

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

**CWP No.7571 of 2020 (O&M)
DATE OF DECISION : 6th APRIL, 2021**

Himanshu Kukkar & others

.... Petitioners

Versus

State of Punjab & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. D. S. Patwalia, Senior Advocate with
 Mr. Salil Sabhlok, Advocate for the petitioners.

 Mr. Ayush Sarna, Assistant Advocate General, Punjab.

 Mr. Gurminder Singh, Senior Advocate with
 Mr. J. S. Gill, Advocate for respondents No.3 to 19.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed seeking quashing of order dated 21.05.2020 (Annexure P-3) to the extent it has placed the petitioners at lower slot in the seniority list than the respondents No.3 to 19 (private respondents), in violation of the earlier order dated 02.12.2019 (Annexure P-2) passed by this Court in CWP No.1361 of 2017, with a further prayer that the petitioners be allotted seniority over and above the above said private respondents.

2. The facts in brief; as can be delineated from the writ petition; are that the petitioners were in service in the respondent-Department. The petitioners were promoted up to the post of Assistant Food Supplies Officers. Later on vide order dated 31.12.2012 the petitioners were promoted as Food and Supplies Officers against the

promotion quota posts, along with other eligible persons, who were promoted separately vide order dated 09.11.2012. Thereafter, the respondents No.3 to 19 were appointed on the posts of Food and Supplies Officers by way of direct recruitment; in February, 2014. So the petitioners had already been working on the post of Food and Supplied Officers for the past about two years, when the private respondents joined the services in the Department as Food and Supplies Officers.

3. On 21.07.2016, the respondent-Department issued a tentative seniority list for the cadre of Food and Supplies Officers. The objections were invited qua the same. After inviting the objections and dealing with the same, the seniority list was finalized by the Department on 27.12.2016. The said final seniority list was challenged by the direct recruits by filing CWP No.1361 of 2017 and CWP No.7203 of 2017. The primary ground for challenging the seniority list was that some of the promotees including the petitioners had been granted promotion on the post of Food and Supplies Officers even though they were not eligible to be promoted as per the qualifications prescribed under the Rules. Hence, they cannot be taken to have been validly promoted on their post. If they are to be retained on the promotional post by the authorities, they are free to retain them, but the seniority of such persons has to be put after the direct recruits; who had joined the Department after being selected through competitive process. The said writ petition was disposed of by this court vide judgment/order dated 02.12.2019, whereby the promotion order of the present petitioners and the final seniority list was quashed. However, the directions were issued by the Court, which read as under:

- i) Upon the setting aside of the impugned promotion Orders of the Private Respondents, the official Respondents shall pass

the fresh promotion orders of the Private Respondents in the Cadre of FSOs strictly in consonance with the requirements of Appendix B read with Rule 8 of the 1988 Rules keeping in consideration the quota and the condition regarding the minimum experience;

- ii) Once the fresh promotion Orders of the private Respondents in terms of (i) above with effect from respective retrospective dates are issued and probation periods completed, thereafter, fresh exercise of fixation of seniority of the two streams of FSOs i.e. the Directly Recruited and the Promotees in the cadre of FSOs shall be made by assigning/placing them from due dates;
- iii) Thereafter, the consequential revisited / revised promotional orders and fixation / re-fixation of seniority of the affected Officers in higher ranks shall be made in accordance with the requirements of the relevant Recruitment Rules governing the respective higher ranks;
- iv) While implementing the above directions, if the consequential promotion, of the persons who have already retired or dead or are in service is affected in any manner to their prejudice, the emoluments already drawn and payments made on account of earlier promotion or benefits granted based on the challenged seniority to them shall not be recovered. The re-fixation of pay etc., in case the same be with retrospective date then in that event the monetary

impact qua the employees shall operate prospectively w.e.f. the date of passing of this order by this court.

- v) The respondents shall carry out the aforesaid exercise within a period of one (01) months from the receipt of the certified copy of this Order, till then 'status quo' as existing on the date of this order pertaining to the posts held by the parties shall be maintained. However, in the event of any affected Officer retiring, henceforth, with effect from date of this order his pensionary benefits would be liable to be determined keeping in view the fresh exercise undertaken by the respondent Department pursuant to the directions at (i) to (iii) above.

