

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

CWP No.10873 of 2016
Date of decision 28.01.2020

Satish Kumar and others

...Petitioners

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Bhardwaj, Advocate,
for the petitioners.

Mr. Harish Nain, AAG, Haryana.

Mr. Harkesh Manuja, Advocate,
for respondent Nos. 3 to 10.

Ritu Bahri, J. (oral)

Petitioners are seeking a writ in the nature of mandamus directing official respondent Nos. 1 and 2 for fixing the seniority as per merit prepared by the Haryana Staff Selection Commission (Annexure P-1).

As per selection list (Annexure P-1), initially, the petitioners were appointed as Clerks in the Department of School Education vide appointment letter dated 25.04.2012 (Annexure P-2) in the pay scale of Rs.5220-20200 plus Grade pay of Rs.1900/- with usual allowances. Thereafter, pursuant to the letter dated 28.02.2013 (Annexure P-3) issued by the Town and Country Planning Department, they participated against 49 posts of Clerks on transfer basis. The Education Department, vide Annexure P-6, gave no objection to the petitioners for appointment in the Town and Country Planning Department. Thereafter, vide appointment letter dated 11.08.2014 (Annexure P-7), they were appointed in the Town and Country

usual allowances as sanctioned by the Haryana Government from time to time.

Now, the petitioners are seeking direction that they should be given the benefit of service rendered by them in the Education Department w.e.f. 2012 to 2014 towards seniority etc.

Learned counsel for the petitioners contends that one of the conditions in the appointment letter dated 11.08.2014 (Annexure P-7) was that their merit in the respective categories will be subject to final outcome of CWP No.11845 of 2011 (**Dinesh Kumar Bhatia vs. State of Haryana and others**), which referred to implementation of reservation for P.H.C. category. The said petition has already been dismissed and the merit prepared by the Staff Selection Commission remains intact. He further contends that the Town and Country Planning Department, vide memo dated 15.12.2015 (Annexure P-8), circulated the list of clerks for promotion to the post of Assistant, in which, names of the petitioners have not been included. The petitioners made representation dated 21.12.2015 (Annexure P-9) claiming the benefit of seniority as per the merit list prepared by the Haryana Staff Selection Commission, when they were appointed as Clerks in the Education Department, Haryana. Vide order/letter dated 21.01.2016 (Annexure P-10), claim of the petitioners has been rejected on the ground that the seniority is to be counted as per departmental service rules.

After hearing learned counsel for the parties, this petition deserves to be dismissed.

A perusal of notification dated 14.03.1983 (Annexure P-11) issued by the Haryana Government, Town and Country Planning Department shows that as per Rule 11, Sub-rule (I), the seniority interse of

members of the Service shall be determined by the length of continuous service on the post in the service. The said rule is reproduced as under:-

“11. (I) The seniority interse of members of the Service shall be determined by the length of continuous service on the post in the Service:

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre:

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the Board shall not disturbed in fixing the seniority:

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

- (a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or transfer;
- (b) a member appointed by promotion shall be senior to a member appointed by transfer;
- (c) in the case of members appointed by promotion, or transfer, seniority shall be determined according to the seniority of such members in the appointment, from which they were promoted or transferred; and
- (d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same then by the length of their service in the appointment; and if the length of service is also the same, the older member shall be senior to the younger one.”

As per proviso to sub-clause (c), if, a person is appointed by way of transfer, his seniority has to be determined as per seniority of such member in the appointment letter. As per sub-clause (d), if, a person is appointed by transfer from different cadres, seniority is to be determined as per pay and preference has to be given to a member who was drawing a higher rate of pay in his previous appointment. If, the rate of pay drawn are also the same, then by the length of their service in the appointment; and if, the length of service is also the same, the older member shall be senior to the younger one.

petitioners were appointed in the Education Department in the year 2012 and after serving for two years, they were appointed, by way of transfer, in the Town and Country Planning Department, Haryana. Hence, as per Rule 11 (I) (d) of the above rules, it is the pay, which they were drawing at the time of transfer, which is to be made basis for fixing their seniority. The seniority has been fixed as per Rule 11 of the Service Rules of Town and Country Planning Department, Haryana. Petitioners cannot be given seniority over and above the employees already working in the Town and Country Planning Department, Haryana. Moreover, the private respondents are direct recruitees in the said department, whereas, the petitioners have been appointed in this department by way of transfer. Therefore, interse seniority of the petitioners has to be fixed as per Rule 11, sub-rule (I) (d). They cannot claim seniority from the date when they joined the Education Department i.e. 25.04.2012 (Annexure P-2).

