

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

CWP No. 6937 of 2016.

Date of Decision: 17.01.2019.

Nirmaljeet Kaur and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Nand Lal Sammi, Advocate,
for the petitioners.

Ms. Ambika Bedi, AAG, Punjab.

JITENDRA CHAUHAN.J.

The petitioners seek issuance of a writ in the nature of mandamus directing the respondents to finalise the seniority of ETT Teachers with effect from 21.12.2001.

In pursuance of the advertisement issued by the Punjab Government Department of Education, the petitioners were appointed in District Amritsar in various Government schools. The recruitment to the post of Masters/Mistress in the Department of Education is governed by the Punjab State Education Class-III (School Cadre) Service Rules, 1978 (for short “the Rules”). The seniority of the candidates is determined by the Rule 11 of the Rules. In case of direct recruitment, the seniority is to be determined as per order of merit in which they are recommended by the Commission.

It is contended that the seniority of the petitioners is

required to be determined according to Rule 11 as per the merit in which they were recommended by the Commission.

On behalf of the respondents, it is contended that the claim of the petitioner is not tenable because the seniority of the employees is fixed from the date on which they joined the department. The candidates who had been working for the last 1 to 2 years could not be made junior to the candidates who joined the department earlier in time. Some of the candidates had joined the department immediately in the year 2001 but the petitioners have joined the department in the year 2002 after a period of one year.

Heard.

Rule 11 of the Rules is reproduced as under:-

11. Seniority of members of service---The seniority in each cadre of the service shall be determined on the basis of continuous length of service on a post in that cadre of the service:

provided that:-

(i) in the case of members recruited by direct appointment the order of merit determined by the Commission, the Board of any other recruiting authority, as the case may be, shall not be disturbed.

xxxx”

In CWP No. 19832 of 2003 titled as “Charan Dass.

Sharma vs. State of Punjab and another” decided on 09.07.2004, it

was held as under:-

“A perusal of the above rule shows that the seniority in case of direct recruitment will be determined as

per order of merit in which the candidates were recommended by the Commission or by the Selection Committee. The similar proposition has also been considered by the Hon'ble Apex Court in Chairman. Puri Gramya Bank vs. Ananda Chandro Dass, 1995 (1) SCT 546.”

Considering the import of Rule 11 of the Rules and in view of the dictum of law laid down in Charan Dass Sharma's case(supra), the seniority in the case of direct recruitment will be determined as per the order of merit in which the candidates were recommended by the Commission. However, the same be carried out after affording an opportunity of hearing to the persons joined earlier in time.

Consequently, the present civil writ petition is allowed. The respondents are directed to refix the pay and seniority of the petitioners as per Rule 11 of the Rules. The necessary exercise be completed within a period of two months from the date of receipt of copy of the judgment.

17.01.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No