4. In nutshell, the direction issued by the Court was that the respondent-Department shall revisit the promotion of the petitioners by bringing it in compliance with the provisions of the Rules. Accordingly, by granting them promotion from the retrospective dates, the seniority of the cadre of Food and Supplies Officers of the respondent-Department was to be re-determined.

5. The requirement of the rules, which was alleged to have been violated in case of promotion of the petitioners earlier, was that they were not having three years' experience as Assistant Food and Supplies Officers, which was the mandatory qualification for further promotion as Food and Supplies Officers. The experience of the petitioners was lacking by few months. Therefore, while reconsidering the issue of promotion of the petitioners and fixation of their seniority, vis-à-vis the direct recruits, the petitioners were allotted the retrospective date of

promotion as Food and Supplies Officers with effect from the date they complete three years of experience. Accordingly, the petitioners were granted retrospective dates of promotion as Food and Supplies Officers w.e.f. April, 2013; May, 2013; June, 2013 and September, 2013. In any case, all these dates were prior to the date of direct recruitment which happened to be in February, 2014. However, vide impugned order; while fixing the seniority of the petitioners, vis-à-vis the private respondents, they have been put at place lower than the direct recruits. This has been done despite the grant of above said retrospective date of promotion as Food and Supplies Officers, which happens to be prior to the date of direct recruitment of the private respondents on the same post. Hence, the present petition has been filed.

6. While referring to the impugned order, the earlier order passed by this court, as well as, to the Rules related to the recruitment and appointment to the post of Food and Supplies Officer, the counsel for the petitioners has submitted that once the petitioners were granted retrospective promotions with effect from the date they completed three years of experience; as required under the Rules; and that retrospective promotion happens to be prior to the entry of the private respondents into the service, then the petitioners could not have been declared junior to the private respondents by any means. However, the respondent-State has given a totally absurd reason for making the petitioners junior to the private respondents. It has wrongly been observed by the State that since the petitioners were promoted as Food and Supplies Officers and there is a probation period prescribed for them for a period one year, therefore, they shall be deemed to be taken as 'regular' promotees to the post of

Food and Supplies Officers only when they complete their probation and that till they complete the probation period they shall remain 'temporary' employees, whereas, the private respondents were appointed on regular basis in February, 2014, in the first instance itself, therefore, the private respondents shall be senior to the petitioners. It has been submitted by the counsel that the probation period is provided for both the categories of the appointees, the promotees, as well as, for the direct recruits. Rather, the period of probation prescribed under the Rules for promotees is only one year, whereas, for direct recruits the probation period is for two years. Even the bare reading of the rules makes it clear that the petitioners would complete the probation before the completion of the same by the direct recruits. Hence, even on this count the respondent-State could not have declared the direct recruits as senior to the petitioners. It is further submitted by the counsel for the petitioners that the respondent-State has granted the retrospective date of promotion to the petitioners in compliance of the order passed by the High Court; and qua promotion of the petitioners it has specifically been written in the promotion order that they are promoted with effect from the date of completion of their three years service, and from the date which was specifically written in the promotion order; as such. The date of promotion, freshly granted to the petitioners, is not even in dispute anywhere nor the same is challenged by any person. Taking that unquestioned date of promotion of the petitioners, the private respondents cannot, by any means, be treated as senior to the petitioners. Hence, the impugned order deserves to be set aside qua the aspect of declaring the petitioners as junior to the private respondents.

7. On the other hand, the counsel for the State, while referring to the written statement filed on behalf of the State, has submitted that the order passed by the State authorities is well reasoned and is a detailed speaking order. The same has been passed in compliance of the order passed by the High Court. The High Court has already held that the promotees cannot claim seniority over the direct recruits involved in this case. Hence, by any means, the petitioners could not have been declared as seniors to the private respondents No.3 to 19. Referring to the note attached to Rule 8 of Punjab Civil Services (General and common Conditions of Service) Rules, 1994, which is stated to be dealing with seniority *inter se* of the persons appointed to the post in each cadre of service, the counsel for the State has submitted that the note itself specifies that in case of a person appointed on provisional or ad hoc basis, his seniority shall be determined as and when he is regularly appointed, keeping in view the date of his regular appointment. Hence, the petitioners are not entitled to seniority from the date of promotion as Food and Supplies Officers. They can be considered as regular member of the cadre only when they complete probation period. On the other hand, the direct recruits were appointed as 'regular' from the date of initial appointment itself. Hence, they have to be granted seniority from the date of their initial appointment. In view of the situation, the private respondents have rightly been granted seniority over the petitioners in compliance of the order of the High Court and in compliance of the Rules applicable in the matter.

