

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

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**CWP-17831-1996 (O&M)
Date of Decision: 01.09.2023**

Harnek Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: None for the petitioner.

Mr. D.K. Singal, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner by way of this writ petition prays to be considered for promotion to the post of Block Primary Education Officer from the date his juniors have been considered.

2. No one is present on behalf of the petitioner. This matter pertaining to the year 1996 and therefore, has been taken up for hearing today.

3. The case of the petitioner is that he belongs to Scheduled Caste category. The name of the petitioner figures at serial No.5 in the seniority list of the Central Head Teacher as on 01.01.1995 whereas the name of Ram Chand figures at serial No.6 as he is junior to the petitioner and joined as Central Head Teacher on 03.04.1993. But Ram Chand has been promoted as Block Primary Education Officer and Shivji Ram has also been promoted as Block Primary Education Officer, although, both of them had joined later than the petitioner as Central Head Teacher.

4. It is the case of the petitioner that he was promoted and joined as Central Head Teacher on 04.11.1992. The respondents have stated that the petitioner belonging to SC category is not entitled to accelerate consequential seniority because he has already got benefit of reservation twice firstly from JBT teacher to Head Teacher and secondly, from Head Teacher to Central Head Teacher on the basis of reservation quota for SC and attained accelerated promotion. The petitioner, therefore, could not have been given accelerated consequential seniority and promoted as Block Primary Education Officer. Moreso, as the SC quota stood already exhausted on the post of Block Primary Education Officer. It is stated that the present sanctioned strength of Block Primary Education Officer is five. Three for men and two for women. The ration is 60-40. Out of three sanctioned post of Block Primary Education Officer, one post was already occupied by SC candidate. It is further stated that the promotion for the post of Block Primary Education Officer was made on the basis of seniority position of JBT cadre where the petitioner figures at serial No.727 while respondents No.4 and 5 figure at serial No.220 and 235 respectively. The petitioner was therefore not entitled for promotion as Block Primary Education Officer.

5. The reply has also been filed by the private respondents who have also reiterated the same position and have relied upon a judgment passed by the Hon'ble Supreme Court in the case of *Ajit Singh Januja Vs. State of Punjab, AIR 1996 SC 1189*, to submit that the persons who have promoted from reserved category would not carry their seniority on the basis of higher promotion. In other words, accelerated seniority cannot be granted to the said persons.

6. I have considered the submissions.

7. The petitioner admittedly was junior to the respondents in the cadre of JBT. However, from the post of JBT, the petitioner being from reserved category, was promoted earlier to the post of Head Teacher and thereafter, from the cadre of Head Teacher, he was further promoted to the post of Central Head Teacher prior to the respondents. In the seniority list of Central Head Teacher, the petitioner has been placed above the respondents as noted above.

8. So far as promotion for the post of Block Primary Education Officer is concerned, the same is to be done from the Central Head Teachers. Thus, the action of the respondents in considering the seniority of the JBT teachers for the purpose of making promotion to the post of Block Primary Education Officer is found to be illegal. The inter se seniority of only Central Head Teachers was required to be taken into consideration. If the inter se seniority of the Central Head Teacher is taken into consideration, the petitioner who was senior to the respondents were required to be promoted first. Even if he was from SC category, he would be promoted earlier against a general quota post being senior to the other general category persons, as it is a settled law that even against General seat, a Scheduled Caste person or a reserved category person would be considered and promoted and thereafter if still there is any reserved category post lying vacant, then any other second or third reserved category person would be promoted against the said post. It is not that the reserved category person would only fill a post which falls vacant against the reserved seat. The principle has been well established now after a Constitutional Bench judgment passed in the case of *R.K. Sabharwal Vs. State of Punjab, 1995(2) SCC 745*. The said judgment has been recently again examined by the Apex Court in the case of *Saurav Yadav and others Vs. State of Uttar*

Pradesh and others, 2021(4) SCC 542, wherein the Apex Court has further clarified that as and when posts are to be filled first upon the general post shall be filled from all the senior persons according to the merit. The similar procedure is to be followed in promotions too.

9. Keeping in view the aforesaid findings, the present petition is allowed. The petitioner shall be granted promotion to the post of Block Primary Education Officer from the date his juniors have been so promoted i.e. on 01.10.1996.

10. Since this writ petition is decided after a period of almost 27 years and the respondents have continued to remain on the higher post, no case for reversion of the persons already promoted is made out nor any such directions are being issued. However, the individual benefit to the petitioner shall be granted by creating a supernumerary post from the same date which the petitioner ought to have been granted. The respondents shall now give all consequential benefits to the petitioner accordingly. The compliance shall be made within a period of four months from today.

01.09.2023

D.Bansal

**(SANJEEV PRAKASH SHARMA)
JUDGE**

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