

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Decided on: May 28th, 2020

1.

CWP No.12723 of 2016

Baljinder Singh & others

....Petitioners

Versus

State of Punjab & others

.....Respondents

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2.

CWP No.20664 of 2016

Gurkirpal Singh & others

....Petitioners

Versus

State of Punjab & others

.....Respondents

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3.

CWP No.28503 of 2017

Nitti Gulati & others

....Petitioners

Versus

State of Punjab & others

.....Respondents

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4.

CWP No.3800 of 2018

Avtar Singh & others

....Petitioners

Versus

State of Punjab & others

.....Respondents

. . . .

5.

CWP No.4727 of 2018

Vishali

....Petitioners

Versus

State of Punjab & others

.....Respondents

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CORAM: HON'BLE MR. JUSTICE JAWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Rajiv Atma Ram, Senior Advocate, with Mr. Arjun Prata Atma Ram, Advocate; Ms. Alka Chatrath, Advocate; Mr. Parvesh Saini, Advovcate; Mr. Gagan Pardeep Singh Bal, Advocate; and Mr. Madhav Pokhrel, Advocate; for the petitioners.

Mr. Shireesh Gupta, Senior Deputy Advocate General, Punjab.

Mr. Gurminder Singh, Senior Advocate, with Mr. J.S. Gill, Advocate, for respondent Nos.4 to 12 (in CWP No.12723 of 2016); for respondent Nos.4 to 6 (in CWP No.20664 of 2016); and for respondent Nos.5 to 7 (in CWP No.3800 of 2018).

Sant Parkash, J

This judgment shall dispose of afore-mentioned five (5) writ Petitions as they involve similar facts and similar questions of law.

For reference, the facts of Writ Petition bearing no. CWP No.12723 of 2016 are taken up.

Through the petition filed under Article 226/227 of the Constitution of India, the Petitioners have sought for issuance of a writ in the nature of Certiorari, praying for quashing of Notification dated 19.09.2014 (Annexure P-15) issued by Respondent–Financial Commissioner & Secretary to Govt. of Punjab, Department of Rural Development &

Panchayats, and also Order dated 05.10.2014 (Annexure P-16) issued by Respondent No.3 - Director, Public Instructions (Ele. Edu.), Punjab, to the extent that the seniority of Elementary Trained Teachers (ETT) working in 5752 schools (alongwith 13034 sanctioned posts) in Zila Parishads under the Department of Rural Development & Panchayats, Punjab, was merged in Department of Education, Punjab, with effect from the dates of their joining in Education Department in 2014, by forfeiting the services rendered by them from the date of their initial appointments from 2006 to 2011 in the Government Elementary Schools, under Zila Parishads in the State of Punjab.

The Petitioners have also sought quashing of Notification dated 03.03.2006 whereby their seniority has been fixed below in the seniority list, taking into account their joining in the Education Department and ignoring the date of their initial appointment in Government Elementary Schools, the management of which, was later transferred to the Department of Rural Development & Panchayats, Punjab and then again absorbed/merged in the Department of Education, Punjab.

The Petitioners have further prayed for issuance of a writ in the nature of Mandamus, directing the Respondents to prepare the seniority list of JBT Cadre taking into account their dates of joining as Primary Teachers in the year 2006/2007, as the posts against which they had been working from 2006/2007 to 2011, were earlier in the Department of Education, Punjab but were later transferred to the Department of Rural Development & Panchayats, Punjab vide Notification dated 03.03.2006 for management purposes only and lateron, again merged in the Education Department, Punjab vide Notification dated 19.09.2014 and thereafter, to consider their cases for promotion against the posts for which they are eligible in the

