

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

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CWP-11564-2001 (O&M)
Date of Decision : 27.01.2020

Prem Kumar and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr.A.P.Atma Ram, Advocate
for the petitioners.

Mr.Luvinder Sofat, AAG, Punjab.

NIRMALJIT KAUR, J. (ORAL)

The matter has come up for service of respondent No.3.

Respondent No.3 has since retired. Learned counsel for the petitioner accordingly prayed that his service be dispensed with. Further, taking into account the facts and circumstances, learned counsel for the parties agreed that the matter can be listed today itself for final disposal.

Listed accordingly.

The petitioners herein is seeking the quashing of the seniority list dated 27.07.2001. While praying for quashing of the said seniority list, reliance has placed upon the judgment rendered by the Hon'ble Apex Court in the case of **P. Mohan Reddy etc. vs. E.A.A. Charles, 2001 AIR (SC) 1210,** wherein it is held that the seniority of an employee in a cadre is required to be determined in accordance with Rules in force unless

subsequent amendment is expressly given with retrospective effect whereas learned counsel for the respondents-State while referring to the judgment rendered by the Hon'ble Apex Court in a case of **Ajit Singh Janjua and others vs. State of Punjab and others, JT 1999(7) SC 153** submitted that the issue in hand is squarely covered by it.

In **Ajit Singh Janjua and others vs. State of Punjab and others, JT 1996(2) SC 727** which was decided on 01.03.1996, the Hon'ble Apex Court was pleased to clarify in para 16 as under:-

*“We respectfully concur with the view in **Union of India vs. Virpal Singh Chauhan, (supra)** that seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by their panel position i.e. with reference to their inter se seniority in the lower grade. The rule of reservation gives accelerated promotion, but it does not give the accelerated 'consequential seniority'. If a Scheduled Caste/Scheduled Tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category candidate is promoted later to that higher grade the general category candidate shall regain his seniority over such earlier promoted scheduled caste/tribe candidate. As already pointed out above that when a scheduled caste/tribe candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such scheduled caste/tribe candidate, in this process he does not supersede his seniors belonging to the general*

category. In this process there was no occasion to examine the merit of such scheduled caste/tribe candidate vis-a-vis his seniors belonging to the general category. As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the scheduled caste/tribe who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for scheduled caste/tribe candidate in still higher grade then such candidate belonging to scheduled caste/tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority cum merit or merit cum seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered in service on basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution.”

Even the review, one of the question before the Hon'ble Apex

Court in **Ajit Singh Janjua's case (supra)** was “Whether roster point promotions from Level 1 to Level 2 to reserved candidates will also give seniority at Level 2?” The said question was answered in paras 76 and 90 as under:-

“76. We, therefore, hold that the roster point promotes (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, - vis- a-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level.

90. We have accepted, while dealing with Points 1 and 2 that the reserved candidates who get promoted at two levels by roster points (say) from Level 1 to Level 2 and level 2 to level 3 cannot count their seniority at Level 3 as against senior general candidates who reached Level 3 before the reserved candidates moved upto Level 4. The general candidate has to be treated as senior at Level 3.”

Admittedly, the judgment rendered by the Hon'ble Apex Court in the case of **Ajit Singh Janjua's case (supra)** has neither been referred nor taken into consideration by the Hon'ble Apex Court in the case of **P. Mohan Reddy's case (supra)**. Accordingly, this Court has no choice but to

follow the judgment of Ajit Singh Janjua's case (supra) being prior in time.

In view of the same, the writ petition is dismissed being squarely covered by the judgment of Ajit Singh Janjua's case (supra).

27.01.2020
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(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No