8. Supplementing the arguments of the counsel for the State, the learned senior counsel appearing for the private respondents No.3 to

19 has submitted that, undisputedly, the earlier promotion of the petitioners were set aside by the High Court on the ground that they were not possessing the necessary qualification on the said date. When the petitioners were working on the post of Food and Supplies Officers, the same cannot be taken as experience on the post of Assistant Food and Supplies Officers. They will have to acquire requisite experience after setting aside of their earlier promotion. Therefore, they will start acquiring that necessary experience on the post of Assistant Food and Supplies Officer, only after they are reverted pursuant to the order of the High Court and they actually work on post of Assistant Food and Supplies Officer. The petitioners are wrongly claiming that they have now been promoted by the respondent-Department with effect from the dates mentioned therein and from the year 2013. They cannot be deemed to have acquired the requisite experience before the year 2019 when this Court had quashed their earlier promotion because of deficiency in experience on the post of Assistant Food and Supplies Officer.

9. Having heard the counsel for the parties and having perused the file, this Court finds that the order passed by the respondents does not confirm to the Rules or even to the order passed by this Court in earlier writ petitions, i.e. CWP No.1361 of 2017 and CWP No.7203 of 2017 qua the determining of seniority of the petitioners and the private respondents. There has been a totally misreading of the Rules on the part of the State authorities in this regard. It is appropriate to hire the relevant Rules which are applicable in the matter. The same are reproduced hereinbelow:

Punjab Food and Supplies (Class II) Service Rules, 1988.

XXX.....

XXX.....

XXX.....

8. Method of appointment and qualification. – (1)

Appointment to the Service shall be made in the manner as specified in Appendix 'B' to those rules.

(2) No person shall be appointed to the Service unless he possesses the educational qualifications and experience specified in Appendix 'B' to these rules.

(3) All appointments to the Service by promotion shall be made on the basis of seniority-cum-merit and no person shall have any claim to any post in the Service merely on the ground of seniority.

(4) When any vacancy occurs or is about to occur in the Service, the appointing authority shall determine the manner in which the vacancy is to be filled.

(5) No person shall be recruited to the Service by direct appointment unless he possesses knowledge of Punjabi language of Matriculation Standard or its equivalent or passes test in Punjabi language of Matriculation Standard to be held by such authority as may be specified by Government in this behalf from time to time.

9. Probation of Members of Service. –(1) Persons

appointed to the Service shall remain on probation for a period of two years if recruited by direct

appointment and one year if recruited otherwise, provided that –.

- (a) any period after such appointment spent on deputation on a corresponding or a higher post shall count towards the period of probation;
- (b) in the case of an appointment by transfer, any period of work in equivalent or higher rank prior to the appointment to the Service, may, in the discretion of the appointing authority be allowed to count towards the period of probation;
- (c) any period of officiating appointment to the Service shall be reckoned as period spent on probation, but no person who has so officiated shall on the completion of the prescribed period of probation be entitled to be confirmed, unless he is appointed against a permanent vacancy; and
- (d) any kind of leave not exceeding six months availed during or at the end of the period of probation is also countable towards the period of probation.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory or, if has failed to pass the prescribed departmental examination within a

period not exceeding two and half years from the date of appointment, it may –

- (a) if such person is recruited by direct appointment, dispense with his service or revert him to a post in which he holds lien prior to his appointment to the Service by direct appointment;
- (b) if such person is recruited otherwise, –
 - (i) revert him to his former post; or
 - (ii) deal with him in such other manner as the terms and conditions of his previous appointment permit.
- (3) On the completion of the period of probation of a person, the appointing authority may,-
 - (a) if his work and conduct has, in its opinion, been satisfactory,-
 - (i) confirm such person from the date of his appointment, if appointed against a permanent vacancy; or
 - (ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or
 - (iii) declare that he has completed his probation satisfactorily if there is no permanent vacancy.

(b) if his work or conduct has not been in its opinion satisfactory or he has failed to pass the prescribed departmental examination,-

(i) dispense with his Services, if appointed by direct appointment or if appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment permit; or

(ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the period of probation specified in sub-rule (i):

Provided that the total period of probation including extension, if any, shall not exceed three years.