It has been contended by learned counsels for the Petitioners that the Petitioners were transferred from the control of the Rural Development and Panchayats Department, Punjab to the Education Department and the post of ETT teachers already working with the Rural Development and Panchayats Department, Punjab, were merged in the cadre of ETT Teachers working with the Education Department. Grievance of the Petitioners is that they were placed junior to the Respondents and are claiming seniority on the ground that they be given benefit of their services rendered in the Panchayati Raj Institutions by taking into account the date of their initial appointment. The Punjab Government, vide Notification dated 03.03.2006, transferred the Management of 3449 Govt. Primary Schools and 232 Government Primary Schools from Punjab Education Department to the Department of Rural Development and Panchayats. The services rendered by the Petitioners in the schools against the posts transferred from Education Department, Punjab to the Rural Development & Panchayats Department, Punjab for management cannot be obliterated as they had rendered the service under the same Government and especially, even the posts against which they had served from the year 2006 to 2011, originally belong to the Education Department, Punjab but for management purposes, these schools were transferred to the Department of Rural Development & Panchayats, Punjab vide notification dated 03.03.2006 and as such, the action of the respondents in not considering their cases for promotion on the basis of their dates of joining in the year 2006/2007 is illegal and arbitrary.

Learned counsels for the Petitioners have placed reliance on the decision rendered by a Division Bench of this Court in the case of ***Rubesh Kumar & others vs. State of Haryana & others, 2007(1) SCT 659*** to contend that the Government JBT teachers and Zila Parishad JBT teachers do not show any significant difference, warranting different treatment, from

one against the other. Therefore, the condition of treating them as fresh entrants without giving the benefit of past services rendered in Zila Parishad cannot be sustained.

Per contra, it has been argued by the counsel of the Respondents that the Writ Petitions are liable to be dismissed for non-joinder of the necessary parties. The Petitioners are claiming seniority from 2006, whereas they have been granted seniority from 07.10.2014 and the direct appointees of 2011 in the Education Department, Punjab have not been impleaded as parties in the present Writ Petitions. The Petitioners were not serving under the Education Department, Punjab prior to 2014 as they were working under Panchayati Raj Institutions. The Petitioners have accepted the terms & conditions of the merger stipulated under Notification 19.09.2014 wherein it was specifically provided that they will be treated as new entrants. After accepting the said condition, the Petitioners joined the Education Department, Punjab and now, they cannot turn around and challenge the conditions of merger. In support of this contention, reliance has been placed upon *Mrigank Johri & others vs. Union of India & others, 2017 (8) SCC 256*, wherein it has been held by the Hon'ble Supreme Court that after accepting the terms & conditions of merger, the Petitioners cannot challenge the same.

We have heard counsel for the parties and perused the record.

In our view, the questions for determination before this Bench are: (i) how should the seniority be determined on merging of two set of employees of similar nomenclature? (ii) who shall be considered senior-whether a direct appointee or a transferee from another department?

For determining the questions framed for adjudication in these Writ Petitions, it is pertinent to look at the set of Rules framed for

appointment in both the cadres in question. The relevant Rules and differences therein are provided as thus:

Punjab Panchayati Raj Primary Teachers (Recruitment and Conditions of Service) Rules 2006 for PRI/ULB schools framed in exercise of powers conferred under Section 227 read with section 196(2) of Panchayati Raj Act	Punjab State Education Class III (Primary Schools Cadre) Service Rules 1997 framed under proviso to Article 309 of Constitution of India
Service means Zila Parishad Service constituted under rule 3	Service means the Punjab State Education Class III service
Appointing authority is the Chief Executive Officer on recommendation of selection committee Selection committee: 1. Chairman Zila Parishad 2. Chief Executive Officer 3. District Education Officer 4. Member of Department of Welfare of SC & BC 5. Member of Department of Sainik Welfare 6. Member of Department of sports	Appointing authority is District Education Officer
Pay from Zila Parishad, grant in aid by Government.	Pay from State Government.
Criteria for appointment was in following orders: 1st of same village 2nd adjoining villages and towns 3rd block and towns 4th adjoining blocks 5th district Outside the district is not allowed to appoint	Open Selection and Person from any district can apply another district
Seniority as per rule 14, the seniority inter se of the person, appointed to the posts in each cadre of the service, shall be determined by the length of service on such post in that cadre of the service	Seniority under rule 8 of Punjab Civil Services (General and Common Conditions of Service) Rules 1994, which provides for continuous service on such posts in that cadre of the service i.e. Punjab School Education Class III Service Cadre

