

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

2023:PHHC:045862

CWP-551-2022 (O&M)
Date of decision: 28.03.2023

CHARANJIT SHAUNIK

..Petitioner

Versus

STATE OF PUNJAB AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aakash Singla, Advocate
for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

Mr. Munish Goel, Advocate
for respondent No.5

ANIL KSHETARPAL, J(Oral)

1. The petitioner *inter alia* prays for the issuance of a writ in the nature of certiorari to quash Clause 14(i) of the executive circular issued on 08.08.2006 on the ground that the same is in violation of Rule 10 of the Punjab Local Audit Services (Class III) Rules, 1979 (hereinafter referred to as the '1979 Rules') and also in violation of Rule 8 of the Punjab Civil Service (General and Common Condition Service) Rules, 1994 (hereinafter referred to as the '1994 Rules'). He also prays for the issuance of a writ in the nature of certiorari to quash the seniority list issued on 15.10.2009, 26.05.2014 and 25.11.2019 while praying for setting aside the orders passed on 12.08.2014, 08.03.2016 and 19.12.2019.

2. In substance, the petitioner claims that he is senior to respondent No.5.

3. The relevant facts, in brief, are required to be noticed in order to understand the controversy involved, which are as follows:-

4. The petitioner was working in the Department of Post under the aegis of Union of India, whereas, respondent was working in the service of the Punjab Government. As per the 1979 Rules, in service candidates including the employees of the Boards, Corporation and other Departments are entitled to compete for the appointment/promotion to the post of the Section Officer after clearing SAS Part I and Part II examinations. In the year 2007, the said examination was held and respondent No.5 was at serial No.1 in the select list, whereas, petitioner was at serial No.2 in the said list. Pursuant to proceedings of the Departmental Committee, respondent No.5 was ordered to be promoted to the post in question and he joined on 19.12.2007 as the Section Officer. The petitioner was issued the appointment letter on 07.01.2008, whereas, he joined on 21.01.2008. The petitioner was placed on probation for a period of 2 years. On 15.10.2009, a seniority list of the Section Officers was issued in which the petitioner was placed below the to respondent No.5, however, the petitioner never raised any objection at that point in time. Both were promoted as the Assistant Controller on 17.02.2014. A seniority list of the Assistant Controllers was issued to which the petitioner objected. The competent authority rejected the objections of the petitioner vide order dated 12.08.2014. Thereafter, the petitioner once again submitted objections on 10.12.2014 which were rejected on 08.03.2016. Subsequently, the petitioner and the private respondents were promoted as Deputy Controller/Deputy Director on 12.06.2019. A seniority list of the Deputy Controllers was issued on 30.09.2019 against which the petitioner submitted his objections which were rejected on 19.12.2019. In the year 2022, the petitioner has filed this writ petition.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. The learned counsel representing the petitioner contends that executive instructions issued on 08.08.2006 being contrary to the 1979 Rules as well as 1994 Rules cannot be enforced. He submits that the petitioner has been treated as a direct recruit, hence, he is required to be placed as a senior to the member who has been appointed by the way of transfer. He further submits that the executive instructions issued on 08.08.2006 are also beyond the office noting prepared and approved by the Department.

7. On the one hand, the learned counsel representing the State of Punjab submits that the petitioner never objected to the seniority list issued on 15.10.2009, hence, he cannot be permitted to take up this objection at a belated stage.

8. On the other hand, the learned counsel representing the private respondent contends that the private respondent was appointed and given joining prior to the petitioner and hence he possess a longer duration of service than the petitioner. He submits even as per Rule 10 of the 1979 Rules, the respondent has been correctly placed senior to the petitioner in the seniority list.

9. Before proceeding further, it would be appropriate to extract Rule 10 of the 1979 Rules, which read as under:-

“10. 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 the service:

Provided that in case of members recruited by direct appointment the order of merit determined by the Board or other recruiting authority, as the case may be, shall not be disturbed in fixing the seniority.

Provided further that in that 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 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 appointed by transfer from different cadres, their seniority shall be 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 their length of service in those appointments and if the length of such service is also the same, an older member shall be senior to the younger member.

