

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-20180-2020 (O/M)

Date of decision : 20.10.2023

Mahesh Chander Kalia

..... Petitioner

Versus

Punjab Engineering College, Chandigarh and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. H.S. Saini, Advocate
for the petitioner.

Mr. Ashwani Talwar, Advocate
for respondents No. 1 and 2.

Mr. M.S. Virk, Advocate for
Dr. Puneet Kaur Sekhon, Advocate
for respondent No. 3.

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HARSH BUNGER, J.

1. Petitioner (Mahesh Chander Kalia) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing of impugned Final Seniority List dated 30.05.2019 (Annexure P-18) to the extent, wherein the date of promotion/joining of the petitioner as Senior Assistant has been wrongly and illegally shown as 27.01.2012 instead of 09.12.2009, ignoring the earlier Seniority List dated 23.06.2016 (Annexure P-15).

A further prayer has been made for directing respondents to release all consequential benefits with interest on account of actual date of promotion of the petitioner to the post of Senior Assistant with effect from the date his immediate junior was promoted i.e. 09.12.2009, especially in

view of Senior List dated 23.06.2016 (Annexure P-15).

2. Briefly, the petitioner was initially appointed to the post of Store Keeper, vide appointment letter dated 07.03.1988, in the pay scale of Rs. 400-600 and the services of the petitioner were regularized by respondent No. 1-Punjab Engineering College, Chandigarh (hereinafter referred to as 'respondent-College') with effect from 19.12.1988. It may be noted that respondent No. 3 (Sanjeev Kumar) was appointed on regular basis in respondent-College as a Clerk on 01.11.1989 by way of direct recruitment.

As per the petitioner, vide office order dated 10.05.1993 (Annexure P-2), the cadre of the posts of Head Lecturers Assistants/Lecturers Assistants/Time Keepers were merged in the cadre of Clerks by respondent-College in pursuance to the Chandigarh Administration Memo dated 27.04.1993, accordingly, the common cadre of Clerks consisting of all the merged posts, as mentioned above came into being. It is the case of petitioner that after implementation of the revision of pay scales w.e.f. 01.01.1986, the cadre of Store Keeper was granted the pay scale in the ratio of 40:40:20 i.e. 40% senior most Store Keeper Rs. 1500-2640; 40% next Store Keeper Rs. 1200-2100, next 20% junior most Store Keeper Rs. 950-1800. Accordingly, with the bifurcation of scales, as per the seniority position of the petitioner in the cadre of Store Keeper, the post of the petitioner was treated as Senior Store Keeper and was granted the pay scale of Rs. 1500-2640, vide office order No. 596, dated 10.07.2002.

As per the petitioner, respondent-College, in terms of the orders passed in CWP-2185-CAT-2002, issued a combined Seniority List of all officials retired or working on regular basis as Clerk/Steno Typist, vide office order No. 882 dated 24.11.2003 (Annexure P-3). According to the petitioner, his name figured at Serial No. 75 of the said combined seniority list and his date of regular appointment was mentioned as 19.12.1988, whereas the name of respondent No. 3 (Sanjeev Kumar) figured at Serial No. 77.

3. The petitioner claims to have submitted a representation dated 23.06.2009 to respondents claiming promotion to the post of Senior Assistant on the basis of said combined Seniority List dated 24.11.2003 (Annexure P-3), however, in response thereto, the petitioner and others were informed that vide another office order No. 335 dated 02.05.2004, the seniority list, issued vide office order No. 882 dated 24.11.2003, stood withdrawn and was not valid. The petitioner states that the aforesaid office order No. 882 dated 24.11.2003 was withdrawn by respondents only on account of interim order passed by Hon'ble the Supreme Court and in the meantime, respondents conducted the meeting of Departmental Promotion Committee (DPC) on 22.10.2009 for making promotions to the post of Senior Assistant and on the recommendation of DPC, the junior to the petitioner, namely, Sanjeev Kumar (respondent No. 3 herein) was ordered to be promoted as Senior Assistant, vide office order dated 09.12.2009 (Annexure P-5), which was made subject to the decision of Hon'ble the Supreme Court in Civil Appeal No. 6053-55 of 2004.

