

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

Sr. No.201

CWP-20246-2011 (O&M)

DECIDED ON: September 10, 2019

ASHWANI KUMAR AND ANOTHER

..PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashish Verma, Advocate,
for the petitioners.

Ms. Ambika Bedi, AAG, Punjab.

Mr. K.L. Arora, Advocate,
for respondents No.20 & 21.

Ms. Surabhi Kaushik, Advocate for
Mr. Prateek Mahajan, Advocate,
for respondent No.23.

Mr. Aman Sharma, Advocate,
for respondent No.24.

Mr. D.K. Bhatti, Advocate,
for respondent No.14.

ARUN MONGA, J. (ORAL)

Petitioners herein seeks issuance of a writ in the nature of certiorari to quash the seniority list dated 05.10.2011 (Annexure P-6) of Assistant Corporation Engineers on the ground that it is not in consonance with Rule 5 of Punjab Municipal Corporation Services (Recruitment and Conditions of Service) Rules, 1978 as well as law laid down by the Hon'ble

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Apex Court in case *Uttanchal Forest Rangers Association & ors. vs. State of U.P., 2007 (1) RSJ 76*, to the effect that the promotees occupying the posts of direct quota can only be granted seniority from the date they get the posts in their own quota and not on the basis of continuous length of service. Further issuance of a writ in the nature of mandamus has been sought to grant seniority to the petitioners, who are the direct recruits of year 1999, on the basis of 50% quota, as provided in the Rules, *ibid*.

2. The controversy herein is qua the promotion of the private respondents granted to them in the year 1996 from the post of Junior Engineer to Assistant Corporation Engineers. The petitioners were concededly not in service at the time promotion was granted to the private respondents. The petitioners' claim arises out of their contention that being the direct recruits they are entitled to seek promotion within the permissible 50% quota meant for direct recruits and the private respondents, in violation of the said 50% limit meant for the promotees, have been granted promotion beyond their quota.

3. On a query posed by the Court, as to how could they have possibly challenged the promotion granted to the private respondents in the year 1996, way prior to the date when the petitioners were born in the cadre of Sub-Divisional Engineers/Assistant Corporation Engineers, learned counsel for the petitioners submits that though the petitioners were recruited in the year 2001 but they were given seniority from 1999 with retrospective effect and therefore, they are well within their rights to challenge the promotions of the private respondents in the year 1996. The contention that petitioners were granted seniority w.e.f. 1999 is strongly disputed by the learned counsel appearing for the private respondents.

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4. Mr. K.L. Arora, Advocate has drawn my attention to appointment order dated 07.11.2001 (Annexure R-20/2) of the petitioners, particularly para 7 & 14 of the terms of the conditions, which are reproduced herein below:-

“7. The appointments are fresh and the incumbent shall not be entitled to any claim or the benefits of any past service or other financial or any other service benefits whatsoever.

14. These shall be treated as fresh appointments and initial start of the scale would be given to all the incumbents.”

5. Having perused the aforesaid paragraphs 7 & 14 of the terms of appointment, on a pointed query posed to the learned counsel for the petitioners as to how the petitioners are claiming the benefit of seniority w.e.f. 1999, no explanation, let alone any plausible explanation, has come forth. There is no document on the Court file to show that the petitioners were accorded seniority with effect from 1999 as contended by the learned counsel for the petitioners. Even otherwise, assuming that the petitioners had been granted seniority with effect from 1999, then also concededly they were not born in the cadre when the private respondents were promoted in the year 1996. They have thus no locus to challenge the said seniority way prior to their appointment.

6. There is another aspect of the matter too, most of the private respondents who were granted promotion in 1996 have already retired or are near about the age of retirement. At this stage, the relief of the petitioners in any case is, therefore, rendered infructuous as they have hardly any people between them and the next in seniority.

7. Viewed from any angle, the writ petition is thus devoid of merits and is accordingly dismissed.

September 10, 2019
Ankur

(ARUN MONGA)
JUDGE

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