

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

Civil Writ Petition No.13939-CAT of 2018(O&M)

Reserved on : September 04, 2019

Date of decision : February 12, 2020

Union Territory of Chandigarh and another ...Petitioners

Versus

Naval Kishore Verma and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Sanjiv Ghai, Advocate for the petitioners.

Mr.G.S.Sethi, Advocate for respondent No.1.

Mrs.Suman – respondent No.2 in person.

Mr.Rajeshwar Singh Thakur, Advocate for respondent No.3.

Harinder Singh Sidhu, J. :

1. This writ petition has been filed against the order dated 22.01.2018 (Annexure P-7) of the Central Administrative Tribunal, Chandigarh Bench, whereby, Original Application No.060/00389/2016 filed by respondent No.1 Naval Kishore Verma was allowed. The Ld. Tribunal held that the respondent is entitled to his seniority from the date of his selection as Group Instructor and that he would rank senior to private respondents No.2 and 3 in the seniority list of Group Instructors for all intents and purposes. He would also be entitled to all consequential benefits arising therefrom.

2. The Government Central Crafts Institute for Women, Chandigarh (Group-C Posts) Recruitment Rules, 1999 were notified on 01.09.1999. As per the said Rules there were four posts of Group Instructors. 75% were to be filled by promotion and 25% by direct recruitment. Thus, three posts out of the total four posts were to be filled up by promotion and one post was meant for direct recruitment. The appointment by promotion was to be made from amongst the Instructors with 10 years service in the grade rendered after appointment thereto on regular basis. For direct recruitment the qualification was matriculation or its equivalent from Recognized Board/Institute and Diploma in Technology/Engineering from a recognised Board and five years of experience in a reputed industrial concern or in training institute.

3. One post of Group Instructor to be filled by way of direct recruitment in the Central Crafts Institute for Women, Chandigarh now known as Government Industrial Training Institute for Women, Chandigarh (GITIW) was advertised on 14.07.2007. Respondent No.1 applied for the said post. The Selection Committee recommended him for appointment. However, the recommendation dated 12.09.2007 of the Selection Committee could not be given effect to as one Kanta Katoch who was working as Instructor in the College filed Original Application for quashing the advertisement. She sought directions to consider her for promotion to the post of Group Instructor claiming that she had been working as an Instructor for the last 27 years. She also sought quashing of the Government Central Crafts Institute for Women Chandigarh (Group-C Posts) Recruitment Rules, 1999. An interim order dated 12.09.2007 was

passed, whereby, the petitioners herein were directed not to finalise any appointment to the said post. The OA was dismissed on 16.09.2009.

4. Thereafter, the Director, Technical Education, UT Chandigarh passed order dated 18.02.2010 annulling the interview conducted on 12.09.2007 and the recommendations of the Selection Committee constituted for the purpose. It was ordered that consequent upon the classification of the post of Group Instructors from Group-C to Group-B by the Chandigarh Administration on 06.05.2007, the interviews conducted on 12.09.2007 are annulled.

5. Aggrieved by the order dated 18.02.2010, respondent No.1 and another candidate Parminder Pal Singh filed two separate Original Applications bearing Numbers O.A. No.190/CH/2010 and O.A. No.256/HR/2010. Both these OAs were decided by common order dated 10.02.2011. The order of the Chandigarh Administration annulling the selection was quashed. It was directed that the competent authority shall proceed to act on the result finalised on 12.09.2007 forthwith. The order dated 10.02.2011 of the Ld. Tribunal was impugned by the petitioners herein by filing two separate writ petitions i.e. CWP No.23890 of 2011 and CWP No.23950 of 2011. Both these writ petitions were dismissed vide order dated 19.09.2012. The order of the Ld. Tribunal dated 10.02.2011 was upheld. Respondent No.1 filed a Contempt Petition before respondent No.4 – Central Administrative Tribunal, Chandigarh Bench. During the pendency of the Contempt Petition letter of appointment dated 20.02.2013 (Annexure A-8) was issued to him. Before respondent No.1 could join pursuant to that letter OA No.231/CH/2013 was filed by one Parminder Pal

Singh, the candidate at Sr.No.1 in the waiting list. An interim order dated 25.02.2013 was passed by the Ld. Tribunal directing that respondent No.1 be not allowed to join the post in terms of the offer of appointment. On 01.04.2013, the interim order was vacated. Thereafter, respondent No.1 joined as Group Instructor on 02.04.2013. The OA was dismissed on 10.02.2014.

6. Meanwhile, respondent No.2 Smt. Suman and respondent No.3 Ms. Anuka were promoted as Group Instructors and joined as such on 07.12.2010 and 13.08.2012 against the vacancies in the promotion quota which occurred on 01.09.2007 and 01.09.2011 respectively.

