

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

CWP No.271 of 2016 (O&M)

Date of Decision: 04.04.2022

Himmat Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Surinder Garg, Advocate for the petitioner.

Mr. Nikhil Chopra, Addl. A.G., Punjab for the respondent(s).

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for issuance of a writ in the nature of mandamus directing respondents to assign serial No.32 to the petitioner in the seniority list circulated in November, 2009 (P-1) for the post of Senior Assistant; further prayer is to promote him as Superintendent Grade-II w.e.f. December, 2011, when his juniors were promoted.

(2) Paper-book reveals that initially petitioner was engaged as Steno-Typist (*ad hoc* basis) on 08.06.1976 and thereafter, his services were regularized w.e.f. 01.10.1980. In November, 2003, he was promoted to the post of Senior Assistant. Ultimately, after attaining the age of superannuation, he retired from service w.e.f. 31.03.2012.

(3) It is contended by learned Counsel for the petitioner that as per seniority list in question, the petitioner was shown at serial No.36, whereas his juniors, namely, Baljit Kaur, Bharpur Singh, Sant Singh and Baljinder Kumar, who were regularized as Clerk subsequent to petitioner were shown at serial Nos.32, 33, 34 & 35, respectively. Further contended that petitioner was promoted as Senior Assistant on 21.11.2003, whereas above juniors were promoted on 04.10.2002. Also contended that although seniority list for the post of Senior Assistant was circulated in November, 2009, but petitioner was not made aware about the same; rather he came to know only in the year 2011. He immediately submitted a representation against the seniority list, but the same was rejected without assigning any reason by respondent No.2 on 09.08.2011.

Learned Counsel for the petitioner has also relied upon the judgment of Hon'ble Supreme Court, titled as "**Ajit Singh Janjua and others Versus State of Punjab and others**", 1996 (2) SCC 215 as well as Instructions dated 22.10.1999 & 10.10.2014 (P-3 & P-4), respectively.

On the other hand, learned State Counsel opposed the prayer and submitted that objections against the seniority list, filed by petitioner, were duly considered by the competent authority, but the same were rejected on 09.08.2011, however, not challenged till date. Further submitted that while acting upon the impugned seniority list, alleged juniors were promoted to the next higher post of Superintendent Grade-II before filing the present writ petition, but none of them has been impleaded as party respondents; thus, prayed for dismissal of writ petition.

(4) Heard learned Counsel for the parties and perused the paper-book.

(5) There is no dispute that initially petitioner was inducted as Steno-Typist (*ad hoc* basis) on 08.06.1976; later on, his services were regularized w.e.f. 01.10.1980.

(6) It is also matter of record that all four alleged juniors were regularized as Clerk(s) on 01.10.1980, 04.09.1981, 28.09.1982 & 10.06.1983, respectively. Concededly, in the impugned seniority list, they were shown at serial Nos.32, 33, 34 & 35, whereas petitioner was assigned serial No.36.

(7) It has also come on record that aggrieved against the seniority list, petitioner filed objections on 25.07.2011, but the same were rejected by the competent authority, vide memo dated 09.08.2011, in the following manner:-

From

Director Agriculture Punjab.

To

*Assistant Cane Development Officer,
Faridkot.*

*Memo No.3A-102/A3 (7)/9006
Dated Chandigarh 9.8.11*

Subject: For promotion as Superintendent Grade-II from Senior Assistant.

Reference: Your endorsement No.181 dated 14.7.11.

In connection with the above referred letter on the above said subject in the seniority list of Senior Assistant issued vide this office letter No.3A-102/A3 (7) 979-1023 dated 29.1.2010 the employees mentioned at Sr. No.32, 33, 34 & 35 belong to Schedule Caste Category. Although earlier they were junior to Sh. Himmat Singh but they were promoted to complete the backlog of Schedule Caste Category. The seniority list issued vide the above said letter is correct. The concerned employee be informed regarding this.

Sd/-

P.Kaur 8.8.2011

*Superintendent Establishment-3
For Director Agriculture Punjab*

Perusal of the above rejection order clearly reveals that the competent authority (respondent No.2) while declining the request of petitioner

specifically observed that seniority list is correct and the “*concerned employee be informed*”. Even otherwise, this is not the case of petitioner that he was unaware about the rejection of his objections; but despite that, he remained silent during his service tenure and never challenged the same.

It is also evident that alleged juniors were promoted as Senior Assistants prior to petitioner i.e. on 04.10.2002 being from reserved categories (Scheduled Castes), whereas he was promoted as such on 21.11.2003, but he again never challenged their promotion.

Also borne out from records that out of four alleged juniors, Baljit Kaur stood further promoted as Superintendent Grade-II in November, 2011; whereas remaining three were also promoted as such on 30.09.2013.

(8) As already observed, during his service tenure, petitioner neither challenged the rejection order dated 09.08.2011; nor the promotion order of Baljit Kaur, issued in November, 2011. Even in the present writ petition also, there is no prayer to that effect.

(9) Above all, none of the above four alleged juniors has been impleaded as party respondents to the present writ petition; yet petitioner is claiming re-fixation of seniority on the post of Senior Assistant, over & above all of them.

(10) Since seniority list was circulated in November, 2009 and that has already been acted upon by the respondents from time to time. Petitioner retired from service on 31.03.2012 after attaining the age of superannuation. Present writ petition was filed on 20.12.2015, thus, it seems that petitioner is enjoying the litigation as a luxury.

(11) Although, learned Counsel for the petitioner tried to justify the delay on the premise that he made three representations dated 19.11.2014,

15.03.2015 & 26.03.2015 (P-5, P-6 & P-7), respectively and no final decision has been taken in the matter till date, but that is not acceptable.

Law is well settled that repeated representations in such like cases would not be a ground for condonation of delay and laches. Reference in this regard can be made to the judgment of Hon’ble Supreme Court (Seven Judges’ Bench), **“S.S.Rathore Vs. State of M.P.”**, AIR 1990 SC, 10, and para 22 thereof reads as under:-

“ It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation. ”

(12) In the present case, as already discussed, the claim of petitioner was rejected wayback on 09.08.2011. He neither challenged the seniority list; nor the promotion of alleged juniors during his service tenure, therefore, he cannot take any benefit on the basis of repeated representations.

(13) In view of the above, there is no option except to dismiss the petition.

Ordered accordingly.

Pending application(s), if any, shall also stand disposed off.

April 4th, 2022
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No