Punishment and appeal under Punjab Panchayati Raj act 1994 and Punjab Panchayati Samities and Zila Parishad Servants Punishment and Appeal rules 1964	Punishment and appeal under Punjab Civil Services Punishment and Appeal Rules 1970
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It is evident from the Rules, as mentioned above, that both set of rules are substantially at variance . The Petitioners herein were selected on village basis and were members of different service. Recruitment of the Petitioners was made by the Selection Committees at the District level, consisting of Chairman, Zila Parishad, Executive Officer, Zila Parishad, District Education Officer (EE), representatives of Welfare Department, Sainik Welfare Department and Sports Department. The appointing authority for the Petitioners was the Chief Executive Officer of Zila Parishad on the recommendations of the Selection Committee. The Petitioners were appointed in the Department of Education, Punjab by way of transfer on 07.10.2014, vide Order dated 05.10.2014; whereas the private Respondents were appointed to the service (with the Education Department, Punjab) as per the aforementioned 1997 Rules with effect from April, 2011.

It is apposite to mention that pursuant to Notification dated 19.09.2014 and Order dated 05.10.2014, the Petitioners were issued appointment letters, whereafter, they joined the Education Department, Punjab and accepted all the terms and conditions in writing. One such condition was that *"..... After merging of cadre, seniority of these Elementary Trained Teachers will be counted from the date of their presence in Education Department."*

When all the terms and conditions have been accepted by the Petitioners, now at this stage, they cannot be permitted to blow hot and cold in the same breath and claim seniority over and above the answering

Respondents.

Furthermore, as per Rule 8 of the Punjab Civil Services (General and Common Condition of Services) Rules, 1994, the seniority *inter-se* of persons appointed to posts in each cadre of a service shall be determined by the length of continuous service on such post in that cadre of the service. Thus, the plea of Petitioners claiming seniority by taking the benefit of service rendered in Zila Parishad is not tenable and is liable to be rejected.

As far as second question is concerned viz. 'who shall be considered senior- 'whether a direct appointee or a transferee from another department?' it will be pertinent to refer to Rule 6 of the Punjab State Education Class III (Primary Schools Cadre) Service Rules, 1997, which is reproduced hereinbelow:

"6. Method of Appointment and qualifications :- (1) All appointments to the post in Service shall be made in the manner specified against post in Appendix 'B':

Provided that all the posts in Service shall be filled in by each method of appointment in such a manner that 50:50 ratio between male and female, so far as it is practicable is maintained.

(2) No person shall be appointed to a post in the service unless he possess the qualifications and experience as specified against that post in Appendix 'B'.

(3) All promotions within the Service shall be made by selection based on seniority -cum- merit but seniority alone shall not give any right of promotion to any person."

Appendix B of the said Rules provided for 100% direct appointment and it did not provide for any other mode of appointment in service either by way of transfer, merger or absorption. The relevant portion of the said Appendix is reproduced hereunder:

Sr. No	Designation	Percentage of appointment direct/ promotion	Qualification
4.	Junior Basic Training teachers/ Elementary Trained Teacher	100% direct appointment	i. Metric/10+2 ii. Training elementary teachers training 2 years course of Punjab State or from any other State or Union Territory declared equal and recognized by the Punjab Government

The aforesaid Rules of 1997 were amended in the year 2011 and by way of the said amendment appointments could also be made by way of transfer. The relevant amendment carried out by the Government is reproduced as under:-

"Appointment by transfer from amongst the persons, holding identical or similar posts under the State Government or any statutory body, and the appointment so made, shall be counted towards the percentage, specified for direct recruitment."

A perusal of the above amended Rule clearly shows that appointment made by way of transfer would be counted towards the percentage specified for direct recruitment, however, it does not provide for, or grant, the benefit of seniority or any claim in that respect. Therefore, the Petitioners cannot be allowed to take benefit of the service rendered by them in the Zila Parishad for the purpose of seniority. There is no enabling provision which would entitle them to claim for such a relief of seniority, as claimed.