7. Respondent No.1 submitted representation dated 26.03.2014 that his service may be counted from the day of his selection i.e 12.09.2007 and that he may be granted all consequential benefits including seniority from the said date and that he be shown senior to respondents Nos.2 and 3. The representation was decided on 16.02.2016. His claim for counting his seniority from the date of his selection was declined. Respondent No.1 filed OA No.060/00389/2016 challenging the order dated 16.02.2016. The same has been allowed vide the impugned judgment of the Tribunal. The Ld. Tribunal has held that the respondent is entitled to his seniority from the date of his selection as Group Instructor and that he would rank senior to private respondents No.2 and 3 in the seniority list of Group Instructors for all intents and purposes. He would also be entitled to all consequential benefits arising therefrom.

8. Ld. Counsel for the petitioner has argued that mere recommendation of a Selection Committee confers no right on a person till

the recommendation is approved and appointment orders issued. He further argued that the seniority of employees of Chandigarh Administration is governed by the Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 (for short "1994 Rules"). As per Rule 8 of the 1994 Rules, the seniority inter-se of persons appointed to posts in each cadre of service shall be determined by the length of continuous service on such post. He argued that the Tribunal has wrongly relied on a decision of Hon'ble Supreme Court in **N R Parmar and others vs. Union of India , (2012) 13 SCC 340**. In that case, the Hon'ble Supreme Court was interpreting different provisions namely O.M. Dated 22.12.1959 and OM dated 3-7-1986 issued by the Government of India, Ministry of Home Affairs and subsequent clarificatory memos which are not relevant in the present case. He further argued that there was no fault on the part of the petitioners in delaying the appointment to respondent No.1. It was only on account of Court orders that the appointment got delayed. Ld. Counsel for respondent No. 1 on the other hand supported the order of the Tribunal.

9. We have heard Ld. Counsel for the parties and perused the record.

10. Respondent No.1 had applied in response to an advertisement dated 14.04.2007. The Selection Committee recommended him for appointment on 12.09.2007. In the OA No.603/CH/2007 filed by Mrs. Kanta Katoch, an interim order dated 12.09.2007 was passed whereby the petitioners- herein were directed not to finalise any appointment to the said post. The OA was dismissed on 16.09.2009. Instead of proceeding to finalize the appointment of respondent No.1, the Director Technical

Education, UT Chandigarh -petitioner No.2 passed order dated 12.10.2010 annulling the interview and the recommendations of the Selection Committee dated 12.09.2007 for filling up the post of Group Instructor. Respondent No.1 filed OA No.190-CH of 2010 challenging the aforesaid order of the Director. That OA along with another OA filed by one Parminder Pal Singh was allowed vide order dated 10.02.2011. It was held that the action of the Director, Technical Education in annulling the recommendation of the Selection Committee after a period of almost 03 years after the recommendation is highly arbitrary. It had caused career related damage to the applicants who had meanwhile crossed the maximum age of eligibility for the said post. The purported justification for annulment that vide order dated 06.05.2007 of the Chandigarh Administration the post of Group Instructor had been classified as Group 'B' instead of Group 'C', was held to be illegal. The competent authority was directed to proceed and act on the result dated 12.09.2007. CWP No.23890 of 2011 and CWP No.23950 of 2011 filed by the Chandigarh Administration against the order of the Tribunal were dismissed vide order dated 19.09.2012. It was affirmed therein that the order of annulment was wholly unjustified and unreasonable as even after the re-classification of the post from Group 'C' to Group 'B', the selection process continued, interviews were held, selections made and only 03 years thereafter, the order of annulment was passed. Even after the dismissal of the writ petitions on 19.09.2012, respondent No.1 was not given appointment. He had to file Contempt Petition and ultimately was offered appointment vide order dated 20.02.2013 (Annexure A-8).

11. It is well settled that seniority is to be fixed as per the applicable Service Rules. As per the 1994 Rules, seniority is to be determined according to the length of service. On a plain application of the Rules, respondent Nos.2 and 3 having been promoted as Group Instructors before the appointment of respondent No.1 as Group Instructor, would rank senior to respondent No.1. But, the issue has to be considered in the light of the fact that the vacancy in the direct quota against which respondent No.1 has been appointed arose on 01.09.2006, the post was advertised on 14.02.2007, his appointment was recommended by the Selection Committee on 12.09.2007. He could not be appointed because of litigation and a wholly illegal order passed by the Director Technical Education annulling the selection. Respondents No.2 and 3 were appointed as Group Instructors against the vacancies in the promotion quota which occurred on 01.09.2007 and 01.09.2011. They joined as such on 07.12.2010 and 13.08.2012.

