

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 15484 of 2015

Date of Decision: 10.04.2023

Piara Singh

... Petitioner(s)

Versus

The State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gagan Pradeep Singh Bal, Advocate
for the petitioner(s).

Mr. R.K.Kapoor, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. The petitioner while filing the writ petition prays for issuance of a writ in the nature of certiorari to quash the order passed on 04.12.2014 while seeking direction to the respondents to promote him as General Manager, Punjab Roadways w.e.f. 01.04.1990. The petitioner, on attaining the age of superannuation, retired on 31.12.2006.

2. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

3. The learned counsel representing the petitioner contends that Amarjit Singh Lauhka was appointed as the Assistant Divisional Manager (Administration) on 03.10.1988 as a direct recruit. After his appointment, he was placed on probation for a period of two years. Hence, the petitioner, who was promoted as the Assistant Divisional Manager (Administration) on

01.04.1989, would be considered senior to the aforesaid appointee/recruit.

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While referring to Rules 10 and 11 of the Punjab, Department of Transport Commercial Wing (State Service Class-II) Rules, 1984 (hereinafter referred to as “the 1984 Rules”), prays for allowing the present writ petition.

4. This Court has considered the submissions of the learned counsel representing the parties and perused the paper-book

5. Rules 10 and 11 of the 1984 Rules read as under:-

“10. Probation of persons appointed to Service-Persons appointed to the Service shall remain on probation for a period of two years, if recruited by direct appointment and one year if recruited otherwise:

Provided that-

- (a) any period after such appointment, spent on deputation on a corresponding or a higher post shall count towards period of probation?*
- (b) In the case of an appointment by transfer, any period of work in an equivalent or higher rank prior to appointment to the service may, at the discretion of the appointing authority, be counted towards the completion of the period of probation;*
- (c) any period of officiating appointment to the service shall be reckoned as period spent on probation but no person, who has no officiated shall, on the completion of the prescribed period of probation, be entitled to be con-- firmed unless he is appointed against a permanent vacancy.*

(2) *If in the opinion of the appointing authority the work or conduct of a person, during the period of probation is not satisfactory, it may-*

(a) *if such person is recruited by direct appointment dispense with his services, or reverted him to a post on which he held lien prior to his appointment to the service by direct appointment; and*

(b) *if such person is recruited otherwise,-*

(i) *revert him to his former post; or*

(ii) *deal with him in such other manner as the terms and conditions of his previous appointment permit.*

(3) *On the completion of the period of probation of a person, the appointing authority may-*

(a) *if his work and conduct has in its opinion, been satisfactory.*

(i) *confirm such person from the date of his appointment, if appointed against a permanent vacancy; or*

(ii) *confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary Vacancy; or*

(iii) *declare that he has completed his period of probation satisfactorily; if there is no permanent vacancy; or*

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(b) *If his work or conduct has not in its opinion been satisfactory,-*

- (i) *dispense with his services, if recruited by direct appointment, or if appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment may permit; or*
- (ii) *extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the period of probation as specified in sub-rule*

Provided that the total period of probation, including extensions, If any, shall not exceed three years.

11. Seniority of members of service.-*The seniority inter se of members of the Service in each cadre shall be determined by the lengths of their continuous service on a post in that cadre of the Service;*

Provided that in the case of members recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be from time to time be extended by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Commission or other recruiting authority of the Government, as the case may be, shall not be disturbed;

Provided further that in case a candidate is permitted to join the Service after the expiry of the said period of four months in consultation with the Commission or other recruiting authority of the Government,. as the case may be, his seniority shall be determined from the date he joins the Service;

Provided further that in case any candidate of the next selection joined the Service before the candidate referred to in the preceding proviso joins the candidate so referred shall be placed below all the candidates of the next selection who join within the time specified in the first proviso;

Provided further that in the case of the 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 to a member recruited by transfer;*
- (c) In the case of members recruited by promotion or transfer, seniority intense shall be determined according to the seniority of such members in the appointments from which they are promoted or transferred, as the case may be; and*
- (d) In the case of members recruited by transfer from different cadres, their seniority inter se shall be fixed 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, and if the length of service is also the same, an older member shall be senior to a younger member."

Note.-

Seniority of members appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment."

6. On the careful reading of Rule 11 of the 1984 Rules, it is evident that the seniority, *inter se*, of the members of the service shall be determined by the length of their continuous service on a post in the particular cadre of the service. The argument of the learned counsel representing the petitioner that the petitioner is senior to Amarjit Singh Lauhka has no substance because he was directly recruited in the month of October 1988, whereas the petitioner was promoted as the Assistant Divisional Manager (Administration) on 01.04.1989. Rule 11 of the 1984 Rules does not provide that the seniority, *inter se*, of the members of the service shall be determined only after a direct recruit is confirmed. Moreover, the petitioner has already retired.

7. As far as the alleged notice (Annexure P4/A) dated 04.12.2014 ordering recovery of ₹32,170/- from the petitioner is concerned, it would be noted that in view of the judgment passed in ***State of Punjab and Others v.***

Rafiq Masih (White Washer) and Others (2015) 4 SCC 334, the State is restrained from recovering the amount from the retired employee.

8. With the observations made above, the present writ petition is disposed of.

(Anil Kshetarpal)
Judge

April 10, 2023
“DK”

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