

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

LPA-1202-2016 (O&M)
Reserved on: 10.05.2022
Date of Decision: 20.05.2022

Davinder Kaur and another

. . . . Appellants

Vs.

Gurpreet Singh and others

. . . . Respondents

LPA-1376-2016 (O&M)

Rajesh Kumar and others

. . . . Appellants

Vs.

Gurpreet Singh and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE H.S. MADAAN

Present: - Mr.C.S. Bagri, Advocate, for the appellants.

Mr.Raman B. Garg, Advocate, for respondent No.1.

Mr.Roopak Bansal, Advocate, for respondent No.23.

Mr.Pankaj Gupta, Addl. A.G., Punjab.

M.S. RAMACHANDRA RAO, J.

The Background facts

In both the appeals, judgment dt.23.02.2016 in CWP-20194-2012
is challenged.

Appellants in LPA-1202-2016 are respondents No.22 & 31 in CWP-20194-2012, and appellants in LPA-1376-2016 are respondents No.10, 18, 23, 25 & 28 in the said Writ Petition.

The dispute in this case relates to seniority in the cadre of Senior Assistants (Accounts).

The seniority list of the Senior Assistants (Accounts) in the Department of Rural Development and Panchayats, Government of Punjab, was fixed vide office order dt.07.04.2000 and endorsement No.15/40/95-2-RDE-4/3514 dt. 17.04.2000 from Sr. No.1 to 157.

The legal notice dt.7.11.2011 (P-4) got issued by Respondent No.1/Writ Petitioner

One Gurpreet Singh (respondent No.1 in both LPAs) had got issued a legal notice on 07.11.2011 to respondents No.2&3 raising a plea that for the previous 10 years and till then no seniority list was issued in the cadre of Senior Assistants (Accounts), and this was initially done to give undue benefits to promotees like the appellants, who were promoted against the quota of posts meant for direct recruitment; that candidates who are beyond the quota i.e. promoted against the posts not meant for promotees but, for direct recruitment, cannot be given seniority; and that the Department was giving them seniority on the basis of their date of promotion ignoring the question *whether they were promoted against quota meant for direct recruitment.*

It was also contended that promotions were being made arbitrarily by picking and choosing, that undue benefit cannot be given to those persons promoted beyond their quota, and they cannot be considered for promotion to the next higher post ignoring claims of direct recruits, who were within their quota.

There was no response to the legal notice by respondents No.2&3.

CWP No.9900 of 2012

So Respondent No.1 filed CWP.No.9900 of 2012 in this Court and sought a direction to the Official Respondents to dispose of the his plea raised in the said legal notice P4 dt.7.11.2011.

The said Writ Petition was disposed off on 23.5.2012 and a direction was issued to the respondents to decide/finalise the seniority list if not already finalized and further directing that any promotion to the next higher post of Block Development and Panchayat Officer, which has been done , will be subject to the final seniority list.

The Tentative Seniority List dt.30.5.2012

In the meantime, through a letter No.17/2/10-2-RDE-4/2885 dt.30.05.2012, a tentative seniority list of Senior Assistants (Accounts) from Sr. No.158 to 345 was published inviting objections thereto within a period of 10 days.

Certain people filed objections to the said tentative seniority list, but the appellants did not file any objections thereto.

The order dt.17.8.2012 impugned in the instant Writ Petition

Vide order dt.17.08.2012 (P5), the Special Secretary, Government of Punjab (respondent No.2 in the LPAs) overruled objections to the tentative seniority list, and also issued an endorsement on 29.08.2012 finalising the seniority list in the said cadre.

CWP-20194-2012

The Respondent No.1 in the LPAs/Writ Petitioner then filed the CWP-20194-2012 challenging the said order dt.17.08.2012 and endorsement

dt.29.08.2012 by impleading the appellants and others as respondents No.3 to 34 specifically contending that they were wrongly given seniority over and above him, and that their promotions to the posts of Senior Assistants (Accounts) were made beyond the quota earmarked for promotees as per the applicable Rules.

Reliance was placed in the Writ Petition on Rules 8 & 10 of the Punjab, Department of Rural Development & Panchayats (Class-III) Service Rules, 1988.