The petitioner claims that even after the decision of Hon'ble the Supreme Court, respondent-College did not take any action for revising the office orders issued during the pendency of case before Hon'ble the Supreme Court and the claim of the petitioner for promotion to the post of Senior Assistant was not considered.

4. As per petitioner, he submitted a representation dated 16.02.2010 (Annexure P-6) to respondent-College, claiming promotion to the post of Senior Assistant keeping in view the fact that his immediate junior, namely, Sanjeev Kumar (respondent No. 3) stood promoted, however, of no avail. The petitioner states that after the decision of Hon'ble the Supreme Court dated 06.04.2010, earlier office order No. 335 dated 02.05.2004 was withdrawn by respondent-College and again the combined seniority list, vide office order No. 882, dated 24.11.2003 (Annexure P-3) was ordered to be restored. In this regard, office order No. 618, dated 28.05.2010 (Annexure P-7), issued by respondent-College is as under :-

“PEC UNIVERSITY OF TECHNOLOGY :
CHANDIGARH

Office Order No. 618

Dated : 28.5.10

In pursuance of order dated 06.04.2010 passed by Hon'ble Supreme Court of India in Civil Appeal No. 6053-6055 of 2004 arising out of CWP No. 3777/CAT/2002 and CWP No. 2185-CAT of 2002 and R.A. No. 300 of 2003 in CWP No. 2185-CAT of 2002 D.R. Saini and others versus Sain Dass and others, the office order No. 335 dated 02.05.2004 is hereby

withdrawn subject to the condition that the pay and pension of the Appellants may not be disturbed and they will continue to get what they were getting since the passing of the interim order of the Hon'ble Supreme Court of India.

Further, the office order No. 882 dated 24.11.2003, office order No. 12, 13 and 14 dated 06.01.2004, office order No. 145 dated 02.03.2004 and office order No. 148 dated 03.03.2004 withdrawn earlier vide office order No. 335 dated 02.05.2004 are to be re-enforced and the pay of the respondents Sh. Sain Dass and others is to be re-fixed accordingly.

This order is being issued with the approval of the Director.

*Sd/-
Registrar
PEC University of
Technology Chandigarh*

Endst. No. PEC/SE-2/13079-81 Dated :

Copy of the above is forwarded to the following for information and necessary action :

- 1. Superintendent Billing Section.*
- 2. Concerned officials.*
- 3. Superintendent Establishment Section.*

*Sd/-
Registrar”*

5. It appears that vide office order No. 77 dated 27.01.2012 (Annexure P-12), the petitioner was promoted to the post of Senior Assistant on regular basis with immediate effect.

6. The petitioner states that subsequently, a tentative seniority list of Senior Assistants was issued, vide office order No. 781

dated 07.06.2013 (Annexure P-13) and the name of the petitioner was placed at Serial No. 13 and name of respondent No. 3 (Sanjeev Kumar) was placed at Serial No. 10. The objections to the said tentative seniority list was raised and to settle the same, respondent-College constituted a committee of three persons. After considering the objections received against tentative seniority list dated 07.06.2013 (Annexure P-13), respondent-College, vide office order No. 717 dated 23.06.2016, issued the seniority list of the cadre of Senior Assistant wherein the name of petitioner for promotion to the post of Senior Assistant from the due date i.e. 09.12.2009 was given effect to and the following seniority list was prepared :-

“OFFICE ORDER NO. 717 DATED 23 JUN 2016

After consideration all the objections received against the Tentative Seniority List issued vide office order No. 781 dated 07.06.2013, Seniority list of Senior Assistant has been prepared by the committee as per office order No. 882 dated 24.11.2003 which has been up held by the Hon'ble Supreme Court order dated 06.04.2010 and re-enforced vide O/O No. 619 dated 28.05.2010 is given as under :-