The Petitioners have placed reliance on the case of **Rubesh Kumar (supra)**, where it has been held that classification could only be sustained on an intelligible differentia belonging to two different cadres. In the instant case, both the set of rules are entirely different (as provided above), which brings out the intelligible differentia. There is no

unreasonable classification, as is being canvassed by the Petitioners. The Private Respondents were appointed to the service (under the Education Department, Punjab) as per aforesaid 1997 Rules with effect from April, 2011, whereas the Petitioners have been appointed by way of transfer on 07.10.2014, vide Order dated 05.10.2014. It will rather be unjust, unreasonable and arbitrary for the Private Respondents, if they are not provided seniority over and above the Petitioners. Accordingly, the judgment in the case of ***Rubesh Kumar (supra)*** is distinguishable and is not applicable to the case at hand. There is no unreasonable classification and there is nothing to suggest that the impugned Notification is unconstitutional by any means.

In the case of ***Mrigank Johri (supra)***, somewhat similar facts and questions came before the Hon'ble Apex Court, wherein the appellants were appointed as Junior Engineers (Electrical) in the All India Radio, New Delhi from time to time between 1987-1990. On an option being invited for deputation as Junior Engineers to the Electrical Wing of the Postal Department, the appellants therein opted for the same, and memorandums were issued for their deputation in 1996. The initial period of deputation was two years but the appellants were desirous of permanent absorption in the Department of Post. The terms and conditions, clearly set out that the appellants would be treated as "*new recruits*" and the service will be counted in the earlier cadre for all purposes "*except his/her seniority in the cadre*". There was no murmur of protest at the relevant time.

The Appellants raised the plea of violation of Articles 14 and 16 of the Constitution of India and sought to rely on the guidelines contained in OM No.9/II/55-RPS dated 22.12.1959 which read as under :

“In the case of a person who is initially taken on deputation and absorbed later, his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent Department such regular service in the grade also should be taken into account in fixation of his seniority subject to the condition that he will be given seniority from the date he has been holding the post on deputation.

OR

The date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.”

While dealing with the issues involved therein, it has been observed by the Hon’ble Supreme Court as under:-

“It is no doubt true that the OM dated 29.5.1986 as modified by OM dated 27.3.2001 did provide for the benefit of the previous service rendered in the cadre. This is in effect also the ratio of the judgment in SI Rooplal case (supra). This would also be inconformity with the normal service jurisprudential view. However, it would be a different position if the absorbing department clearly stipulates a condition of giving willingness to sacrifice the seniority while preserving all other benefits for the absorbee (which are accepted) failing which the option was available to the absorbee to get himself repatriated to the parent department. The terms and conditions are categorical in their wording that the absorbees would be “deemed to be new recruits” and the previous service would be counted for all purposes “except his/her seniority in the cadre”. The appellant accepted this with open eyes and never even challenged the same. Their representations to give them the benefit of their past seniority was also turned down and thereafter also they did not agitate the matter in any judicial forum. The controversy was thus not alive and it was not open for them to challenge the same after a long lapse of period of time. In fact on the day of filing of the OM, any prayer to set aside the terms and conditions of absorption would have been clearly barred by time under Section 21 of the Administrative Tribunals Act, 1985.”

Even in the instant case, there was a specific condition whereby it was accepted by the Petitioners upon transfer that *“..... After merging of cadre, seniority of these Elementary Trained Teachers will be*

counted from the date of their presence in Education Department".

Therefore, the question of claiming seniority by the Petitioners over the persons who were already serving in the cadre of the Education Department, Punjab is not justified. The private Respondents are much senior to the Petitioners in the cadre of the Education Department, Punjab.

In this view of the matter, the Petitioners have no right to ask for the benefit of earlier service rendered by them for fixation of seniority. No doubt, their earlier service will be counted by the Department for the purpose of their pay, pension and leaves etc., as grant of these benefits will not affect or prejudice the rights of other employees of Education Department.

Looking from another view point, if the claim of the Petitioners is accepted, the Petitioners would become senior to many more persons who were recruited directly as per 1997 Rules. All such teachers who are likely to be affected have not been impleaded as parties in these Writ Petitions. In the absence of such persons whose interests are bound to be affected materially and directly, we do not find any ground to grant the relief, as prayed for by the Petitioners.

From the aforesaid discussion, we are of the considered opinion that no injustice has been done to the Petitioners; there is no illegality or infirmity in the impugned notification/order. Resultantly, the writ petitions are dismissed.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

May 28th, 2020

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Whether Speaking :
To be reported or not :

Yes/No
Yes/No