

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28140-2022 (O&M)
Date of Decision: 15.12.2022

Rajbir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Chanderhas Yadav & Mr. Kamal Goyal, Advocates
for the petitioner.

Mr. Pankaj Middha, Addl.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for setting aside order dated 04.05.2022 (Annexure P-15), whereby representation dated 14.10.2020 (Annexure P-11) filed by the petitioner, regarding his claim of seniority over and above the private respondents, was rejected by the respondent-authorities.

2. Succinct facts first, as pleaded by the petitioner. Petitioner was appointed on the post of Clerk in the year 1994 on compassionate ground. Staff Selection Commission selected 5373 candidates in the year 1989, out of which 1692 candidates were given appointment in the year 1990. However, selection of some of the persons travelled upto the Supreme Court and in view of the decision of the Supreme Court, those persons were given appointment in the year 2000, including the private respondents. Thereafter, the provisional gradation list was

prepared in 2006 and the petitioner was placed at serial No.268 in seniority, whereas the private respondents were at serial No.320 onwards.

2.1. On 11.02.2011, the petitioner was promoted as Assistant on the basis of his seniority. On 29.02.2008/01.03.2008 the private respondents were promoted as Assistant and thereafter on 07.10.2017, they were promoted as Assistant Superintendent (Treasury). In the provisional gradation list as on 31.07.2020, the private respondents were shown at serial Nos.7, 10, 11, 12, 13 and 14, whereas the petitioner was shown at serial No.39. The petitioner raised various objections but no decision was taken by the official respondents thereon and various other persons were promoted, despite the petitioner being senior in actual service. In view of Rule 12 of the Haryana Treasury Establishment Subordinate (Group C) Service Rules, 1980, the seniority of the petitioner deserves to be re-fixed. Therefore, the petitioner approached this Court vide CWP No.17455 of 2021 and in pursuance of the directions of this Court, the impugned order was passed, whereby representations/objections of the petitioner were rejected. Hence, the present petition.

3. On advance service, the learned State counsel appears and opposes the petition.

4. I have heard the rival contentions of the learned counsel for the parties.

5. In my opinion, merely because the appointment of the petitioner is prior to the private respondents, he cannot stake a claim in abstract only on that ground. What is under challenge herein is the seniority as Assistant. The conceded factual position is that the petitioner was promoted to the post of Assistant on 11.02.2011 as against the private respondents who were promoted as Assistant w.e.f. 29.02.2008. On that ground alone, it does not lie in the mouth of the petitioner to stake a claim over and above the private respondents. Moreover, the impugned order has been premised on the following reasoning:

“xxxxxxxxxxxxx

Whereas the seniority of the employees was fixed as Clerk in the original gradation list as stood on 01.06.2006 which has further been changed and refixed with respect to 29 Clerks adopting the due procedure considering their merit as received from the erstwhile Subordinate Services Selection Board, Haryana now Haryana Staff Selection Commission in order to comply with the Rule 12 of Haryana Treasury Establishment Subordinate Group C Services Rules, 1980, which is reproduced as under:

“12. Seniority inter se of members of the Service shall be determined the length of continuous service on any post in the service;

Provided that in the case of different cadres in the Service, the seniority will be determined separately for each cadre;

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the Board or any other recruiting authority as the case may be, shall not be disturbed in fixing the seniority;

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 appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;*
- b) a member appointed by promotion shall be senior to a member appointed by transfer;*
- c) in the case of member appointed by promotion or by transfer, seniority shall be determined according to the seniority of such member in the appointments from which they were promoted or transferred; and*
- d) in the case of member appointed 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 the appointments, and if the length of such service is also the same the older member shall be senior to the younger employee.”*

After re-fixation of seniority as Clerk of 29 affected employees in term of 2nd Provision to ibid Rule 12, as explained above. The detail of 32 employees, including the petitioner, Sh. Rajbir

Singh and his immediate Senior & Junior to the petitioner namely Sh. Dharmender Kumar & Sh. Ravi Parkash, respectively in the provisional gradation list as stood on 01.06.2006, the present position is as under:

S.NO.	Name	Merit of HSSC	Date of Joining	Seniority number as per the provisional gradation list of Clerks as it stood on 01.06.2006 of Treasury Organization	Seniority number according to re-fixed seniority	Seniority refixed in the Month/Year
xxxx xxxx xxxx						
30.	Dharmender Kumar	Appointed under Ex-gratia	06.07.1994	267	267 (Unchanged)	Not applicable
31.	Rajbir Singh	Appointed under Ex-gratia	19.07.1994	268	268 (Unchanged)	Not applicable
32.	Ravi Parkash	Direct	26.07.1994	269	269 (Unchanged)	Not applicable

Whereas it is clear that on re-fixation of seniority of the above named employees, out of above 29 employees (at Sr. No. 1 to 29), only 23 employees, at Sr. No. 1 to 3 & 10 to 29 above, were junior to the petitioner as per original gradation list of Clerk as stood as on 01.06.2006, became senior to the petitioner as Clerk.

Whereas out of above named 29 senior Clerks, 25 Clerks were promoted to the post of Assistant on merit in terms of Rule 9 of Haryana Treasury Establishment Subordinate Group C Service Rules, 1980 (First Amendment) Rules, 1982 (Second Amendment) Rules, 1983, detail of which is as under: -

S.NO.	Name of the employees/Sh.	Date of promotion from Clerk to Assistant w.e.f.	Order No. & Date
1.	Kulwant Singh	29.02.2008	xxxx xxxx xxxx
2.	Satyavir Singh	01.03.2008	
3.	Jagat Narayan	29.02.2008	
4.	Joginder Singh	29.02.2008	
5.	Santosh Devi	29.02.2008	
6.	Prahlad Ram	29.02.2008	
7.	Jai Krishan	29.02.2008	
8.	Vimlesh Kumari	29.02.2008	
9.	Anoop Singh	29.02.2008	
10.	Ram Bhaj	29.02.2008	
11.	Chhabil Dass	29.02.2008	
12.	Satnam Singh	29.02.2008	
13.	Birbal Dass	29.02.2008	
14.	Dalbir Singh	29.02.2008	
15.	Ishwar Singh	29.02.2008	
16.	Ashok Kumar	29.02.2008	
17.	Balwant Singh	29.02.2008	
18.	Raj Rani	29.02.2008	

19.	Rambir Singh	29.02.2008	
20.	Balbir Singh son Shri Maman Chand	29.02.2008	
21.	Ram Kumar	29.02.2008	
22.	Sube Singh	29.02.2008	
23.	Raja Ram	29.02.2008	
24.	Satish Kumar	29.02.2008	
25.	Bhoop Sin	29.02.2008	

Whereas the petitioner Sh. Rajbir Singh was promoted to the post of Assistant from Clerk on merit vide this office order issued under Endst. No.2050-TA-HR(9T)/2011/2930-80 dated 11.02.2011. Thus is clear that the petitioner is junior as Assistant to the officials against whom the benefit has been claimed by him.
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6. I see no irregularity either in facts or in law in the aforesaid view taken by the State in the impugned order regarding fixation of seniority of the petitioner vis-à-vis the private respondents. No ground is made out to interfere.
7. Dismissed.
8. Pending civil miscellaneous application(s), if any, also stand disposed of.

(ARUN MONGA)
JUDGE

December 15, 2022
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Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No