<i>S. No.</i>	<i>Name of the officials</i>	<i>Date of Promotion as Sr. Assistant</i>	<i>Remarks</i>
<i>1.</i>	<i>Piara Singh (SC)</i>	<i>11.09.2006 (Notionally)</i>	<i>In place of Sh. Surjit Singh</i>
<i>2.</i>	<i>Surjit Singh (SC)</i>	<i>01.09.2007</i>	<i>In place of Piara Singh Sr. Assistant retired on 31.08.2007</i>
<i>(a).</i>	<i>Kamaljit Kaur</i>	<i>23.10.2009</i>	<i>To fill up the</i>

	(SC)		backlog of SC
3.	Om Parkash (SC)	23.10.2009	In place of Ms. Jiwan Lata on reversion to the post of Steno
4.	Suman Lata	09.12.2009	
5.	Mahesh Kalia	09.12.2009	In place of Sh. Sanjeev Kumar
6.	Sanjeev Kumar	09.12.2009	In place of Sh. Balbir Singh
7.	Balbir Singh	01.01.2009	In place of Sh. Rajiv Nanda
8.	Rajiv Nanda	27.01.2012	In place of Sh. Mahesh Kalia
9.	Jagdish Pathania	27.01.2012	In place of Sh. Kulwant Singh
10.	Kulwant Singh	27.01.2012	In place of Sh. Suresh Kaushal
11.	Suresh Kaushal	27.01.2012	In place of Sh. Ganesh Chand
12.	Ganesh Chand	27.01.2012	In place of Ms. Anu Sharma
13.	Anu Sharma	30.01.2012	In place of Sh. Om Parkash
14.	Saroj Kumari	01.01.2013	
15.	Ms. Veena Malhotra	01.07.2013	
16.	Mohaljit Kaur	20.05.2015	
17.	Mamta	25.05.2015	
18.	Veena Nanda	01.06.2015	
19.	Satish Kumar	13.07.2015	
20.	Gursharan Kaur	13.07.2015	Pending

Any objection to the above tentative seniority may be submitted in this office within 15 days from the date of issue of this letter.

*(MANISH KUMAR)
Registrar”*

Dated : 22.06.2016

7. The petitioner claims that the above extracted seniority list has attained finality.

8. It appears that subsequently, respondent again issued another tentative seniority list, vide office order No. 18 dated 03.01.2019 (Annexure P-16) by ignoring the earlier seniority list dated 23.06.2016 (Anenxure P-15) wherein the name of the petitioner was correctly shown at Serial No. 4, above the name of respondent No. 3 (Sanjeev Kumar), however, in the column of “date of promotion as Senior Assistant”, petitioner's date of promotion was again wrongly shown to be 27.01.2012 instead of 09.12.2009 [as was mentioned in earlier seniority list issued vide office order No. 717 dated 23.06.2016 (Annexure P-15)].

9. Being dis-satisfied with the aforesaid tentative seniority list dated 03.01.2019 (Annexure P-16), the petitioner is stated to have submitted his objections claiming that his date of promotion as Senior Assistant to be corrected as 09.12.2009 instead of 27.01.2012 and future promotions to the post of Superintendent Grade II be made according to the seniority list issued vide earlier orders and all financial benefits from his due date of promotion as Senior Assistant be granted.

10. The grievance of the petitioner is that now final seniority list of Senior Assistant has been issued, vide office order No. 575 dated 30.05.2019 (Annexure P-18) wherein although the petitioner is ranked senior to respondent No. 3 (Sanjeev Kumar) as his name figured at Serial No. 4 and name of respondent No. 3 (Sanjeev Kumar) figured at Serial No. 5, however, again his date of joining as Senior Assistant has

been wrongly shown as 27.01.2012 instead of 09.12.2009 which is not in consonance with earlier seniority list dated 23.06.2016 (Annexure P-15). It is also grievance of the petitioner that while treating the petitioner as senior to respondent No. 3 (Sanjeev Kumar) in the cadre of Senior Assistant, as per his date of promotion as Senior Assistant with effect from 09.12.2009; the petitioner alongwith respondent No. 3 (Sanjeev Kumar) was further promoted to the post of Superintendent Grade II, vide office order No. 1142 dated 30.10.2019 (Annexure P-19), however, he has not been paid actual monetary benefits on account of his promotion with effect from 09.12.2009 as Senior Assistant by respondents. The petitioner claims to have submitted numerous representations, however, office order/combined seniority list dated 24.11.2003 (Annexure P-3) has not been implemented by respondents correctly and he has not been granted due benefits on account of his date of promotion with effect from 09.12.2009. Accordingly, petitioner claims that the impugned final seniority list dated 30.05.2019 (Annexure P-18) is liable to be corrected to the extent that his date of joining as Senior Assistant be corrected as 09.12.2009 instead of 27.01.2012, as shown in the earlier seniority list dated 23.06.2016 (Annexure P-15) and all consequential/monetary benefits, as admissible, be granted to him by taking into account his actual date of promotion/joining to the post of Senior Assistant as 09.12.2009.