11. Seniority of members of Service.— The Seniority inter se of members of the Service in each cadre shall be determined by the length of continuous service on a post in that cadre of Service:

Provided that in case of members recruited by direct appointment who join within the period specified in the order of appointment or within such period as may from time to time be extended by the appointing authority subject to a maximum of four months from the date of order of appointment, the

order of merit determined by the Commission or other recruiting authority of the Government, as the case may be, shall not be disturbed:

Provided further that in case a candidate is permitted to join the Service after the expiry of the said period of four months in consultation with the Commission or other recruiting authority, as the case may be, his seniority shall be determined from the date he joins the Service:

Provided further that in case any candidate of the next selection has joined the Service before the candidate referred to in the proceeding proviso joins the candidate so referred shall be placed below all the candidates of the next selection who join within the time specified in the first proviso:

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 recruited by direct appointment shall be senior to a member recruited otherwise;
- (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 appointments from which they were promoted or transferred; and

(d) in the case of members recruited 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 service in that appointment and if the length of service is the same, an older member shall be senior to a younger member.

Note,- Seniority of members appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment.

Punjab Civil Services (General and common Conditions of Service) Rules, 1994

7. Probation.- (1) A person appointed to any post in the Service shall remain on probation for a period of two years. If recruited by direct appointment and one year if appointed otherwise:

Provided that.-

- (a) any period, after such appointment, spent on deputation on a corresponding or a higher post shall count towards the period of probation;
- (b) in the case of an appointment by transfer, any period of work on an equivalent or higher rank, prior to appointment to the Service, may in the discretion of the appointing authority, be allowed to count towards the period of probation;
- (c) any period of officiating appointment to the Service shall be reckoned as period spent on probation; and
- (d) any kind of leave not exceeding six months, during or at the end of period of probation, shall be counted towards the period of probation.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory or he has failed to pass the departmental examination, if any, prescribed in Service Rules within a period not exceeding two and a half years from the date of appointment, it may,-

- (a) if such person is recruited by direct appointment, dispense with his service, or revert him to a post on which he held lien prior to his appointment to the Service by direct appointment; and

- (b) if such person is appointed otherwise-
 - (i) revert him to his former post; or
 - (ii) deal with him in such other manner as the terms and conditions of the previous appointment permit.
- (3) On the completion of the period of probation of a person, the appointing authority may –
 - (a) if his work and conduct has in its opinion been satisfactory –
 - (i) confirm such person, from the date of his appointment or from the date he completes his period of probation satisfactorily, if he is not already confirmed; or
 - (ii) declare that he has completed his probation satisfactorily, if he is already confirmed; or
 - (b) if his work or conduct has not been, in its opinion, satisfactory or if he has failed to pass the departmental examination, if any, specified in the Service Rules –
 - (i) dispense with his services, if appointed by direct appointment or if appointed otherwise revert him to his former post, or deal with him in

such other manner as the terms and conditions of his previous appointment may permit; or

- (ii) extend his period of probation and thereafter pass such order as it could have passed on the expiry of the period of probation as specified in sub-rule (1):

Provided that the total period of probation including extension, if any, shall not exceed three years.

8. Seniority - 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.

Provided that in the case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Commission or the Board, as the case may be, shall not be disturbed:

Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the Commission or the Board,

as the case may be, his seniority shall be determined from the date he joins the post:

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso:

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

- (a) a person appointed by direct appointment shall be senior to a person appointed otherwise;
- (b) a person appointed by promotion shall be senior to a person appointed by transfer;
- (c) in the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred; and
- (d) in the case of persons appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a person 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 their length of service in these appointments
and if the length of such service is also the
same, an older person shall be senior to a
younger person:

Note:- Seniority of persons appointed on purely
provisional basis or on ad hoc basis shall be determined as
and when they are regularly appointed keeping in view the
dates of such regular appointment.