The respondent No.1/Writ Petitioner contended that for the post of Senior Assistant 75% posts were to be filled by promotion from amongst Clerks, and 25% by direct recruitment as per the above Rules; in 2001, when Selection was made by direct recruitment, there were 170 posts in the Department; requisition was sent for filling up of only 13 posts by direct recruitment in which respondent No.1 got selected; and the promotion of respondents No.3 to 34 in the Writ Petition including the appellants was made in September 2001 against the posts meant for direct recruitment quota.

He contended that candidates, who are within their quota only are entitled for seniority and candidates working against direct recruit quota posts cannot be given seniority till they become part of their own quota.

He contended that when his legal notice dt.07.11.2011 was not considered, he had filed CWP-9900-2012 before this Court, and it was disposed of with a direction to the respondent to decide/finalize the seniority list, if not already finalized, and that any promotion which had been made to the next higher post of Block Development and Panchayat Officer would be subject to the final seniority list.

He contended that in the impugned order dt.17.08.2012 and the endorsement dt.29.08.2012, objections given by him in his legal notice dt.07.11.2011 (P4) were not considered.

According to respondent No.1/Writ Petitioner, in the seniority list of Senior Assistants (Accounts), which had been issued in April 2000, 157 persons' seniority was mentioned, and out of these 157 persons, only 4 were direct recruits and the rests were all promotees, and this itself was in violation of the Rules which enabled 25% of the posts of Senior Assistants (Accounts) to be filled by way of direct recruitment.

According to him, even in the said seniority list issued in April 2000, employees were promoted much beyond their quota and promotees were occupying posts made for direct recruits; that even in the seniority list framed now, continuous length of service was taken as the basis without keeping in view the fact that promotees, who were beyond quota, cannot be given seniority, and such seniority can only be given from the date when they become part of the cadre. He contended that seniority for the period when they were working against direct quota posts, cannot be given to them.

Stand of the appellants herein in the Writ Petition

None of the respondents (including the appellants herein) in the Writ Petition filed any written reply opposing the case of the Writ Petitioner/respondent No.1 herein.

Reply filed on behalf of respondents No.2 & 3 in the LPAs/respondents No.1 & 2 in the Writ Petition

In the reply filed by the Under Secretary to the Government of Punjab, Department of Rural Development & Panchayats, on behalf of

respondents No.2 & 3 in the LPAs/respondents No.1 & 2 in the Writ Petition, the allegations leveled by the petitioners are admitted at more than one place'

While admitting that Rule 10 of the above Rules requires seniority to be determined in each cadre by the length of continuous service on a post in that cadre of service, it is stated that the objections raised to the tentative seniority list were rightly rejected under the impugned Order dt.17.08.2012.

A contention is also raised that respondent No.1 cannot claim seniority from a date when he was not borne in the service and that a later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruit vacancies arose, and seniority would depend only on length of service.

It is thus sought to be projected by respondents No.2&3 as if respondent No.1/Writ Petitioner, having been directly recruited to the posts of Senior Assistants (Accounts) on 03.01.2002 cannot questioned the seniority given to promotees, who had been promoted in the year 2001.

The Order in the Writ Petition

The learned Single Judge, vide order dt.23.2.2016, considered the rival submissions of respondent No.1/Writ Petitioner and respondents No.2&3 in LPAs.

The learned Single Judge held that because averments made in paras No.5, 13, 14, 16 & 17 by respondent No.1/Writ Petitioner alleging that promotees were occupying posts of direct recruits in access of their quota was not denied, allowed the Writ Petition.

He also took note of the fact that respondent No.1 had already served a legal notice on 07.11.2011 vide Annexure P4 raising the same

grievance; that the appellants and others private respondents in the Writ Petition had not chosen to contest the Writ Petition; and since they have been promoted in September 2001 beyond their prescribed quota, without their being any vacancy in the promotee quota, they cannot claim seniority over and above respondent No.1. He held that respondent No.1 having been appointed in January 2002 against posts earmarked for direct recruitment was entitled to claim seniority over the appellants and other private respondents in the Writ Petition.

