

**CWP-16005-2015 (O&M)
and other connected case** 1

**103-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.CWP-16005-2015 (O&M)

Gurpreet Singh and another
....Petitioners

Versus

State of Punjab and others
..Respondents

2.CWP-1355-2016 (O&M)

Manpreet Singh and another
....Petitioners

Versus

State of Punjab and others
..Respondents
Date of decision:20.01.2023

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K.Arora, Advocate for the petitioners
in CWP-16005-2015 and
for respondent no.3 and 4 in CWP-1355-2016
Mr. Arvinder Singh, Advocate for the petitioners
in CWP-1355-2016
Mr. R.S.Pandher, Sr. DAG, Punjab
Mr. Gagneshwar Walia, Advocate for respondent no.3 to 5
Mr. G.S.Bal, Sr. Advocate with
Mr. D.S.Gill, Advocate and
Mr. J.S.Randhawa, Advocate for respondent no.6 to 11
Mr. D.S.Rawat, Advocate for respondent no.12

ANIL KSHETARPAL, J (Oral)

1. By this order, two identical Civil Writ Petitions i.e CWP-
16005-2015 and 1355-2016 shall stand disposed of.

2. The relevant facts, in brief, are being noticed from CWP-16005 of 2015, which has been filed with the following substantive prayers:-

“a) Issue a writ in the nature of Certiorari quashing or such other appropriate writ, order or directions quashing the memo dated 23.07.2015 (P-9) whereby, the respondent No.1 has granted approval for amending the seniority list of the petitioners to their disadvantage, after more than 10 years of their settled seniority which was finalized in the year, 2005 and thereafter objections have been called with regard to changes in the seniority positions of the petitioners, as patently illegal, arbitrary, malafide and unconstitutional, violative of principle of natural justice and also violative of settled law that the seniority list cannot be unsettled after such a long period;

b) Issue a writ in the nature of mandamus directing the respondents to grant the petitioners all consequential benefits including benefit of consideration for regular promotion on the post of Sub Divisional Soil Conservation Officers in pursuant to the final seniority list circulated vide letter dated 22.07.2005 (P-4), because the same has already been acted upon and benefit of promotions to the higher posts of Sub Divisional Soil Conservation Officers on that basis have already been granted to number of officers including to some of those similarly situated who were appointed along with the petitioners and they are now being considered for further promotions to the further higher posts of Divisional Soil Conservation Officers; etc.’

c) It is further respectfully prayed that during the pendency of the present petition, the operation of the impugned memo dated 23.07.2015 (P-9) may kindly be stayed in the interest of justice;”

3. In substance, the dispute is with regard to the inter se seniority of the selected candidates from the same select list. They were selected by the Subordinate Selection Board pursuant to the recruitment notice dated 15th September, 1997. On selection, they joined as the Soil Conservation Officers in the Department of Soil and Water Conservation,

Punjab. In the year 2005, a seniority list was circulated and finalized by the concerned authority. However, subsequently, it came to the notice of Government that there was a mistake in the said select list. Hence, an attempt to finalize the subsequent seniority list, led to the filing of this writ petition. In fact, the subsequent seniority list is only tentative. The attention of the learned counsel representing the petitioners in this regard was drawn to the tentative revised merit list, however, he insisted on the decision on merits.

4. The seniority of the Officers is governed by the Punjab Civil (General and Common Conditions of Service) Rules, 1994 (hereinafter referred to as 'the 1994 Rules), which reads as under:-

*“8. **Seniority.** - The seniority inter se of persons appointed to posts in each cadre of a Service shall be determined by the length of continuous service on such post in that cadre of the Service.*

Provided that in the case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time 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 the Board, as the case may be, shall not be disturbed:

Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the Commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post:

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below

all the persons of the next selection who join within the time specified in the first proviso:

- (a) a person appointed by direct appointment shall be senior to a person appointed otherwise;*
- (b) a person appointed by promotion shall be senior to a person appointed by transfer;*
- (c) in the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred; and*
- (d) in the case of persons appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a persons who was drawing a higher rate of pay in his previous appointment; and if the rate of pay drawn are also the same, then by their length of service in these appointments and if the length of service is also the same, an older person shall be senior to a younger person.*

Provided further that in the case of persons recruited by direct appointment in the same cadre obtaining equal marks during same selection process, their inter-se-seniority shall be determined on the basis of their age. This is, an older person shall be senior shall be senior to the younger person.”

5. It is evident that the seniority is governed by the length (duration) of the continuous service on such post, on that cadre of service. However, first proviso to Rule 8 of the 1994 Rules provides that if the persons recruited by the direct appointment, who join within the period, specified in the order of appointment or within such period, as may be extended from time to time, by the appointing authority, subject to a maximum of four months, from the date of order of appointment then while determining the inter-se seniority, the merit determined by the Commission or the Board, as the case may be, shall not be disturbed.

6. The seniority list prepared in the year 2005 was not in accordance with the first proviso to Rule 8 of the 1994 Rules. In fact, when the seniority list was prepared, the competent authority was not having the requisite information about their respective merit position as assigned by the Board. Hence, steps to prepare a fresh seniority list were taken by the Government. In these circumstances, the question which arises for adjudication is, “As to whether the Government (employer) is debarred from changing the seniority position of the employees in the subsequent seniority list only because previously a final seniority list was issued?”

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book. Learned counsel representing the petitioners contend that once a seniority list was finalized vide memo dated 22nd July, 2005, wherein the petitioners were placed at serial no. 366 and 367, in a subsequent seniority list their position could not be changed by the concerned authority. He submits that once a seniority list has been finalized, such seniority cannot be tampered with, after a period of more than 10 years. It is further submitted that the candidates who were not in the select list, but were in the waiting list could not be granted seniority on the basis of merit list and selected candidates in the merit list are required to be granted seniority from the date of their joining the service. He further submits that the petitioners have not been granted an opportunity to file their objections regarding the same.

8. On the other hand, learned counsel representing the respondents contends that the Government (employer) is not debarred from correcting the mistakes, if any made in the previous seniority list inadvertently and prepare a subsequent revised seniority list. He submits that once a mistake has come to the notice of the Government, the decision has been taken to issue a fresh seniority list such decision does not require any interference by the Court.

9. As regards the last objection of the learned counsel that the seniority list (Annexure P-9) issued vide letter dated 23rd July, 2015 is final, it may be noticed that while forwarding the copy the Chief Conservator of Soil, Punjab, had given the following note:-

“And it is being written that the Government has prepared the tentative seniority list of the Soil Conservation Officers and sending the same to you. In this regard, all the concerned officers be got noted of the same and if any officer is having any objections with regard to tentative seniority list or points out any discrepancy with regard to particulars mentioned in this list, the same be sent within a period of one month so that the seniority list can be sent to the Government for finalization.”

10. Thus, it is evident from a bare reading of the abovesaid letter, that the seniority list is only tentative. It is also the stand of the respondents that the final seniority list is yet to be prepared.

11. Keeping in view the aforesaid facts, there is no substance in the argument of the learned counsel representing the petitioners that the petitioners have not been given the opportunity of hearing. It was for the petitioners to file their objections to the tentative seniority list as per the letter. It is not the case of the petitioners that the tentative seniority list

was not circulated in the office and they had no knowledge of the tentative seniority.

12. As regards the first argument of the learned counsel representing the petitioner, it may be noticed that Rule 8 of 1994 Rules, specifically provides for determining the inter se seniority of the persons, who were selected by the same selection on the basis of the merit list determined by the Commission or the Board. It is specifically provided that their inter se seniority shall not be disturbed. As regards the objection of the learned counsel that the seniority/position cannot be changed even by the employer, it may be noticed that every authority, which has the power to issue the seniority list or any list for that matter, has an enabling power to issue a fresh seniority list in case of discrepancies. If the previous seniority list has been issued on account of a mistake or some other error, which affects the career of its employees, the employer is required to take remedial steps immediately so that no one suffers. The employer cannot shy away from correcting the mistake because if it is allowed to continue or persist, it would result in perpetuating injustice to its employees.

13. The learned counsel representing the petitioners relies upon **Shiba Shankar Mohapatra and ors vs. State of Orissa & Ors 2010 (12) SCC 471**. In this particular case, the Supreme Court was considering the question of delay in the context of the members of the cadre who failed to forthwith challenge the seniority list. The aforesaid judgment is thus distinguishable in facts. Even judgment in **BS Bajwa vs. State of Punjab 1998 (2) SCC 523** is to the same effect. Both the

judgments relied upon by the learned counsel does not help his case as the facts are entirely different.

14. Hence, there is no substance in the first argument of the learned counsel representing the petitioners.

15. Another grievance of the petitioners is with respect to the seniority assigned to the persons shown at serial no. 718 to 722 in the tentative seniority list in (Annexure P-9). It is claimed that the aforesaid officials were not part of the original select list but were placed in the waiting list prepared by the Board. Hence, they were appointed subsequently. Learned counsel has also drawn the attention of the Court to the order of the High court in **Hemant Jasuja vs. State of Punjab CWP No.16209 of 2010** decided on 10th March 2010 with respect to the officials placed at serial no. 18.

16. It would not be appropriate for this Court to adjudicate the rights of the aforesaid 5 officials because they have not been impleaded as a party to this case. It shall be open to the petitioners to press their already filed objections before the competent authority.

17. Let the seniority list be finalized by the Government within a period of two months, from today, positively.

18. With these observations, the writ petitions are disposed of.

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

20.01.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)
JUDGE**