10. A bare perusal of the above said Rules shows that the appointment to the post of Food and Supplies Officer is to be made through direct recruitment or otherwise; which includes by way of promotion and by way of transfer. The appointments, made from any source of appointment, have been made subject to completion of probation. The probation period prescribed for direct recruit is two years whereas, it is one year for a person who is appointed by way of promotion or by transfer. The competent authority has been granted power to review the performance of the appointee within a period not exceeding two and half years. After assessment of the appointee the competent authority may revert a promotee if his work and conduct is not found as per the standards, and in case of direct recruit; he can be shunted out of the service altogether. The appointing authority can also extend the probation for a maximum period of three years. On being satisfied with the conduct of the appointee, the competent authority may confirm such appointee from the date of his appointment or from the date he completes his probation period satisfactorily, if he is not already confirmed. Confirmation from the date of appointment and from the date

of completion of probation, obviously; refers to the persons appointed by direct recruitment and by promotion, and the persons appointed by transfer, respectively. Still further the seniority of an appointee in the cadre is to be determined on the basis of length of continuous service on a post in that cadre of service. The Departmental Service Rules also prescribed that seniority of such members who were earlier appointed on purely provisional basis shall be determined as and when they are regularly appointed, keeping in view the date of such regular appointment. There is a little difference qua this aspect in the Common and General Service Condition Rules of 1994. Under these Rules the Note reads that : 'seniority of persons appointed on purely 'provisional' basis or on 'ad hoc' basis shall be determined as and when they are regularly appointed, keeping in view the dates of such regular appointment'. Hence, in the Common and General Service Condition Rules words 'provisional basis' have been supplemented with 'ad hoc basis'. Otherwise, both the Rules are *para materia*.

11. In view of the above Rules, the respondent-department is required to fix the seniority of the persons appointed in the cadre, on the basis of continuous length of service in the cadre. The only exception created is that if an appointment was initially made on 'provisional' basis, as contemplated under the Departmental Service Rules or on 'provisional' or 'ad hoc' basis, as contemplated under the Common and General Service Condition Rules of 1994, then the seniority shall be counted from the date on which the service of such a person is regularized or such a person is appointed on regular basis. The date of completion of probation has no relevance qua the fixation of the seniority

under either Departmental Service Rules or under the Common and General Service Condition Rules. It is not even disputed that the probation period; of neither the petitioners nor of the private respondents; was ever extended by the departmental authorities. Hence, they have completed the probation period satisfactorily. Even if there had been any extension of probation period, then also, on completion of probation satisfactorily, a promotee is required to be confirmed from the date of appointment. Hence, it is only the continuous length of service rendered by the incumbent upon the post in the cadre, which is to be taken in to consideration for determination of the seniority. Earlier even a specific order was passed by the department qua declaring the probation period of the petitioner as having been successfully completed by them. Admittedly, the petitioners were actually appointed before the private respondents No.3 to 19, who were not even born on the cadre on that date. Although, the High Court vide order dated 02.12.2019 (Annexure P-2) had directed revisiting the promotion order and for grant of retrospective promotion from the date they completed three years of experience, as required under the Rules, however, even as per the fresh promotion order issued by the respondents-State, the petitioners have been granted the date of promotion, again, before the date when the direct recruits/private respondents were not even born on the cadre. Therefore, by any means, respondents No.3 to 19 could not have been granted seniority over and above the petitioners.

12. The stand of the respondents is that the petitioners were promoted on 'temporary' basis in the first instance, therefore, they shall become eligible for regular promotion with effect from the date when

they complete their probation. Unless they complete the probation, they cannot be deemed to have been regularly appointed. Hence, as per the note attached to the rules relating to seniority their deemed date of regular appointment for the purpose of determination of seniority shall be the date on which they completed the probation period. However, before that the private respondents had already joined the department on regular basis vide the appointment order dated 10.02.2014. Hence, the private respondents have rightly been declared as senior. However, this court finds this argument to be noted only to be rejected with contempt it deserves. This argument has resulted from the confusion, deliberate or otherwise, between the terms: regular, temporary, provisional, ad hoc and permanent. The term 'temporary' is, very conveniently, being put at par with the term with 'provisional' or 'ad hoc' appointment for the purpose of treating the same to be an appointment which is not 'regular'. However, all these terms denote different type of meaning and situations in service jurisprudence. The term 'regular' refers to only a procedural aspect of recruitment and appointment. It does not, in itself, refer to the positional aspect of the appointment of the person in question. On the other hand the terms 'provisional', ad hoc, 'officiating' or 'current duty charge' refer to the positional aspect of the appointment of the person in question. These positional terms denote the differential extent of rights of a person so appointed. Whereas; the term 'regular' denotes only this much that the person has been appointed after satisfying the requirements of concerned service rules and after following a due procedure where all eligible aspirants were given opportunity of fair competition. Therefore, legally, the term 'regular' is only in contrast to 'irregular' appointment,

