

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 828 of 2021 (O & M)
Date of decision: 09.03.2022

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Satish Kumar and others

....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

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

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 2033-LPA of 2021

Application for condonation of delay of 24 days in filing the appeal is allowed, in view of the averments made in the application duly supported by affidavit.

Delay of 24 days in filing the appeal is condoned.

C.M. stands disposed of.

LPA No. 828 of 2021

The petitioners are aggrieved against the order dated 28.01.2020 passed by the learned Single Judge in ***CWP No. 10873 of 2016, Satish Kumar and others vs. State of Haryana and others***. The claim of the writ petitioners for fixing of seniority as per the merit prepared by the Haryana Staff Selection Commission (Annexure P-1) was rejected by the learned Single Judge. The reasoning was that the Rules of service govern the service conditions of an employee and after accepting the same and joining the department, claiming of seniority by counting past service could not be made out. The petitioners having accepted the condition of the applicability of the Rules mentioned in the appointment letter dated 11.08.2014 (Annexure P-7) whereby they were to be

governed by the Haryana Town & Country Planning Department Ministerial (Group C) Service Rules 1983 (in short '1983 Rules) could not claim the benefit contrary to the Rules. The learned Single Judge placed reliance upon the judgment of the Apex Court in ***Indu Shekhar Singh and others vs. State of U.P. and others, 2006 (2) SCT 808*** and judgment of this Court in ***CWP No. 3543 of 2017, Vinay Dhull vs. State of Haryana and another decided on 18.08.2018.***

Counsel for the petitioners has vehemently submitted that at the time of inviting applications vide letter dated 28.02.2013 (Annexure P-3), the Director General, Town & Country Planning, Haryana had put a condition that the lien would remain intact with the parent department while filling up the posts of clerks which had been filled on transfer basis. It is accordingly contended that the petitioners be given a right to contest as such since they were initially working with the Director, Secondary Education. It is further contended that though the said department has not been made party, permission be given to re-agitate by withdrawing the present appeal.

After hearing counsel for the appellants-writ petitioners, we are of the considered opinion that such a course of action cannot as such be now permitted at this stage. As noticed, the writ petitioners, with open eyes as such, opted to shift from their parent department to the Director General, Town & Country Planning in pursuance of the said offer of appointment on transfer basis. The aspect of lien being remaining intact was never as such offered by the Education Department and necessary no objection certificate had been granted by the office of the District Education Officer, Jind on 16.07.2014 (Annexure P-6). It was noticed on the said date that the petitioners had applied through proper channel and the services of the employees would be finished by

the parent department on account of the letter dated 06.03.2014 which had been addressed while issuing the necessary no objection certificate. Thereafter, the requisite appointment letters were issued on 11.08.2014 (Annexure P-7) whereby, they were offered appointment as Clerks on transfer basis in the pay band of Rs.5690-20,200+1900 grade pay. The appointment letter was very clear that they would be governed by the 1983 Rules as per Clause 15.

The learned Single Judge has referred to the Rule in question in the impugned judgment and come to the conclusion that the Rule itself provides that in cases of members appointed by transfer, their seniority has to be determined as per the seniority of such member in the appointment from which they were transferred as per Rule 11(1)(c).

In such circumstances, the writ petitioners having accepted the said appointment letter, could not start agitating for the benefit of service rendered by them earlier in the Education Department from 2012 to 2014 and that it should be counted for seniority in the Department of Town & Country Planning. In search of green pastures, the petitioners have migrated and now cannot as such claim any right of the earlier service for the claim of seniority as they are bound by the service conditions prescribed in the 1983 Rules.

In such circumstances, we are of the considered opinion that the learned Single Judge while dismissing the writ petition has not erred in any manner which would warrant interference by this Court. The present appeal is accordingly dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

09.03.2022

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Whether reasoned/speaking

Whether reportable

Yes/No

Yes/No

(VIKAS SURI)
JUDGE