

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.21990 of 2014

Ramesh Kumar and another ... Petitioners

Versus

State of Haryana and others ... Respondents

2. CWP No.4018 of 2016

Balwant Singh ... Petitioner

Versus

State of Haryana and others ... Respondents

Date of Decision: 20.02.2018

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

Present: Mr. Vivek Khatri, Advocate,
for the petitioners in CWP No.21990 of 2014.

Mr. N.K. Malhotra, Advocate,
for the petitioner in CWP No.4018 of 2016
for respondents No.6 & 9 in CWP No.21990 of 2014.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of CWP No.21990 of 2014, *Ramesh Kumar and another v. State of Haryana and others* & CWP No.4018 of 2016, *Balwant Singh v. State of Haryana and others*.

2. The Haryana Public Works (Building and Roads) Department (Group C) Field Staff Service Rules, 2012 ("2012 Rules") were brought into

force on June 19, 2012. Prior thereto there were no rules governing the service of T-Mates/Helpers/Adult Mazdoor.

3. The petitioners and the private respondents No.6 to 9 and other similarly situated persons were appointed on daily wages from time to time on different dates from January 1996 in various Electrical Divisions of the respondent-Department including in Hisara and Rohtak. The petitioners belong to the Hisar Division while the private respondents to Rohtak. A tentative seniority list was drawn as on July 31, 2013 a copy of which has been annexed with the written statement filed by the State as Annex R-1 at p.97 of the paper-book. This seniority list mostly does not bear the dates of joining of the 99 employees mentioned therein. Not only is the date of joining recorded in the tentative seniority list from where one can know of the inter se dates of joining but the petitioners complain that the tentative seniority list was not circulated or brought to the knowledge of the petitioners. Therefore, they could not object to the same. Had they known of the tentative seniority list even otherwise in the absence of dates of joining they could hardly have filed any effective objections to the tentative seniority list.

4. Mr. Rathee submits that the principle adopted in constructing the tentative seniority list is not based on the dates of joining but on the age of the candidates, the older being senior to the younger.

5. The further grievance in the petition is that not only is the tentative seniority list based on a wrong principle, it has not been circulated to invite objections. Hence, the same could not have been acted upon to make promotions on the post of Electrician without first finalizing the

seniority list. It is well settled that a tentative seniority list can be finalized only after objections are invited and parties heard on the objections before final decision can be taken regarding inter se seniority positions.

6. As per Rule 11 of the 2012 Rules seniority is determined by length of continuous service on the post in the service. If the seniority rule is based on length of service, then seniority based on age may have no place in the scheme of seniority. There is also no clarity on whether seniority has to be maintained division-wise or State-wise or by a smaller unit in service. It is also not known whether seniority lists have to be maintained separately for the Civil and Electrical wing of the department. And what is the effect of seniority of an employee coming by way of transfer from one wing to the other. Also whether appointment by transfer would carry previous seniority in the service in the parent wing. These factors cumulatively suggest that the tentative seniority list drawn as on July 31, 2013 is ill-conceived.

7. In the written statement filed by the State, there is more confusion than precision to influence understanding as to how the tentative seniority list has become the working seniority list and has been treated like the final list. The State in its reply is treating the tentative seniority list as final without inviting and deciding objections recorded in writing. The tentative seniority list deserves to be re-visited as per rules and in accordance with law. It is only after such an exercise is completed can the question of promotions to the post of Electrician validated and considered.

8. As a result, this petition is partially allowed. A direction is issued to the respondents to finalize the tentative seniority list within four months from the date of receipt of certified copy of this order. Thereafter,

the department can consider promotions and accordingly those who have been promoted to the post of Electrician their promotions will remain subject to drawing of the final seniority list as per rules and in accordance with law.

(RAJIV NARAIN RAINA)
JUDGE

20.02.2018
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Whether speaking/reasoned	Yes
Whether reportable	No