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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-8828-2021 (O&M)
DECIDED ON: 12.12.2023

JITENDER KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. AG, Haryana.

Mr. Prateek Mahajan, Advocate and
Mr. Daanish Mahajan, Advocate
for respondent No.3.

Mr. Sandeep Sharma, Advocate
for respondents No.4 to 6.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* seeking quashing of the circular dated 13.04.2021 (Annexure P-11) with further prayer for issuance of a writ in the nature of *Mandamus* directing the respondents to comply with the provision of Rule 11 of Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998 in letter and spirit and to fix the seniority accordingly and also to consider the objections submitted by the

petitioner on 14.04.2021 (Annexure P-12) and not to promote any junior to the post of Kanungo.

2. Pursuant to advertisement dated 25.08.2007, the petitioner being fully eligible applied for the post of Patwari on contract basis. The services of the petitioner was extended from time to time. The petitioner joined his duties on 03.10.2007 whereas, the private respondents have joined their duties on 01.10.2007. Further vide recommendation letter dated 02.05.2008 (Annexure P-3), though the case of the petitioner was recommended for regular appointment for the post of Patwari with the Corporation but despite recommendations the claim of the petitioner was rejected for regularization. The petitioner finding no other way approached this Court by way of filing CWP-1834-2017, which was allowed and order dated 11.02.2009 was set aside and direction was issued to respondent to consider the case of the petitioner for regularization at par with respondents No.5 and 6 and to pass appropriate orders within a period of two months. The petitioner gave the numerous representation to respondent No. 3 to consider his name for regular appointment. Pursuant thereto, appointment letters were issued to the petitioner along-with private respondents vide order dated 22.01.2021 (Annexure P-9). Thereafter, a circular dated 13.04.2021 (Annexure P-11) was issued wherein, the petitioner has been shown junior to the private respondents. Hence, the present writ petition.

3. The grievance of the petitioner is that the seniority is to be reckoned from the date of regular appointment i.e. actual appointment in service. It is contended that though the service conditions of the petitioner

is with the Municipal Corporation, Faridabad but are governed by Haryana Municipal Corporation Employees (Recruitment and Conditions) Services Rules, 1998 (hereinafter referred to as '1998 Rules'). The assertion is that as per Rule 11 of 1998 Rules, the petitioner being older in age is entitled to be given seniority over and above the private respondents.

4. It is submitted on behalf of the petitioner that the department has passed an order 05.08.2021 (Annexure P-13) without giving an opportunity of hearing to the petitioner.

5. Learned counsel for respondents have contended that the case of respondents No.4 to 6 was considered for regularization of their services since 22.05.2008 including the petitioner and further prepared the seniority list on 13.04.2021 for the post of Kanungo, as per rules and regulations of the Haryana Government. The benefit of seniority to respondents No.4 to 6 was granted, as they have joined the service on 01.10.2007 and the petitioner has joined the services on 03.10.2007. The assertion is that the seniority *inter-se* of members of the service shall be determined by the length of continuous service on any post in the service.

6. No other arguments have been raised by either of the parties.

7. Heard learned counsel for the respective parties.

8. From the perusal of offer letter dated 22.01.2021 (Annexure P-9), it is crystal clear that the service conditions of the petitioner shall be governed by the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998 and Rule 11 of 1998 Rules pertains to Seniority, which reads as under:-

“11. Seniority. - Seniority inter se of members of the Service

shall be determined by the length of continuous service on any post in the service :

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre :

Provided further that in the case of a member appointed by direct recruitment, the order of merit determined by the appointing authority 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 members appointed by promotion or by 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 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 their service in the appointments and if the length of such service is also the same, the older member shall be senior to the younger member.”

9. This Court has minutely gone through the afore-said provisions of 1998 Rules wherein, it has been specifically mentioned that in the case of two or more members appointed on the same date, 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 appointments and if the length of such service is also the same, the older member shall be senior to the younger member.

10. There are two aspects one is the date of contractual service and another is the date of regularization, if the seniority is to be counted from the date of contractual service then all the benefits are required to be granted to all the employees and in case, the seniority is to be computed from the date of regular appointment then in accordance with the afore-said 1998 Rules. The seniority principle is to be followed by giving seniority to the person appointed on the same day keeping in view their age and the older in age is required to be kept as senior.

11. In view of above, this Court is of the view that the seniority is to be fixed strictly in accordance with 1998 Rules and as per Rule 11 of 1998 Rules the petitioner being older in age is entitled to be given seniority over and above the private respondents.

12. In the light of afore-said discussions, the present petition is allowed and respondent No.3 is directed to prepare afresh seniority list strictly as per Rule 11 of 1998 Rules and release the benefits accrued to the petitioner, as per law.

(SANDEEP MOUDGIL)
JUDGE

12.12.2023
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No