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

10. As far as reliance on 1994 Rules is concerned, it may be noticed that the aforesaid 1994 Rules lay down general and common conditions which are applicable to all the employees in absence of the specific rules that govern the Department. Rule 20 of the 1994 Rules has been interpreted by this Bench in **CWP-12435-2015 and other connected cases, titled as "Gurwinder Singh and another Vs. State of Punjab and others", decided on 27.01.2023**, whereby, it has been held that a limited over-riding effect has been given to 1994 Rules with respect to the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. The relevant discussion in para 18, 19 and 21, is extracted as under:-

"18. The second argument of the learned counsel representing the petitioners is with reference to Rule 20 of the 1994 Rules. The same needs to be cautiously examined and interpreted. On a careful reading thereof, it is evident that the various special Rules notified by the

specific Departments have not been entirely/completely superseded except to the extent specified in Rule 20. In other words, Rule 20 uses a non obstante provision to a limited extent. The 1994 Rules have been given an overriding effect over the specific Rules of the various Departments only for the limited purpose of regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. In other words, the 1994 Rules are applicable in all the Departments of Punjab only with respect to regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. Moreover, the 1994 Rules, as is evident from the long title are relating to general and common conditions of service. These Rules do not deal with every aspect of service involved in various Departments of the State. Hence, the maxim of generalia specialibus non derogant shall be applicable to the facts of the present case.

19. While applying the interpretative tools, the Court is required to give meaning to each word used in the provision. On a plain and logical reading of Rule 20, it is evident that the State Government never intended to supersede the specific Rules which are peculiar to the situations arising in the individual Departments. Otherwise, the State Government could have stated that these Rules shall supersede the preexisting Rules applicable to the various Departments. It is evident that this was never the intention of the Government. It was for this reason that the Rule 1994 Rules were given an overriding effect only with respect to the situations which have been, explicitly, envisaged in the Rules, itself.

21. In view of the foregoing discussion, the conclusion is inevitable. Consequently, it is declared that Rule 20 of the 1994 Rules has a limited over-riding effect on 1961 Rules with respect to regulating the recruitment and conditions of service for appointment to public service and posts held under the State. Secondly, in view of the judgment passed in Piara Singh's case (supra) the 1961 Rules shall continue to operate till these are repealed or substituted in the future by the Legislature or the Government in the exercise of the powers of delegated legislation."

11. Hence, the reliance of the petitioner on 1994 Rules is held without substance.

12. On a careful reading of Rule 10 of the 1979 Rules, it is evident that the substantive provision lays down that the seniority inter-se all members of the service in each cadre shall be determined by the length/duration of the continuous service on a post of that cadre of service. Proviso 1 to Rule 10 of 1979 Rules would be applicable in a case where an order of merit is to be determined by the Board or other recruiting agency inter-se amongst the direct recruits which is not the case herein. The 2nd proviso to Rule 10 of 1979 Rules is applicable to the cases where two or more members are appointed on the same date. The private respondent joined on 19.12.2007 pursuant to the proceedings of Departmental Promotion Committee, whereas, the petitioner who was ordered to be appointed on 07.01.2008, joined on 21.01.2008. Moreover, the private respondent joined on the post of Section Officer by promotion, whereas, the petitioner who was serving under the aegis of Union of India, was treated as a direct recruit for the purpose of the pensionary benefits. In any case, the petitioner was placed below the private respondent in the seniority list issued on 15.10.2009. Thereafter, the petitioner and respondents have been promoted on the post of Assistant Controller and Deputy Controller on the same date. Hence, at this stage, the petitioner cannot claim that he is a senior to the private respondent. The instructions issued on 08.08.2006 giving priority to a departmental candidate who has been promoted need not be applied particularly when the private respondent was appointed by way of promotion prior to the petitioner at the first instance.
13. Keeping in view the aforesaid facts and discussion, the writ petition is hereby dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

March 28th, 2023

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(ANIL KSHETARPAL)
JUDGE

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