

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

**CWP-18414-2006 (O&M)
Date of decision : 02.05.2019**

Gurmukh Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Samrat Malik, Advocate,
for the petitioner.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

Mr. Varun Parkash, Advocate,
for Mr. Amit Jain, Advocate,
for respondent No.2.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for quashing order dated 27.07.2006/02.08.2006 (Annexure P-8), whereby, respondent No.2 was promoted after ignoring the claim of the petitioner.

Heard.

The petitioner joined as Assistant Town Planner on ad hoc basis on 15.03.1983. He was appointed on regular basis on the recommendation of the Punjab Public Service Commission in November, 1983. Whereas, respondent No.2 was appointed on 05.06.1986 as Assistant Town Planner and joined as such on 18.08.1986. In the seniority list issued in the year 1998 (Annexure P-1), the name of the petitioner had been

reflected at Sr. No.39, as against the name of respondent No.2 shown at Sr. No.46. Respondent No.2 filed a civil suit with a grievance that he was entitled to seniority w.e.f. 21.12.1977. The said suit was decreed. The petitioner along with other affected employees as well as the State of Punjab, filed appeals against the judgment and decree passed by the civil Court which were allowed vide judgment dated 04.09.2004 (Annexure P-3) and the judgment/decreed passed by the civil Court was set aside. Feeling aggrieved, respondent No.2 approached this Court by filing RSA No.3707 of 2004, wherein, this Court passed the following order on 18.09.2004 (Annexure P-4):-

“Heard.

Notice of motion.

Mr. S.K. Sharma, Advocate, accepts notice on behalf of the Coveter-respondents.

Reply filed to the stay application is taken on record.

To come up for arguments on 26.10.2004.

In the meanwhile, operation of the judgments of the Courts below is stayed till the next date of hearing.”

In the instant petition, at the time of issuing notice of motion on 21.11.2006, this Court noticed as under:-

“Learned counsel for the petitioner having invited our attention to the order passed by this Court on 18.09.2004 (Annexure P-4), states that since the order of the trial Court as well as the lower appellate Court was stayed by this Court, the inter se seniority position, as it existed prior to the respondent's approaching the trial Court, should be the basis of any further action.

Notice of motion for 22.02.2007.”

Thereafter, on 21.07.2008, this Court passed the following order:-

“Heard.

Admitted.

To be listed along with RSA No.3707 of 2004.”

It is to be noted that RSA No.3707-2004 stands dismissed vide judgment dated 12.01.2010 and the judgment and decree dated 04.09.2004, passed by learned first Appellate Court, stands affirmed, wherein, it was held that the appointment letter issued to respondent No.2 contains a stipulation that his seniority as Assistant Town Planner will be reckoned from 14.05.1985 and therefore, he cannot claim seniority w.e.f. 21.12.1977. It was further held that respondent No.2 could not fall back on his selection on 21.12.1977, as during this period the post of Assistant Town Planner had been downgraded to a Class-II post, whereas, respondent No.2 was selected against a Class-I post. It was also held that as during this period, the appellant worked with the Governments of Punjab and Uttar Pradesh, though on ad hoc basis, grant of seniority w.e.f. 21.12.1977, would make him an employee of two Governments at the same time.

Considering the fact that the issue of seniority stands settled in RSA-3707-2006, preferred by respondent No.2, whereby, the petitioner will be deemed to be senior to respondent No.2. Accordingly, the petitioner deserved to be promoted on the date respondent No.2 was promoted i.e. 02.08.2006. Ordered accordingly. Respondent No.1 is directed to pass the

consequential order treating the petitioner to be promoted w.e.f. 02.08.2006 and necessary benefits be passed on to the petitioner within four months from the date of receipt of a certified copy of this judgment. However, the arrears, if any, shall be restricted to a maximum period of 38 months from the date of filing the instant petition as laid down in **Saroj Kumari vs. State of Punjab CWP No. 14874 of 1995 decided on 04.05.1998..**

02.05.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No