11. In the aforementioned circumstances, the petitioner has filed the instant writ petition.

12. Per contra, learned counsel for respondent-College has opposed the prayer made by the petitioner on the ground that since the petitioner had actually joined the rank of Senior Assistant only with effect from 27.01.2012 and his pay and allowances for the period from 09.12.2009 to 27.01.2012 have been regulated as per the post held by him at that time, accordingly there is no merit in the writ petition and his date of promotion/joining as Senior Assistant has been rightly shown as 27.01.2012. However, learned counsel for respondent-College has not specifically disputed the seniority list issued, vide office order No. 717 dated 23.06.2016 (Annexure P-15) wherein the date of promotion of the petitioner as Senior Assistant has been shown as 09.12.2009 as in the case of respondent No. 3 (Sanjeev Kumar). Infact, a perusal of the remarks column in the aforesaid office order No. 717 dated 23.06.2016 (Annexure P-15) would indicate that the petitioner was placed at Serial No. 5 in place of respondent No. 3 (Sanjeev Kumar) and he (respondent No. 3) was placed at Serial No. 6 in place of Shri Balbir Singh and in the date of promotion column, the date of promotion/joining to the post of Senior Assistant of the petitioner as well as respondent No. 3 is shown as 09.12.2009.

13. Once the seniority list issued, vide office order No. 717 dated 23.06.2016 (Annexure P-15), has not been disputed by respondent-College wherein the date of promotion of petitioner as Senior Assistant is mentioned as 09.12.2009 and it is not forthcoming as to on what basis in the subsequent seniority list issued, vide office order No. 575

dated 30.05.2019 (Annexure P-18), the date of promotion of the petitioner as Senior Assistant is mentioned as 27.01.2012.

14. It is a well settled law that in normal circumstances when retrospective promotions are effected, all benefits flowing therefrom including monetary benefits must be extended to an employee who has been denied promotion earlier. It is equally well settled that the principle of 'no work no pay' is not attracted in cases where the authority was at fault in not considering the case of employee for promotion and not allowing him to work on the promotion post. In this regard, reference can be made to the judgment of Hon'ble the Supreme Court in the case of Ramesh Kumar Versus Union of India and others, 2015 (3) SCT 704.

15. In view of aforementioned circumstances, once the petitioner has ranked senior to respondent No. 3 (Sanjeev Kumar) in the earlier seniority list, circulated vide office order dated 717 dated 23.06.2016 (Annexure P-15) wherein the date of promotion/joining of the petitioner as Senior Assistant is stated to be 09.12.2009, which is not disputed by respondent-College; accordingly, the final seniority list of Senior Assistant, as circulated, vide office order No. 575 dated 30.05.2019 (Annexure P-18), is liable to be corrected to the effect that the date of promotion/joining of the petitioner as Senior Assistant be read as 09.12.2009 instead of 27.01.2012 as the date of joining of respondent No. 3 (Sanjeev Kumar) is also the same i.e. 09.12.2009. As a consequence thereof, the petitioner would be entitled to all consequential benefits, as admissible to him, by treating his date of promotion/joining to

the post of Senior Assistant as 09.12.2009 in consonance with the earlier seniority list issued vide office order No. 717 dated 23.06.2016 (Annexure P-15).

16. The instant writ petition is accordingly disposed of in the aforestated terms.

17. Application(s) pending, if any, shall stand closed.

(HARSH BUNGER)
JUDGE

20.10.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No