

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

**CWP-11289-2015 (O&M)
Date of decision : 16.01.2019**

Ramesh Kumar

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rahul Dev Singh, Advocate,
for Mr. Rohiteshwar Singh, Advocate for the petitioner.

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

JITENDRA CHAUHAN, J.

CM-6997-CWP-2018

CM application is allowed as prayed for and Annexure P-6
appended therewith is taken on record.

Main case

By way of the instant writ petition filed under Articles 226/227
of the Constitution of India, the petitioner, *inter alia*, seeks issuance of a
writ in the nature of Mandamus directing the respondents to assign seniority
to the petitioner from the date of his appointment i.e. 03.08.1981 at par with
similarly situated persons working in different Punjab Roadways Depots
along with all consequential benefits.

It is the case of the petitioner that he joined the respondent-

Department as Conductor on 03.08.1981 on ad hoc basis. Due to non-availability of vacancy, his services were discontinued temporarily on 08.09.1984 but was taken back in service on 30.08.1985 and his services were regularized on 30.08.1985. The grouse of the petitioner is that two similarly situated employees, namely, Satpal and Dhian Chand, who joined on 03.08.1985, were granted regularization w.e.f. the date of appointment. The petitioner approached the respondents in 2010 to assign him seniority from the date of his appointment i.e. 03.08.1981 but the same was rejected being time barred. The petitioner then preferred an appeal in the month of April, 2011 before respondent No.1, upon which respondent No.1 sent a letter dated 25.05.2011 (Annexure P-1) to respondent No.2 to furnish parawise comments on the appeal while observing that an appeal regarding seniority cannot be time barred. However, no action has been taken by the respondents on the said appeal till date. The petitioner again moved representation in October, 2013 (Annexure P-2) with a prayer to grant him seniority w.e.f. the date he joined the services of the respondents. Thereafter, he also served legal notice dated 05.01.2015 (Annexure P-4), but to no avail.

It is contended that during the course of his service, false allegations were levled against the petitioner and his six annual increments were stopped with cumulative effect vide separate orders. Feeling aggrieved, the petitioner preferred seven civil suits which were allowed on 08.02.1991. The judgments passed in the civil suits ultimately came to be implemented vide order dated 20.02.2014 (Annexure P-3) by re-fixing the

pay of the petitioner. It is argued that when the benefit of stopped increments w.e.f. 27.11.1981 to 16.04.1985 was granted to the petitioner, then the consequential benefit of seniority ought to have been granted from the date of his initial appointment as Conductor i.e. 03.08.1981. On account of the inaction of the respondents, the petitioner has become junior to the similarly situated employees who joined along with the petitioner in the year 1981. It is further submitted that the case of the petitioner is at par with one Beant Singh, Conductor, who was granted seniority w.e.f. his initial appointment i.e. 04.08.1981.

On the other hand, learned State counsel submits that the claim of the petitioner is time barred and therefore, cannot be accepted. The petitioner was appointed on 03.08.1981 on temporary ad hoc basis and was retrenched on 08.09.1984. The services of the petitioner were regularised w.e.f. 30.08.1985, the date when he was again taken back in service. Therefore, he prays for dismissal of the instant petition.

Heard.

As per the assertion of the petitioner, one Beant Singh, Conductor No.109, Punjab Roadways, Patti, joined the services on 04.08.1981. Vide order dated 02.02.1990, the services of the employee were discontinued w.e.f. 03.02.1990. Against the said order, said Beant Singh approached this Court by filing CWP No.7115 of 1990, which was decided in favour of the employee. Thereafter, the respondent vide order dated 09.01.1991 had taken back said Beant Singh on duty on 07.01.1991 with continuity of service but without back wages. Thereafter, in

compliance of judgment dated 19.08.2014, passed in CWP-16448-2014 and on the recommendations of the Director, State Transport, Punjab, said Beant Singh has been granted seniority from the initial date of appointment instead of 07.01.1991. The aforesaid fact situation has neither been disputed nor the respondents have been able to show as to how the case of the petitioner is distinguishable from that of said Beant Singh. Even otherwise, the benefit of stopped increments w.e.f. 27.11.1981 to 16.04.1985 had already been granted to the petitioner. Therefore, there does not seem any cogent reason to deny the benefit of seniority to the petitioner in the same manner.

Hon'ble the Supreme Court, in ***V. Punnam Thomas Vs. State of Kerala, AIR 1969 Kerala 91***, observed as under:-

“The Government is not and should not be as free as individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

From the facts and circumstances of the instant case, it is established that the petitioner has been discriminated with and the same needs to be rectified.

In view of the above, the petitioner is ordered to be regularized

w.e.f. from the date of his initial appointment i.e. 3.08.1981 along with all consequential benefits.

Allowed.

16.01.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No