

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22977-2016 (O&M)

Date of Decision: 20.07.2023

NARINDER PAUL

.....Petitioner

V/s.

**FINANCIAL COMMISSIONER, REVENUE-CUM-SECRETARY TO
GOVT. OF PUNAJB AND OTHERS**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. A.P. Bhandari, Advocate, for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a Writ in the nature of *certiorari* for quashing the order dated 16.08.2016 (Annexure P-6) whereby the petitioner was denied the benefit of judgement dated 14.07.2015 (Annexure P-3) passed by this Court in LPA No.1299 of 2013 titled as **“Balkar Singh and Others Vs. Financial Commissioner, Revenue-cum-Secretary to Govt. of Punjab and others”** laying down the principle that the seniority list shall be prepared on the basis of the merit list and on the basis of joining.

2. The principle laid down by this Court in LPA No.1299 of 2013 was to be applied to all the persons in the cadre and could not have been applied to the appellants in the said LPA alone. However, respondent No.2-

Collector, Jalandhar vide impugned order has held that the benefit would be applicable only to the persons who filed the said Appeal at that relevant time.

3. Learned counsel for the petitioner submits that such an action would go contrary to the law/principle laid down by the Division Bench of this Court.

4. Learned State counsel on the other hand submits that the benefit should only be given to the persons who had approached this Court for seeking relief and the petitioner in the present petition had not approached in time and there is a delay in claiming the relief.

5. I have considered the submissions of the learned counsel for the parties and perused the case file as well as the available record.

6. Seniority *inter se* of persons is to be determined on the basis of the principles or Rules laid down from time to time. It is a settled principle of law that a seniority list has to be drawn on *inter se* merit of candidates who have been recruited by way of one single selection process. Date of issuance of appointment order or date of joining would have no relevance for the purpose as the same can be a fortuitous circumstance.

7. Once the said principle has been reiterated in a judgment relating to a particular seniority, the same would apply to all those who are affected. It is so as even if one person assails the principle being followed by the Department, and the Court reaches to a particular conclusion, the conclusion/finding of the Court for drawing of seniority list would be applicable on all, it is not necessary for others to again knock the Court of justice.

8. There is another view point. In challenge to a particular seniority list, a person impleads some other candidates who have been placed in the seniority list by way of representative capacity as has been held by the Supreme Court in the case of **Prabodh Verma And Others** vs **State Of Uttar Pradesh;** 1984 (4) SCC 251 wherein the Court has held as under:-

“The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

9. The said aspect has also been reiterated by the Hon'ble Supreme Court in the case of Arun Tewari Vs. Zila Mansavi Shikshak Sangh; 1998(1) SCT 533.

10. The Court, while laying down the principle in the present case, protected the persons who had already retired and it was directed that the seniority of the retired persons would not be re-determined to affect their pension or other retiral benefits. Thus, the Court was fully conscious that the complete seniority list would have to be re-determined, however, it protected those who have already attained the superannuation.

11. The respondents have failed to consider the judgement in a correct perspective. Resultantly, this litigation has again come to this Court.

12. From the perusal of the impugned order, it is noticed that the concerned Collector, Jalandhar was having full knowledge that there are several *Patwaris* who are required to be placed in the revised seniority list but he has failed to perform his duty and has unnecessarily created the present litigation in this Court.

13. This Court restrains from making any further comment on the said Officer as he is not present before us.

14. Be that as it may, the respondent-Department is now directed to re-frame the seniority strictly in terms of the principle as laid down by the Division Bench vide its judgment dated 14.07.2015 passed in LPA No.1299 of 2013 titled as "Balkar Singh and Others Vs. Financial Commissioner, Revenue-cum-Secretary to Govt. of Punjab and others" and give benefit to all those persons to whom benefit could be given as on the date of passing of the said judgement by the Division Bench.

15. The orders shall be passed within a period of 3 months.
16. Accordingly, this Writ Petition is **allowed**, the order passed by the Collector dated 16.08.2016 (Annexure P-6) is quashed and set aside with the directions as above.

July 20, 2023
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>