

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CWP-20267 of 2020 (O&M)
Date of decision: 17.02.2023

Pawan Kumar and others ..Petitioners

Versus

State of Punjab and others ..Respondents

(2) CWP-25 of 2013 (O&M)

Narinder Singh ..Petitioner

Versus

State of Punjab and others ..Respondents

(3) CWP-9641 of 2016 (O&M)

Lakhwinder Singh and others ..Petitioners

Versus

State of Punjab and others ..Respondents

(4) CWP-25300 of 2017 (O&M)

Jagmail Singh ..Petitioner

Versus

State of Punjab and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jatinderpal Singh, Advocate
for the petitioner.(in CWP-20267 of 2020)

Mr. Ranjivan Singh, Advocate and
Mr. Risham Raag Singh, Advocate
Ms. Kavita Toor, Advocate,
for the petitioner (in CWP-25 of 2013)

Mr. Rahul Rampal, Advocate
for the petitioner (in CWP-25300 of 2017)

Mr. Arvind Kashyap, Advocate,
for the petitioner (in CWP-9641 of 2016)

Mr. R.K.Kapoor, Addl.A.G., Punjab

Mr. Manpreet Singh Longia, Advocate
for respondent no.3 (in CWP-25 of 2013)
for respondent no.4(in CWP-9641 of 2016)
for respondent no.4(in CWP-20267 of 2020)

Mr. Gurminder Singh, Sr. Advocate, with
Mr. Jatinder Singh Gill, Advocate
for respondent no.5 (in CWP 25 of 2013)
for respondent no.6 (in CWP-9641-2016)

Mr. Sameer Sachdeva, Advocate
for respondent no.6(in CWP-25 of 2013)
for respondent no.7 (in CWP-9641 of 2016)

ANIL KSHETARPAL, J(Oral)

1. A batch of 4 connected writ petitions has come up for final disposal. The pivotal issue which arises for consideration is “Whether a member of the cadre can be granted seniority prior to the date of his appointment?

2. Since this is the only issue involved, hence, detailed facts are not required to be noticed.

3. The dispute is with respect to inter-se seniority between the Naib Tehsildars recruited in accordance with the rules vis-a-vis those appointed on compassionate basis. The competent authority, after forming an opinion on the basis of some administrative instructions, has granted seniority to the private respondents prior to the date on which they were born in the cadre in the seniority list issued on 22.03.2012.

4. The learned counsels representing the parties are *ad-idem* that the services of the Naib Tehsildars in the State of Punjab are regulated by the Punjab Naib-Tehsildars (Class III) Service Rules, 1984 (hereinafter referred to as 'the 1984 Rules') which have been prepared and notified by the

Government in exercise of powers under proviso to Article 309 of the

Constitution of India. Rule 16 whereof reads as under:-

“16 Seniority - Seniority of the members of the Service shall be determined in accordance with the order of their appointment to 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 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 recruiting authority 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 recruiting authority, his seniority shall be determined from the date he joins the Service;

Provided further that in case any candidate of the next selection has 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.

NOTE - Seniority of persons appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment.”

5. It may be noted here that the 1984 rules were subsequently amended in the year 2019, however, the rule relating to seniority remained unchanged. In any case, the dispute pertains to the period prior to the enforcement of amendment and hence, 2019 amendment shall not be applicable.

6. As noticed, the private respondents have been appointed as Naib Tehsildars on compassionate basis. Their request for grant of seniority from the date on which they submitted application for the job has been accepted by the competent authority on 09.10.2009 which was ultimately, abided/followed in the final seniority list on 23.03.2012.

7. This Bench has heard the learned counsels representing the

parties at length and with their able assistance perused the paper book.

8. On the one hand, the various learned counsels representing the petitioners contend that the service rules framed under proviso to Article 309 of the Constitution of India, being a superior form of legislation, would govern the inter-se seniority between the members of the cadre. They submit that the Government's instructions which are in conflict with the 1984 rules cannot be given effect to and hence, the seniority list dated 22.03.2012 is liable to be set aside.

9. Sh. Gurminder Singh, the learned senior counsel assisted by Mr. Jatinder Singh Gill, Advocate, representing respondent no.5, while drawing the attention of the Court to the interlocutory order passed by the High Court in Civil Writ Petition No.13097 of 1996 submits that the Division Bench has specifically observed that the applications for compassionate appointments are being kept pending and there is no time frame within which such appointments are required to be ordered. The Court also observed that no priority list has been prepared and a direction was issued to the Government to prepare a proper priority list so that the cases are considered in the order in which the applications have been submitted. He further submits that respondent no.5 was initially appointed as a Clerk which led to the filing of Civil Writ Petition No.5689 of 1989. The Division Bench, vide judgment dated 15.10.1999 after noticing that the respondent no.5 has been discriminated, ordered his appointment as Naib Tehsildar. He further draws the attention of the Court to the instructions (Annexure R5/4), dated 30.09.1996, wherein the Government has taken the decision to grant seniority from the date of application. He has also drawn the attention of the Court to the order dated 09.10.2009 whereby, inter-se seniority of Naib

Tehsildars, who were appointed on compassionate basis, has been decided.

