

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

**Civil Writ Petition No. 28629 of 2017 (O&M)
Date of Decision: 31.10.2018**

Jagtar Singh and others

..... Petitioners

Versus

Punjab State Power Corporation Limited,
Patiala and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Bikramjit Singh Patwalia, Advocate
for the petitioners.

Mr. Bhupinder Kumar Gupta, Advocate for
Mrs. Ishneet Kaur, Advocate
for the respondents-PSPCL.

JASWANT SINGH, J.

1. Present petition under Article 226 and 227 of the Constitution of India has been filed by Jagtar Singh and eighteen (18) other petitioners seeking quashing of seniority list (**Annexure P-12**) on the ground that it has been prepared in derogation to the directions of this Court in LPA No. 450 of 2011 decided on 12.03.2013 (**Annexure P-5**) as well CWP No. 16630 of 2014, decided on 12.09.2017 (**Annexure P-11**).

2. The facts emerging from record of the case are that petitioners were initially appointed in the office of Punjab State Power Corporation Ltd.-Respondent on the post of Steno-Typist. They are governed by Punjab Stated Electricity Board Service of Stenographers, Class-III Regulations, 1988. The promotion to the post of Junior Scale Stenographers is governed by Regulation 8 of the aforesaid Rules. The respondent issued instructions dated 20.09.1994 whereby it was decided to hold test for promotion. In

those instructions, it was also provided that promotion shall be granted on the basis of date of passing stenography test which entailed into promotion of a junior on the ground of passing stenography test earlier in point of time even though on the date of promotion of junior, the seniors had also cleared the test by that time.

3. The aforesaid instructions came to be challenged before this Court in CWP No. 539 of 2009 which was dismissed vide order dated 27.09.2016 (**Annexure P-4**), however, Division Bench of this Court in LPA No. 450 of 2011 vide order dated 12.03.2013 (**P-5**) set aside decision of learned Single Judge and held that it is senior in the feeder cadre who would rank senior in the promotional cadre if he has qualified the test even though later in time but on the date of promotion of the junior, meaning thereby that a candidate, who is junior can pass the test earlier than the senior and that would not make any difference if senior also passes the test subsequently but before the promotion takes place and both of them are promoted on the same date. In that eventuality, it was pointed out that the senior person even when he passes the qualifying test later, would rank senior as both of them are promoted on the same date. The LPA decision dated 12.03.2013 (**P-5**) of this Court was unsuccessfully assailed before Hon'ble Supreme Court, and SLP was dismissed vide order dated 30.09.2013 (**Annexure P-6**).

4. The respondents vide order dated 13.03.2014 (**Annexure P-8**) promoted all the petitioners of CWP No. 539 of 2009, as per orders (**P-5**) of this Court in LPA No. 450 of 2011 as Junior Scale Stenographers with effect from deemed dates of juniors. The said promotional order dated 13.03.2014 (**P-8**) was unsuccessfully challenged before this Court by way of

taken by the aforesaid LPA Bench. In the integrum, COCP No. 2089 of 2013 was filed in LPA No. 450 of 2011 which came to be disposed of in view of reply of the respondents.

5. Learned counsel for the respondents contended that the petitioners have approached this Court at a very belated stage and benefit of outcome of said LPA cannot be extended to entire cadre which is very clear from the interim order dated 25.07.2016 passed by this Court in COCP No. 2086 of 2013 which was filed by the petitioners/appellants of LPA No. 450 of 2011.

6. This Court does not find any substance in the arguments of respondent. It is admitted position that instructions dated 20.09.1994 (P-3) of respondent have already been modified by this Court. The respondent is bound to prepare seniority list in terms of orders of this Court in LPA No. 450 of 2011 (P-5) *de hors* any order passed in contempt proceedings or any other subsequent writ petitions. However, it is added that CWP No. 539 of 2009 was dismissed with the following observations:-

“ I have heard learned counsel for the parties at some length and perused the records. In my considered view, there is no inconsistency between the Service Regulations and the impugned instructions. I say so for the reason that if more than one employee scores the minimum bench-mark and qualify for promotion to the post of Junior Scale Stenographer, their inter-se seniority as in the feeder cadre shall remain intact irrespective of their merit position. It is only if the senior employee does not qualify and can not be promoted along with his juniors but if he qualifies in the subsequent years that his seniority shall be reckoned from the year in which he actually qualifies the minimum bench-mark. On subsequent passing of the promotional test, the employee senior in feeder cadre can not claim that his

original seniority be restored as such a claim, if allowed, would amount to giving premium on in-efficiency ”.

In LPA No. 450 of 2011 decided on 12.03.2013, it was clarified that absence of the qualifying test will be of no consequence and would not be a determinative factor and if two persons are promoted on the same date, it is the senior in the feeder cadre, who would rank senior in the promotional cadre as well. The operative portion of the order dated 12.03.2013 is reproduced as under:-

“ We find substance in this submission of learned counsel for the appellants. We, thus, clarify that absence of the qualifying test will be of no consequence and would not be determinative factor and if the two persons are promoted on the same date, it is the senior in the feeder cadre, who would rank senior in the promotional cadre as well ”.

Thus, a conjoint reading of the judgment dated 27.09.2010 passed by the learned Single Judge in CWP No.539 of 2009 as also the judgment dated 12.03.2013 passed by the Division Bench in LPA No.450 of 2011 would show that upon consideration of the instructions dated 20.09.1994, it was laid down that if on the date of promotion, a senior has cleared the qualifying promotional examination, a junior cannot be promoted ahead of him only on the basis that the junior had qualified such examination prior in time to the senior.

It was pious duty of the respondents to prepare seniority list as per mandate of this Court whereas respondent acting in mis-chief manner granted benefit to only those employees who had filed CWP and thereafter LPA. This court has modified instructions so there was no question to give benefit to particular employees. The reliance placed upon interim order of

with order passed in LPA and not rely upon some interim order of this Court which itself does not stand in view of final disposal of contempt petition. Even otherwise, respondent in reply to contempt petition accepted that department has initiated process of re-fixing seniority of other similar officials in compliance to orders passed in LPA No. 450 of 2011. The litigation qua seniority again cropped up in CWP No. 16630 of 2014 which came to be decided on 12.09.2017, therefore, argument of the respondent that petitioners have approached at belated stage cannot be appreciated. On the basis of order passed in LPA No. 540 of 2011, it was duty of respondent to prepare correct seniority list so respondent has no right to take shelter of its own lapse and alleged delay on the part of petitioners who are suffering on account of inappropriate and incorrect decision of respondents.

In view of categorical decision of this Court in LPA No. 540 of 2011 decided on 12.03.2013 (**P-5**), the present petition deserves to be allowed and accordingly **“Allowed”**. The needful exercise shall be completed within three (03) months of the receipt of the certified copy of the order.

October 31, 2018

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>