The condition put in the appointment letter (Annexure P-7) with respect to pendency of CWP No.11845 of 2011 (**Dinesh Kumar Bhatia vs. State of Haryana and others**), has nothing to do with the fixation of seniority after transfer. Hon'ble the Supreme Court in **Indu Shekhar Singh and others vs. State of U.P. and others**, 2006 (2) SCT 808, was examining a case, where there was offer of adjustment/absorption of employees of different establishments. As per Rules 7 (1) and 28 of Uttar Pradesh Development Authorities Rules, 1985 (as amended in 2002), once a deputationist accepts the conditions of absorption, his seniority has to be placed below the officers already appointed in the cadre. It was held that subsequently, he cannot complain violation of Articles 14 & 16 in fixing of his seniority. There is no fundamental right for counting of service rendered

in another body unless the rule permits for the same. Benefit of past service can only be given when there exists a rule directing consideration of seniority on that basis. It has been further observed as under:-

“34. The decisions referred to hereinbefore, therefore, lay down a law that past services would only be directed to be counted towards seniority in two situations: (1) when there exists a rule directing consideration of seniority; and (2) where recruitments are made from various sources, it would be reasonable to frame a rule considering the past services of the employees concerned.

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38. This Court in Anand Chandra Dash v. State of Orissa & Ors. [(1998) 2 SCC 560], while considering a reverse case, i.e. when an employee who was working as Senior Auditor in Revenue and Excise Department and subsequently applied for the post of Senior Auditor in Labour Department, opined:

“....We find sufficient force in the aforesaid contention of the learned counsel appearing for the appellant. That the appellant was appointed as Senior Auditor on being duly selected by the Member, Board of Revenue on 28.10.1966 is not disputed. It is also not disputed that his services were brought over to the Labour Department on requisition being made to all the Government departments and on his name being sponsored by the Revenue Department. It is no doubt true that the Labour Department had indicated that the seniority will be determined on the basis of the date of joining of the Labour Department itself but the appellant had at no point of time agreed to the said condition, and on the other hand, unequivocally expressed his unwillingness to come over to the Labour Department by letter dated 06.11.1970 and without consideration of the same the Revenue Department relieved him requiring him to join in the Labour Department.”

It was thus, open to the Respondents herein not to agree to in spite of the said conditions as they had already been working with a statutory authority, they, however, expressly consented to do so. They must have exercised their option, having regard to benefits to which they were entitled to in the new post. Once such option is exercised, the consequences attached thereto would ensue.”

This Court, in Vinay Dhull vs. State of Haryana and another,

CWP No.3543 of 2017 (decided on 18.08.2018) was examining a case, where pursuant to advertisement issued by the Haryana Public Service Commission, 04 posts of Sub Divisional Officers (Civil) were to be filled-up by way of transfer. The petitioner (therein) was working in the Haryana State Agriculture Marketing Board and he was appointed on 09.12.2013 with a specific condition that his pay would be protected. However, subsequently, an order was passed withdrawing the pay protection. The said order was challenged by way of writ petition, wherein the petitioner was seeking the benefit of pay protection as well as seniority on account of service rendered by him in the previous department before transfer. Ultimately, the writ petition was allowed and benefit of pay protection in respect of his past service was granted. However, benefit of past service towards seniority was declined on the ground that at the time of joining new department, he had accepted the condition mentioned in the appointment letter dated 09.12.2013, whereby it was specifically stated that he would not be given the benefit of seniority and only his pay would be protected. Hence, he had no right to claim seniority.

In the facts of the present case, benefit of seniority can be given to the petitioner only as per Rule 11 (I) (d) of above stated rules. At the time of joining the Town and Country Planning Department, the petitioners had accepted the conditions of appointment letter dated 11.08.2014 (Annexure P-7), wherein it has been mentioned service of the petitioners will be governed by Haryana Town & Country Planning Department Ministerial (Group 'C') Service Rules, 1983, 2013 and Punjab Government Employees Conduct Rules, 1966 as amended from time to time. Further, as per Rule 11 of the Service Rules (Annexure P-11), seniority of the

petitioners has to be determined by length of continuous service on the post in the service. Since, the petitioners have accepted this condition, now they cannot claim the benefit of seniority over and above the employees already working in the Town and Country Planning Department on the basis of service rendered in the Education Department, Haryana. Hon'ble the Supreme Court in **Indu Shekhar Singh's** case (supra) has held that claiming seniority is not a matter of right. It is the rules of service, which governs the service conditions of an employee and after accepting the same and joining the department, the claim of seniority by counting past service is not made out.

In view of the above discussion, no ground for issuance of any direction, as prayer for, is made out.

No merits. Dismissed.

28.01.2020
ajp

(RITU BAHRI)
JUDGE

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