10. Sh. Longia, the learned counsel representing respondent no.3 submits that the writ petitions suffer from unexplained delay of 4 years and the order dated 13.08.2009 has not been challenged.

11. In rebuttal, the learned counsels representing the petitioners contend that the order dated 09.10.2009 has been passed while determining the inter-se seniority amongst Naib Tehsildars, who were appointed on compassionate basis. They submit that the said order was never circulated amongst the persons, who were likely to be adversely affected. They submit that on 04.01.2008, the final seniority list was prepared in which the petitioners were ranked/shown as senior. Thereafter, a fresh seniority list was issued on 22.03.2012 which has, immediately, been challenged in this Court.

12. This court has analyzed and evaluated the arguments of the learned counsels representing the parties.

13. The various learned counsels representing the petitioners are correct in contending that in the presence of statutory service rules, the instructions issued can only be executed to the extent to which they supplement such rules. However, such instructions cannot supplant the statutory rules.

14. On a careful study of Rule 16 of the 1984 Rules, it is evident that the seniority of the members of service is to be determined in accordance with the order of their appointment to the service. There are 3 provisos attached to the substantive rule. The first proviso provides that if direct appointee joins within the period specified in the order of appointment or within such extended period, his seniority as determined by the recruiting

authority, shall not be disturbed. Whereas, the second proviso lays down that if a candidate is permitted to join the service after the expiry of such period as granted by the recruiting authority, then, his seniority shall be determined from the date of his joining. The next proviso deals with the placement of the candidates appointed under the above two provisos below the candidate of next selection who has been appointed prior to them. Thus, it is evident that the statutory service rules do not envisage seniority from the date of submission of application seeking appointment. In fact, the appointment on priority/compassionate basis are exceptions to the ordinary rules and principles of recruitment. These appointments are made in order to help the families who suffer due to an unexpected tragedy. Such appointments are made by the Government in extra-ordinary situations like death of the sole bread-earner etc. However, once such an appointment is made and a member is born in the cadre, then, he is governed by the same service rules applicable to other employees.

15. As already noticed, the substantive service rule provides for giving seniority in accordance with the order of appointment of candidates/employees to the service. Undisputedly, it means in the order in which they have been appointed. The attention of the Court has not been drawn to any provision which enables the government to grant seniority to a member of a cadre from a date which is prior to the date on which he was born in the cadre.

16. As regards the objection of the learned senior counsel with reference to the orders passed by the High Court in Civil Writ Petition No.13097 of 1996 and 5689 of 1989, it may be noted that the court did not order grant of seniority to respondent no.5 from the date of his application.

Rather, on a careful reading of order dated 15.10.1999, it can be observed that though the Division Bench directed the appointment of respondent no.5, however, it was conscious of the fact that there has been considerable delay in the appointment, thus, no order to count seniority from the date of application for the job was passed.

17. As regards the argument of Sh. Longia, the learned counsel representing respondent no.3, on the question of delay, it is important to observe that the order dated 09.10.2009 is only determining inter-se dispute between the various Naib Tehsildars appointed on compassionate basis. Moreover, there is no evidence to prove that this order was ever communicated or brought to the notice of the remaining members of the cadre who were thereby affected. The petitioners came to know of the decision of the Government only when the final seniority list was prepared on 22.03.2012. The first writ petition was filed in the month of December, 2012 itself. Hence, this court does not find it appropriate to agree with the contention of the learned counsel on the objection of delay.

18. His next argument is with reference to the order dated 13.08.2009 passed by the Commissioner, Ferozepur Division. On a careful reading thereof, it is evident that the order does not even referred to the statutory service rules which, being a delegated form of legislation, are binding on the authority. In these circumstances, even if the correctness of the order has not been formally challenged by the petitioners, still, once the subsequently prepared final seniority list has been challenged, then, this Court in the exercise of writ jurisdiction would not deny the relief to the petitioners only based on a hyper-technical objection.

19. At this stage, the learned senior counsel representing respondent

no.5 has drawn the attention of the court to Annexure R4/12 in Civil Writ Petition No.20267 of 2020 to highlight that in some cases, the order of compassionate appointment was issued within a few days of submission of the application, whereas, in the case of respondents no.3 and 5, there was a delay of 8 years.

20. In the considered view of this Court, once there is a rule governing the conditions of service which is a superior form of legislation, then, the Court cannot surpass the same and accede to the request of the respondents even if the order may operate harshly upon them.

21. At this stage, Sh. Jatinderpal Singh, the learned counsel representing the petitioner(s) in Civil Writ Petition No.20267 of 2020, submits that the change in the seniority amongst the Naib Tehsildars would have a consequential effect on the promotion of Tehsildars.

22. In view of the submission, it is directed that once the competent authority finalizes the fresh seniority list, all the consequential effects shall mandatorily follow.

23. Keeping in view the aforesaid facts and discussion, the seniority list dated 22.03.2012 is quashed. The writ petitions are allowed.

24. The competent authority is directed to prepare a fresh seniority list strictly in accordance with the 1984 rules, within a period of 3 months, from today, positively.

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

February 17, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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