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2023:PHHC:140958

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-8801-2020
DECIDED ON: 3rd NOVEMBER, 2023

SANYOGITA

PETITIONER

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD. AND
OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sunil K. Nehra, Advocate
for the petitioner.

Mr. R.D. Bawa, Advocate
for the respondents No.1 to 3.

Mr. R.S. Sangwan, Advocate
for respondent No.11.

Mr. Akhil Saini, Advocate
for respondent No.12.

SANDEEP MOUDGIL, J (ORAL)

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* to quash the impugned orders dated 19.06.2020 (Annexure P-7) whereby, she has been reverted from the post of Upper Division Clerk (UDC) to the post of Lower Division Clerk (LDC) with further prayer to quash the impugned order dated 14.05.2020 (Annexure P-

10) vide which the seniority list earlier finalized on 23.12.2019 (Annexure P-4) has been revised and also to direct the respondents to treat the seniority list dated 23.12.2019 (Annexure P-4) as the final seniority list of the LDC recruited from the period 01.01.2013 to 31.12.2016.

2. It is submitted on behalf of the petitioner that she was promoted on the post of UDC under 25% quota on the basis of seniority-cum-merit, as she had more than 3 years service as graduates. In the seniority list dated 23.12.2019, the name of the petitioner was shown at Sr. No. 123, therefore, she was rightly promoted to the post of UDC on the basis of Seniority. It is further submitted that without calling for objections from the petitioner, the seniority list was revised and the petitioner was reverted to a lower post without issuance of any shown cause notice or opportunity of hearing.

3. The contention is that it is settled law that settled position of seniority should not be changed without granting an opportunity to the delinquent employee. The objections were never called from the petitioner and therefore, no objection was submitted as it was complete lockdown in the country when the tentative seniority list was issued on 07.04.2020. It is further contended that the seniority list issued and finalized on 23.12.2019 was accepted and was never challenged in any Court of law by the private respondents. However, now all of a sudden the revised seniority list has been issued without calling for objections. It is settled law that successor in office cannot review the order passed by the predecessor. The earlier seniority list which was issued was finalized after calling for objections but now, the same has been revised/reviewed by the successor in office for the

reasons best known to them. No reason has been mentioned for revising/reviewing the seniority list which has the repercussion of reversion of the petitioners to the Lower Post. It is settled law that reversion is a major penalty and no revision order can be issued without issuing the charge sheet to the delinquent employee.

4. It is asserted that the service of the petitioner for the purpose of procedure of imposing punishment is governed by the "DHBVN Employees (Punishment and Appeal) Regulations, 2006" in which it has been mentioned that reduction to a lower scale of pay or grade, post or service is a major penalty and the procedure for imposing the major penalty has been prescribed in Regulation 7 which provides that a charge sheet is required to issued for imposition of major penalty. The service of the petitioner of the post of LDC is governed by the Regulations known as "HSEB Ministerial Service (Head Office) Regulations, 1991". As per Regulation 9 all promotions shall be made on the basis of seniority-cum-merit and further in the Regulations it is mentioned that seniority, *inter se* of Member of the service shall be determined by the length of continuous service on any post in the service and further, in case of members appointed by direct recruitment, the order of merit determined by the selection committee, or the Board, as the case may be, shall not be disturbed in fixing the seniority. The petitioner and private respondents were appointed not by the Haryana Staff Selection Commission but were appointed in lieu of the policy of the State Government which provided for employment to the dependents of the Land Oustees. The petitioner had joined on 05.03.2014 and many of the private respondents had joined later

than the petitioner and still they have been shown senior to her. Since there was no selection committee and no merit was determined, therefore, the seniority position was fixed unilaterally which has attained finality in 2019 and now when the country is in the throes of global pandemic, namely, COVID-19, the said seniority list has been altered by lowering the position of the petitioner resulting into the reversion order passed on 19.06.2020 (Annexure P-7).

5. Learned counsel for respondents have vehemently contended that the petitioner has referred to a tentative seniority list of LDC (Head Office) 01.11.2013 to 31.12.2016 allegedly issued on 22.08.2017, which was finalized on 23.12.2019 after inviting objections, whereas, neither any such tentative seniority list of LDCs was issued on 22.08.2017 nor was finalized on 23.12.2019. In fact, the objections were invited from the concerned officials and the said seniority list was issued on the basis of random list received from HPGCL, Panchkula vide memo dated 27.01.2014 in which village wise names of the candidates were appearing. Before finalizing the seniority list, the officials who raised objections on the same, a personal hearing was given to them and only thereafter, the seniority list was prepared by the HPGCL, which was later on forwarded to the LR/HPUs, Panchkula for legal opinion. After obtaining legal opinion, it was decided to revise the said tentative seniority list as per merit i.e on the basis of marks obtained in graduation degree. It is contended that the tentative seniority list of LDC was again issued vide memo dated 07.04.2020 superseding the seniority list of LDCs (HO) issued vide memo dated 22.03.2019. After hearing the concerned officials who raised the

objections on the tentative seniority list dated 07.04.2020 of LDCs (HO) for the period of 01.01.2013 to 31.03.2019, the seniority list was finalized on 14.05.2020, to which the petitioner has not filed any objection, wherein, it was clearly mentioned that this revision seniority list will supersede the earlier existing tentative seniority list of LDCs (HO) issued on 22.03.2019. Accordingly, the seniority of the petitioner was re-fixed and her name figures at Sr. No.133 in the final seniority list of LDCs (HO) issued on 07.04.2020 and finalized on 14.05.2020.

6. No other argument has been raised by either of the parties.
7. Heard learned counsel for the respective parties.
8. It emanates from the record that the petitioner was appointed on the post of LDC (HO) with the respondent-Nigam in view of the policy of the State for providing employment to the dependents of the Land Oustees and later on, she was promoted on the post of UDC under 25% quota on the basis of seniority-cum-merit, as she had more than 3 years service as graduates. In the seniority list dated 23.12.2019, the name of the petitioner was shown at Sr. No. 123, therefore, she was rightly promoted to the post of UDC on the basis of Seniority. From the perusal of the record, it is clear that the petitioner was reverted from the post of UDC to LDC without issuing any show cause notice or opportunity of hearing and to the utter surprise, this Court could not make out from the fact herein as to what was the hurry to decide the case when there was a complete lock-down in the Country. Moreover, the respondents have failed to show that any opportunity of hearing was given to the petitioner before passing the impugned order and what prompted them to finalize the seniority list at the time when the

country is in the throes of global pandemic, namely COVID-19.

9. In view of the discussions made hereinabove, this Court is of the considered opinion that the impugned order dated 19.06.2020 has been passed by the respondents in a very haste manner. Accordingly, the present petition is allowed and the impugned order dated 19.06.2020 is hereby set aside.

(SANDEEP MOUDGIL)
JUDGE

3rd NOVEMBER, 2023
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No