He also placed reliance on the judgment of the Supreme Court in ***D. Ganesh Rao Patnaik and others Vs. State of Jharkhand and others***¹, wherein the Supreme Court held that period of service of promotees against quota earmarked for direct recruits cannot be taken into consideration, and such promotes cannot be treated as seniors to the direct recruits.

Reliance was also placed on the decision of the Supreme Court in ***Uttaranchal Forest Rangers' Asson. (Direct Recruit) and others Vs. State of U.P. and others***², and it was reiterated that if promotion is outside the quota, seniority would be reckoned from the date of vacancy within the quota rendering the previous service fortuitous; and the previous promotion would be regular only from the date of the vacancy within the quota, and seniority shall be counted from that date and not from the date of his earlier promotion for subsequent confirmation; that Rule of quota being a statutory one, it must be strictly implemented and it cannot be deviated from, whatever be the reason.

¹ 2005(8) SCC 454

² 2006(10) SCC 346

The learned Single Judge thus held that the impugned order dt.17.08.2012 was contrary to law and the seniority of respondent No.1 has to be fixed over and above that of the private respondents including the appellants.

Present LPAs

Challenging the same, these two appeals have been filed by the appellants herein.

Contentions of counsel for the Appellants in the LPAs

Mr.C.S. Bagri, Advocate, appearing for the appellants contended that the order passed by the learned Single Judge is contrary to law and unsustainable; that the appellants had rightly been given promotion on the basis of the length of their service, and the final seniority list notified in the cadre of Senior Assistants (Accounts) vide order dt.17.08.2012 with endorsement dt. 29.08.2012, is a valid one and unassailable.

According to him, the seniority list was rightly framed by respondents No.2&3 on the basis of continuous length of service; while deciding seniority, the date of appointment has to be the deciding factor; and the appellants were senior to respondent No.1.

He reiterated that *inter se* seniority of members in the service in each cadre has to be determined by the length of continuous service on a post in that cadre of service as per Rule 10, and since respondent No.1 was directly recruited as Senior Assistants (Accounts) in 2002 and joined on 07.01.2002, he cannot claim seniority over the appellants who had been promoted to the posts of Senior Assistants (Accounts) on 12.09.2001.

He also stated that since respondent No.1 was not borne in the cadre on the date when the appellants had been promoted to the posts of Senior Assistants (Accounts), he cannot claim seniority over and above the appellants.

Counsel for the appellants admitted that the appellants had not filed any pleading in spite of service of notice in CWP-20194-2012, and that there was no denial by respondents No.2 & 3 that posts earmarked for direct recruitment had been filled up by promotees like the appellants in excess of the quota earmarked for promotees.

Mr.Pankaj Jain, Addl. A.G., Punjab categorically stated that the posts earmarked for direct recruits had indeed been filled by promotees in excess of their quota and so the judgment passed by the learned Single Judge is correct.

Consideration by the Court

Once, respondents No.2&3 do not dispute that the appellants and others were promoted to the posts of Senior Assistants (Accounts) in excess of the quota earmarked for them and had occupied posts which fell within the quota of direct recruits, seniority of the respondents cannot be counted by taking into account the period of service rendered by them in posts earmarked for direct recruits.

When promotion is outside the quota, seniority has to be reckoned from the date of vacancy within the quota rendering the previous service fortuitous; and the previous promotion would be regular only from the date of the vacancy within the quota, and seniority shall be counted from that date and not from the date of the earlier promotion.

The decisions cited and followed by the learned Single Judge have laid down the above principles and the said decisions are binding on this Court.

It is impermissible for the official respondents to deviate from the Rule of quota, which is a statutory one, and they cannot give seniority to promotees (who had been promoted beyond their quota) over the direct recruits, and such action is violative of Article 14 & 16(1) of the Constitution of India.

Therefore, we find no merit in the LPAs and they are accordingly dismissed.

Interim orders, if any, granted in favour of the appellants shall stand vacated.

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

A photocopy of this order be placed on the connected file

(M.S. RAMACHANDRA RAO)
JUDGE

20.05.2022
Vivek

(H.S. MADAAN)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes