

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.202

CWP No.17099 of 2015
Date of Decision: 06.09.2023

Parvesh Tyagi

.... Petitioner

Versus

Deen Bandhu Chhotu Ram University of
Science and Technology, Murthal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Partap Singh, Advocate and
Mr. Gaurav Jangra, Advocate for the petitioner.

Mr. Chanakya Pandit, Advocate for the respondent-University.

Mr. Rajender Singh Malik, Advocate for respondents No.2 to 9.

TRIBHUVAN DAHIYA, J. (ORAL)

This petition has been filed seeking a writ of *certiorari* quashing the seniority list dated 26.03.2015 (Annexure P-3), and promotion order dated 21.04.2015 (Annexure P-5), vide which the petitioner was illegally ignored in violation of Rule 10(ii) of the Guru Jambheshwar University of Science and Technology, Hisar. Further, a writ of *mandamus* has been sought directing the respondent-University to re-fix the petitioner's seniority over and above that of respondents No.2 to 9 as per the Rules.

2. Briefly, facts of the case are, the respondent-University advertised 18 posts of Clerk-cum-Data Entry Operator (hereinafter referred to as 'Clerk-cum-DEO') vide advertisement No.24 of 2008, dated 23.10.2008 (Annexure P-1). Out of these, six posts were advertised for general category candidates.

2.1. After conducting written test, computer skill test and typing test, as per the criteria, the candidates were interviewed by the selection

committee. The names of candidates selected for appointment were recommended in the order of merit category wise, vide select list dated 18.03.2010 (Annexure P-2/R-5); the petitioner's name was recommended at no.1 in the waiting list of general category. The select list, including the waiting list, was drawn in the order of merit, and the same was approved by the competent authority/Vice Chancellor.

2.2. Ranks in the merit list were decided by the selection committee on the basis of total marks awarded to the candidates in the selection process. The petitioner and respondent No.2 had equal marks (each scoring 74 marks). However, respondent No.2 was placed in the select list of general category and recommended for appointment, and the petitioner at no.1 in the waiting list, on the basis of the former's higher marks in the computer skill test, as per the criteria.

2.3. The selected candidates joined the posts of Clerk-cum-DEO from 23.03.2010 to 26.03.2010, except one candidate Sonia Malhotra, who was placed at no.1 in the select list. Her candidature was cancelled, and the petitioner being first in the waiting list, was offered appointment on the post. He joined as such on 21.07.2010.

2.4. In the meanwhile, seven Class-IV employees were promoted as Clerk-cum-DEO, vide office order dated 31.03.2010. A tentative seniority list of Clerk-cum-DEOs was prepared and circulated vide memo dated 26.03.2015. Private respondents No.2 to 9, who were selected along with the petitioner, were placed at no.16 to 23 in it; whereas, the petitioner was placed at no.31.

2.5 He filed objections to the tentative seniority list vide letter dated 09.04.2015, Annexure P-4, claiming that he was selected in the same selection as were the private respondents, therefore his seniority be clubbed

along with theirs. Without deciding the objections, the University promoted fifteen Clerk-cum-DEOs to the post of Assistant-cum-Data Entry Operator/Assistant (hereinafter referred to as 'the Assistant'), vide office order dated 21.04.2015, which included the private respondents as well. The petitioner objected to the same by serving a legal notice (Annexure P-7), but to no effect. Therefore, the instant petition was filed.

3. Learned counsel for the petitioner contends that the petitioner having been recommended for appointment along with the private respondents, has a right to be placed in the seniority list along with them in the order of merit determined by the selection committee. The respondents have committed an illegality in not doing so, and effecting promotions vide the impugned seniority list, dated 26.03.2015, without deciding the petitioner's objections to the same.

4. Learned counsel for the respondents, on the contrary, points out that the petitioner has no right to be placed in the seniority list along with the private respondents, since he was a late appointee. He was appointed only on account of being placed in the waiting list, and was not recommended along with the private respondents. The right accrued to the petitioner only upon his joining the post, and that was after the private respondents joined as Clerk-cum-DEO. On this account also he cannot be placed ahead of them. Besides, before the petitioner could join on the post on 21.07.2010, seven other Class-IV employees were promoted as Clerk-cum-DEO, vide order dated 31.03.2010, and the petitioner had no right to steal a march over them by jumping places in the seniority list.

5. Learned counsel for the parties have been heard, and the case file has been perused.

6. Admittedly, the University adopted Rules of Guru Jambheshwar University of Science and Technology, Hisar, vide EC Resolution No. C-3(ii), dated 02.03.1996. Seniority of the employees is to be determined as per Rule 10 thereof, which reads as under:

10. Seniority:

An employee shall rank for seniority in the grade in the manner as mentioned below:

- (i) Persons appointed in a substantive capacity to any post prior to these rules shall retain the relative seniority already assigned to them.
- (ii) when any post is filled by open competition, the seniority of the applicants selected at the same interview shall be in the order in which they are ranked by the Selection Committee and approved by the competent authority irrespective of the dates of joining the duties.
- (iii) inter-se-seniority of persons appointed by promotion on the same date, from within the University shall be the same as in the lower category of post from which they have been promoted/appointed unless otherwise specified by the Selection Committee/Establishment Committee for reasons to be recorded in writing.

7. Sub-rule (ii) of Rule 10 provides, when a post is filled by open competition, the seniority of candidates/employees selected in the same interview shall be as per their ranks assigned by the selection committee irrespective of their dates of joining the duties. It is, therefore, clear that date of joining the post by the candidates selected in the same interview is of no relevance for the purpose of determining their seniority.

8. It is an admitted position on record that the petitioner as well as the private respondents were applicants for the post of Clerk-cum-DEO in response to advertisement No.24 of 2008. The same selection committee

recommended all of them for appointment assigning ranks in the order of merit as per marks obtained in the selection process. Both, the petitioner and respondent No.2, obtained equal marks; however, as per criteria, the petitioner was placed in the waiting list at no.1. The recommendations of the selection committee including the waiting list were approved by the Vice-Chancellor, the competent authority. The petitioner joined the post subsequent to joining of the private respondents when one of the recommended candidates could not join. The petitioner's late joining on account of having been placed in the waiting list is inconsequential, since he was selected in the same interview as were the private respondents and ranked along with them. Accordingly, his seniority position is to be determined strictly as per mandate of Rule 10(ii), on the basis of rank assigned by the selection committee and approved by the competent authority, irrespective of his date of joining. The respondents have failed to do that and wrongly assigned seniority position to the petitioner on the basis of date joining in the seniority list, dated 26.03.2015; the consequent promotion order, dated 21.04.2015, was also wrongly passed ignoring his rightful claim. Both are, accordingly, unsustainable in law.

9. Further, the contention of learned counsel for the respondents that before the petitioner could join, seven Class-IV employees were promoted as Clerk-cum-DEO, and the petitioner cannot be allowed to steal a march over them, deserves rejection in the light of provision of Rule 10 (ii) of the Rules. Seniority of all the employees selected by one selection committee in the same interview, has to be determined as per ranks assigned to them, as discussed herein above. Joining of post(s) by some other employee(s) on promotion before any of the selected candidates could join,

is inconsequential, since the seniority is required to be determined

irrespective of the dates of joining duties by the candidates selected in the same interview.

10. In view of the aforesaid discussion, this petition is allowed. The respondent-University is directed;

- i) To assign correct place to the petitioner in the seniority list of Clerk-cum-DEO, dated 26.03.2015, on the basis of rank assigned to him by the selection committee in its recommendation/select list dated 18.03.2010;
- ii) Consider the petitioner for promotion to the post of Assistant from the date his junior was so promoted, and grant him all consequential service benefits except arrears of salary.

These directions are to be carried out by the University within a period of four weeks from receiving a certified copy of this order. There shall be no order as to costs.

(TRIBHUVAN DAHIYA)
JUDGE

06.09.2023
Maninder

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