12. It has been held by Hon'ble Supreme Court in ***Balwant Singh Narwal v. State of Haryana, (2008) 7 SCC 728*** that where candidates selected against an earlier vacancy could not be appointed only because of litigation they should be ranked senior to those appointed against subsequent vacancies. The relevant extracts from the judgment are as under:

“5. In pursuance of the said judgment, the State Government by order dated 26-5-2000 appointed Respondents 4 to 16 as Principals. The said respondents gave several representations dated 19-7-2000, 5-9-2000, 4-10-2000, 10-10-2000 and 11-10-2000 for fixing their seniority with reference to the merit list published by the Commission on 1-10-1993. They pointed out

that but for the litigation, they would have been appointed along with the other 16 candidates on 2-6-1994 and as their selection was in regard to vacancies which were notified in January 1992, they should be given seniority above those who were appointed against subsequent vacancies. The State Government considered and accepted their request and fixed their position immediately after the 16 candidates who were appointed from the same merit list on 2-6-1994. As a result, they have been shown above the appellants in the provisional seniority list of Principal HES-II.

6. *Feeling aggrieved the appellants filed CWP No. 18727 of 2003 before the Punjab and Haryana High Court. They contended that the selection by the Commission being merely recommendatory does not imply automatic employment and therefore candidates selected by the Commission are not entitled to claim seniority on the basis of selection or from the date of selection. They submitted that seniority of Respondents 4 to 16 should be reckoned only from the date of their actual appointment, namely, 26-5-2000. They also contended that granting notional seniority to Respondents 4 to 16 with retrospective effect would affect them as they had already entered into service prior to Respondents 4 to 16.*

7. *The High Court rejected the writ petition by the impugned order dated 5-10-2004. It held that appointments of Respondents 4 to 16 were in regard to an advertisement issued prior to the advertisement, in response to which the appellants were selected; that the actual appointment of Respondents 4 to 16 was delayed not for want of any vacancies but on account of litigation which were beyond their control; that but for the decision rendered by the learned Single Judge on 4-4-1994 declaring selections beyond 18 to be illegal, they would have been appointed on 2-6-1994 when the other candidates from the said merit list were appointed; and that therefore, the State*

Government was justified in giving Respondents 4 to 16 benefit of notional seniority with effect from 2-6-1994 and placing them above the appellants who were appointed against subsequent vacancies/advertisements.

8. The said decision is challenged by the appellants reiterating the contentions urged before the High Court. Reliance was also placed on the decisions of this Court in S.K. Saha v. Prem Prakash Agarwal [(1994) 1 SCC 431 : 1994 SCC (L&S) 574 : (1994) 26 ATC 607], Chandra Prakash (Dr.) v. State of U.P. [(2002) 10 SCC 710 : 2003 SCC (L&S) 308] and State of Uttaranchal v. Dinesh Kumar Sharma [(2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] and other cases which lay down the general proposition that selection by the Public Service Commission is merely recommendatory and does not imply automatic appointment and that the appointing authorities should not give notional seniority without valid reason, from a retrospective date, which would affect the seniority of those who have already entered service.

9. There is no dispute about these general principles. But the question here is in regard to seniority of Respondents 4 to 16 selected on 1-10-1993 against certain vacancies of 1992-1993 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 1-10-1993 were appointed on 2-6-1994. Considering a similar situation, this Court, in Surendra Narain Singh v. State of Bihar [(1998) 5 SCC 246 : 1998 SCC (L&S) 1317] held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.

10. *This Court while allowing the appeals by Respondents 4 to 16 by order dated 6-12-1999 made it clear that all the 30 persons recommended by the Commission as per merit list dated 1-10-1993, including Respondents 4 to 16 are entitled to be appointed. The State Government submitted that but for the order dated 4-4-1994 of the High Court, Respondents 4 to 16 would have been appointed on 2-6-1994 itself. The order dated 4-4-1994 was ultimately set aside by this Court and Respondents 4 to 16 who were consequently appointed should not be denied the benefit of seniority. Therefore, the State Government was justified in giving them only notional seniority and placing them immediately below the other 16 candidates selected in the common merit list (published on 1-10-1993) and appointed on 2-6-1994. Respondents 4 to 16 have been given retrospective seniority not from the date of their selection as wrongly assumed by the appellants, but from 2-6-1994 when other selected candidates in their merit list were appointed.”*

13. The ratio of the above case is squarely applicable to the facts of the present case. Respondent No.1 would be entitled to be placed above respondents No.2 and 3 in the seniority list.

14. However, the fact of the matter is that though the Selection Committee recommended the appointment of respondent No.1 on 12.09.2007 he joined as such on 02.04.2013. In view thereof the direction of the Tribunal that respondent No.1 is entitled to seniority from the date of his selection as Group Instructor and that he would be entitled to all consequential benefits does not appear to be justified.

15. Accordingly, this petition is partly allowed. Respondent No.1 is directed to be placed above respondents No.2 and 3 in the seniority list of

Group Instructors. He would, however, only be entitled to notional seniority without monetary benefits. The order of the Ld. Tribunal granting him seniority from the date of his selection with all consequential benefits is set aside.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 12, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No