wherein the relevant rules are not complied with at the time of making the appointment. However, in common parlance; while the term 'regular' is used in contrast to 'ad hoc', 'contractual', 'officiating' or 'provisional'; the term 'temporary' is used in contrast to 'permanent'. The appointment of a person can be said to be not on 'regular' basis, only when he is appointed by not following the regular procedure prescribed for recruitment to the posts in the cadre; and not when he is appointed as 'temporary' employee, though by following the rules. The appointments like the appointment on ad hoc basis, appointment on contract basis, appointment or promotion on officiating basis or promotion on provisional basis, on account of some short duration vacancy; are stop-gap appointments; which may be regular or irregular. On the contrary, the 'temporary' appointment is always a regular appointment, whether it is made by promotion or by direct recruitment. In fact, where there is a provision for putting an appointee on probation, the initial appointment of such a post is always on 'temporary' basis. A person gets appointed on 'permanent' basis only after he has completed the probation period and when a permanent vacancy is available for him, irrespective of the fact whether such a person has been appointed by way of promotion or by way of direct recruitment. Hence, the term 'temporary' is comparable in contrast to the term 'permanent' or 'substantive' and not comparable in the same class with 'provisional' or 'ad hoc' or 'contractual' and the like. This aspect is made more clear by the fact that the Rules governing the post of Food and Supplies Officer itself prescribed the cadre strength by specifying the number of 'temporary' posts and number of 'permanent' posts. Still further, the Rule regarding probation also

clarifies that a person shall not be entitled to be confirmed on a post in his 'substantive' capacity, unless there is a 'permanent' post available for him. In view of this legal situation, the appointment of the petitioners has to be taken as having been regularly made, though, on temporary basis, as was written in the promotion order of the petitioners. This is further clarified by the fact that it was also stipulated in the promotion order of the petitioners that their seniority in the cadre shall be determined as per the Rules applicable to the appointment. This leaves no doubt that the promotion of the petitioners was on regular basis, whose seniority was also to be determined in accordance with Rules. Moreover, when the respondent-department has granted retrospective date of promotion to the petitioners, pursuant to the order of the High Court, the department has calculated even the cadre posts and the roster points available for permanent appointment. The promotion of the petitioners has been made against those slots in the roster, which were meant for 'promotion' source of recruitment and in their respective categories. Therefore, there can not be any doubt on the fact that the promotion of the petitioners was on regular basis. This cannot be taken as non-regular or ad hoc or provisional; only because the word 'temporary' was used in their promotion order. Therefore, they are entitled to seniority in the cadre of Food and Supplies Officer from their re-allotted date of promotion in the year 2013, i.e., a date prior to the time when the direct recruits were not even born on the cadre.

13. Another aspect which would make the things more clear is that although the direct recruits were ordered to be appointed vide letter dated 10.02.2014, however, even their appointment order does not

specify that they were being appointed on 'regular' basis. The terms and conditions of their appointment also specified that if they intended to leave the training, they will have to deposit entire expenses incurred by the State on their training. Still further it was stipulated in their appointment order that the State Government can terminate their service without any reason by giving them one month notice. This liberty of terminating the service of an incumbent is not available qua a permanent employee. Moreover, mere fact that they were put on probation shows that even their appointment was not permanent, a status which they would acquire only after completion of probation. Therefore, a reading of the conditions of appointments of the private respondents also show that they were also appointed on 'temporary' basis, may be even against temporary vacancies available in the cadre. There is nothing on record to show that they were appointed only against the 'permanent' vacancies. At the cost of repetition it deserves mention that there are two types of posts available in the cadre of Food and Supplies Officer, namely, 'temporary' posts and 'permanent' posts.

