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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23317-2023 (O&M)
Date of Decision: 13.10.2023

Vijay Maheshi and others

. . . . Petitioners

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Ms. Alka Chatrath, Advocate, for the petitioners.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioners before this Court assail the tentative seniority list issued vide order dated 18.08.2021 relating to Agriculture Development Officers recruited in the year 2010 and 2012 in the Department of Agriculture.
2. Learned counsel for the petitioners submits that with regard to the selections conducted in the year 2012 for the post of Agriculture Development Officer, advertisement was issued for 154 posts out of which 77 posts fell in open/general category while the remaining were for the reserved category of SC and BC. Certain candidates, who were belonging to SC/BC and had scored higher merit than the general candidates, were left out from being placed against the general post and 23 additional general candidates were appointed resulting in disturbing the quota.
3. Writ Petition was filed by one *Sarv Mitter bearing No.CWP-18098-2012* wherein the State submitted an affidavit that they will consider the reserved category candidates, who secured more marks than the last

general category candidates, to be placed in the general category and accordingly additional 23 SC/BC candidates would be added against the quota. The select list was also accordingly revised. The additional 23 general category candidates who had been given appointment against the 77 posts were to be issued show cause notice as per the affidavit, and later on their appointments were also saved by the State Government and they were allowed to continue.

4. Learned counsel submits that the said 23 general category candidates are in addition to the 154 posts advertised, and therefore they cannot be considered for the *inter se* seniority amongst the 154 Agriculture Development Officers selected against the advertisement issued on 29.10.2011 (P-1).
5. Learned counsel submits that these 23 candidates from general category would have to be placed at the lowest in the said select list, and therefore as per the seniority rule, they would not march over the petitioners who fall within the said 154 posts, originally advertised as above.
6. Learned counsel submits that as per the above principle, in the tentative seniority list published by the respondents for candidates of 2012 selectees, from 665 to 750 would be only the open/general category candidates whereafter the names of the petitioners who are from SC/BC category, shall be placed according to their merit. The additional 23 persons who have been added after 750 up to 775 would not have been granted the seniority and they need to be relegated below the petitioners.
7. This Court finds a basic error in the submission raised by the petitioners. So far as the selection process is concerned, in terms of the law laid down in ***R.K. Sabharwal and others vs. State of Punjab and others, 1995 AIR***

1371, the reserved category candidates having secured higher marks than general category candidates would be treated as a general category candidate, and would be placed in the selection process, whereafter the post of SC candidates would be filled accordingly. The law has been reiterated succinctly recently in the case of ***Saurav Yadav and others vs. State of Uttar Pradesh and others, WP(C) No.237 of 2020***, wherein the Supreme Court has held as under:

“15. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate’s merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state’s argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.”

8. The method and manner of filling up of post is what the Supreme Court has laid down in the aforesaid judgment. However, if the State Government deems it appropriate to increase the number of posts while making selections, and fills additional number of posts, question arises whether those additional persons who are appointed against the additional number of posts would be placed lowest in the select list, or whether they will be entitled to claim benefit of their marks obtained in the selection process, and be granted seniority according to their merit. It would be apposite to quote the Rule relating to seniority 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 the case of two or more persons appointed on the same date, their seniority shall be determined as follows:-

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 to transfer from different cadres their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment; and if the rates 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, there inter-se-seniority shall be determined on the basis of their age. That is, an older person shall be senior to the younger person"] "

9. From the perusal of the aforesaid Rule, it is apparent that the seniority of a person appointed under one selection process would be determined on the basis of his own merit in the said selection process. Once a candidate secures higher marks than another in a selection process, his merit *inter se* is the only relevant factor for the purpose of preparation of seniority. Placement/migration of any individual from any category to another, would not affect his seniority.
10. The submission of learned counsel, that the select list is sacrosanct and any person who is appointed beyond the select list of the number of posts advertised, would fall and be treated as a separate selection, is wholly erroneous.
11. The selection process constitutes the complete process starting from the submitting of an application and ending into appointment. In view of the fact that those 23 candidates had been appointed under the same selection process and possess higher merit obtaining higher marks than the petitioners, there is no occasion to deny them their merit for the purpose of preparation of seniority. It is settled law that seniority list would not be based on roster points. The roster as introduced in terms of the judgment passed in *Indra Sawhney Etc. Etc vs Union Of India And Others, AIR 1993 SC 477*, is essentially for the purpose of placement and knowledge of the selecting body relating to the number of posts available for each category. The Rule of seniority also does not mention the positioning of roster.
12. This Court notices that there are certain rules governing selections where roster points are also part of the seniority, and as and when selection is done, the concerned candidate fills up the particular roster appointed in

the seniority, like it is done in relation to judicial services keeping in view the law laid down in ***Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604***. However in the present case, since the Rule is silent with regard to seniority being drawn on the basis of roster, the submission raised by the learned counsel for the petitioners fails.

13. Learned counsel for the petitioners has also relied on the judgment passed in the case of ***Vikas Pratap Singh and others vs. State of Chhattisgarh and others, 2013 AIR (SC) 3414***. This Court finds that the judgment is on a different aspect altogether. It was a case wherein it has been held as under:

“26. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

27. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.”

14. This Court finds that the judgment is on completely different facts. In the said case, the merit list was revised and the marks of the concerned candidates who had already been appointed had been reduced. As a special case, the Supreme Court saved their appointments and therefore

directed that while saving their appointments, they will be placed in the bottom of the merit list. Placing persons in the bottom of the merit list would automatically, as per rule of seniority, grant them lowest seniority. Here, it is not the case of the petitioners that the 23 candidates appointed additionally, possess lower marks than the petitioners. Thus, so far as the *inter se* merit is concerned, the 23 candidates are higher in merit than the petitioners. Accordingly, they would be entitled for their placement too.

15.This Court also finds that in the tentative seniority list amongst the 23 candidates, there are also those who belong to SC/BC category. Thus, these 23 candidates who have scored higher marks than the petitioners would be entitled to claim their seniority over and above them.

16.Accordingly, the Writ Petition stands *dismissed*.

17.All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

October 13, 2023

Mohit goyal

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No