

(a) Different recommendations may have been made in respect of different subjects. The inter se seniority of the lecturers of different subjects have been prepared on merit by taking into account the overall marks obtained by them during the selection process.

(b) if more than one person had obtained same marks, the inter se seniority between such persons has been prepared by taking into account the age of the persons. The older person has been listed higher in seniority.

(c) In case more than one person secured the same number of marks and they were of the same age, the inter se seniority between such persons has been prepared in accordance with the date of joining in the present service. The person who joined earlier has been given higher seniority.

(iv) Some persons might have been recruited by other

methods i.e. by way of regularization of their previous ad-hoc/contractual services etc. The seniority of such persons has been determined from the date of regularization of their services.

(v) Some college lecturers have been taken into Government service on the basis of their having served in private colleges which were taken over by the Government. The seniority of such persons has been determined from the date of issuance of the orders of taking over the private college by the Government. However, inter se seniority of the teachers of such colleges in the Department has been determined with reference to the date of joining the service on regular basis in the private college.

(vi) A small number of persons are still working on ad hoc basis in the department. The issue regarding their regularization is at advances stages of consideration with the Government.

4. Hence, the State submits that the seniority list/gradation list had to be modified as per the order of merit determined by the Haryana Public Service Commission and on the basis of Rule 11 of the Haryana Education (College Cadre), Group-B Service Rules, 1986 which provisions govern the service conditions of the petitioners and the respondents. Rule 2(b) (f) defines 'direct recruitment' to mean

appointment made otherwise than by promotion from within the service by transfer of an officer already in service of the Government of India or any State Government. In the rules the word 'service' has been defined to mean the Haryana Education (College Cadre) Group 'B' Service. Rule 11 determines the mode of fixing seniority. Rule 11 (1) prescribes that seniority inter se of the members of the service shall be determined by the length of continuous services on any post in the service.

5. In the First Proviso to Rule 11(2) lies the crux of the dispute in this case. It lays down that members appointed by direct recruitment the order of merit determined by the Commission of other recruiting authority shall not be disturbed in fixing the seniority. With the rest of Rule we are not concerned in this petition. It is not disputed that petitioner and the respondents belong to the same batch of one recruitment process and were appointed by way of direct recruitment on the recommendations of the Commission according to merit. The petitioner was offered appointment and entered service on 18.12.1986. She was one of six candidates in Annex. R-1 (page 92 of the paper-book) whose names were forwarded for appointment of Lecturers in Home Science subject alone by the Commission. The petitioner's name falls at serial No. 2 in the merit list. The name of respondent No.4- Aruna Kumari was considered for the subject of Hindi in a combined cadre and her name figures at merit position 19 of the *inter se* merit

positions which become seniority points of Lecturers in HCS Class-II (College Cadre) in the Education Department, Haryana recommended by the Commission in the year 1986. The name of the petitioner is mentioned at serial No.94 of the merit list. It appears that appointments were offered subject-wise and that is what has led to some confusion during the hearing but, after all, some of the appointments, such as that of the respondent No. 4 and others, were considerably delayed for no fault of theirs and thus the inter se seniority has to be determined by mode prescribed in First Proviso to Rule 11.

6. Concededly, the petitioner is lower in merit than respondent No.4 determined by the Commission in the same selection process (1986). The dates of appointment and joining are fortuitous circumstances and accordingly can have no material bearing on the issue of inter se seniority in the cadre of Lecturers (College Cadre).

7. Mr. H. N. Mehtani, Advocate for the Commission points out that merit cum seniority list was sent by the Commission to the Director Higher Education, Haryana by letter dated 27.11.1991, relevant for the years 1986-87 as requested by the respondent department. The final seniority list only gives effect to the *inter se* merit determined by the Commission, and therefore, I have no reason to interfere in this matter when the seniority list is based on undisputed *inter se* merit of the candidates who participated in the same selection process, some appointed earlier than others. The principle of continuous length of

service has to subserve the ends of First Proviso to Rule 11, failing which, it would result in grave violation of the rule of seniority based on comparative merit of the candidates determined by the Public Service Commission. If what is argued by the petitioner to secure seniority position above respondent No 4 is to prevail, there would be a failure of justice and breach of the rule of law. The final seniority list has been drawn in accordance with law and rules and is approved as legal and valid.

8. As a result of the above discussion, the petition is apparently devoid of merit and is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

24.09.2018

kv

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