14. Although the respondent-State has tried to take the entitlement of the petitioners; to count their service for the purpose of seniority; to the date of completion of probation, however, this again is totally ridiculous. As observed above, the confirmation has no reference or relevance qua determination of seniority under the applicable Rules. It is the length of continuous service which is the statutory determining factor to decide the *inter se* seniority of the members of the cadre. Otherwise also, if the service of the petitioners is to be seen from the date of completion of the probation, the same has to be applied to the private

respondents as well. Rather, the probation period provided for the private respondents is two years; as against the probation period provided for the petitioners. There are no exemptions to the direct recruits, as such, in the matter of completion of probation, which are not available to promotees. Therefore, by any means, the direct recruits cannot be taken to have completed the probation period before the petitioners, unless it was extended by the competent authority qua petitioners alone. However, it is not even the case of anybody that the probation of the petitioners was ever extended by the competent authority. Rather the record shows that before the re-allotted date of promotion was granted to the petitioners, they were declared to have completed their probation period; by passing specific orders.

15. Much reliance has been placed by the State as well as the private respondents upon the notes attached to the Rule 11 of the Departmental Service Rules and Rule 8 of Common and General Service Conditions Rules. However, even these Notes do not require a person to be appointed on 'regular' basis for counting of service for seniority. This Note only excludes the service rendered by a person on 'provisional' basis, whether it is by direct recruit or by promotee, under the Departmental Service Rules and the Note excludes 'provisional' and 'ad hoc' service under the Common General Service Condition Rules, 1994. However the promotion of the petitioners was neither 'ad hoc' nor 'provisional'. Rather it was a regular promotion, though described as 'temporary'. However, as clarified above the term 'temporary' has comparable significance qua the term 'permanent' or 'substantive' and not with the terms 'regular', 'ad hoc' or 'provisional'. Hence, this Court

finds the action of the respondents in counting the service of the petitioners; for the purpose of seniority; from the date of completion of probation period; while counting the same from the date of initial appointment in case of the private respondents No.3 to 19, to be totally arbitrary and patently in violation of the statutory rules.

16. Although the counsel for the private respondents has argued that after the setting aside of the promotion of the petitioner on the ground of deficiency in prescribed experience; the petitioners shall have to gain experience on post of Assistant Food and Supply Officer to the extent of deficiency in experience, after their revision pursuant to order of High Court; and further, that the experience acquired by them on the post of Food & Supply Officers cannot be counted as experience on the post of Assistant Food and Supplies Officers, however, this Court finds this argument only to be an argument of vanity. The petitioners have been granted retrospective promotions now, after adjusting their dates of promotions with effect from the dates of competition of 3 years of service as Assistant Food and Supplies Officers. There has been no reversion of petitioners pursuant to the order of High Court. They have only been deemed to have worked, on the post of Assistant Food and Supplies Officer in substantive capacity for the deficient period. In case of substantive appointment of a person the 'service' has to be treated as 'experience' as well; unless the employees goes totally out of his cadre. In the present case, the petitioners were only promoted to higher post directly in line with the post of Assistant Foods and Supplies Officers. The work of food and supplies officer is higher in nature and responsibility. The cadre of Food and Supplies Officer is a supervisory and the work-regulating cadre for the cadre of Assistant Food and Supplies Officers. Therefore any experience gained as Foods and

Supplies Officer has to be taken as their experience on the post of Assistant Food and Supplies Officers as well; to the extent it makes up the deficiency in the requisite experience of 3 years experience on the post of Assistant Food and Supplies Officers. Hence, the petitioners have rightly been granted the retrospective dates of promotion by the respondent State. Moreover, as mentioned above, the retrospective promotion of the petitioners is not even under challenges anywhere through any appropriate proceedings. Therefore, the petitioners are fully entitled to get seniority as Food and Supplies Officers from the dates of their promotions, which have now been granted to them from the retrospective dates.

17. In view of the above, the seniority prepared by the respondent-State deserves to be set aside and the concerned authorities deserve to be directed to prepare the seniority list afresh; by counting the same from the date of promotion in case of the petitioners; and by counting the service of the respondents No.3 to 19 from the date of their direct recruitment.

18. Ordered accordingly.

19. In view of the above the present petition is allowed. The seniority list prepared by the respondent-State qua the petitioners and the respondent Nos.3 to 19 is quashed. The respondents-State is directed to prepare and issue fresh seniority list; by re-determining the seniority slots of the petitioners and the respondents No.3 to 19, on the basis of their dates of promotion and direct appointment respectively, within a period of two months from the date of receipt of the certified copy of this order.

6th APRIL, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: **Yes** **No**

Whether Reportable: **Yes** **No**