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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7540-1993 (O&M)

Date of Decision:29.01.2024.

NARINDER PAL SINGH

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Vikas Kuthiala, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Shivender Pal, Advocate for
Mr. B.S. Bhalla, Advocate for respondents No.4 to 6.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. This Writ Petition has been initially preferred by the petitioner seeking quashing of the seniority list dated 20.11.1992 wherein he was shown junior to the private respondents.

2. Learned counsel for the petitioner has joined service as a Clerk on 24.05.1971 as was promoted as Steno Typist w.e.f. 13.11.1972 and confirmed on the said post on 19.03.1976. He was further promoted to the post of Junior Scale Stenographer w.e.f. 04.07.1981 initially on *ad hoc* basis but vide order dated 12.07.1984, he was confirmed as Junior Scale Stenographer w.e.f 11.07.1981. He was further promoted as Senior Assistant w.e.f. 16.06.1991 and is still continuing on the said post. While the petitioner was holding the post of Junior Scale Stenographer w.e.f. 11.07.1981, the respondents No.3 to 6 (hereinafter referred to as “the private respondents”) were directly recruited as Junior Scale Stenographers on 26.08.1983, 20.10.1983, 01.03.1984 and 19.02.1985 respectively. Thereafter, they were

promoted to the post of Senior Assistants w.e.f. June, 1992 and July, 1992 as the case may be.

3. Learned counsel for the petitioner submits that vide the seniority list published by the department on 04.04.1989, the petitioner was shown at Sr.No.7 while the private respondents were shown at Sr.No.9, 10, 11 and 12. It is further stated that the said seniority list was never challenged in any Court, however, a representation was made by respondent No.5 and on the basis of the said representation, petitioner's seniority was sought to be changed and it was stated that the benefit of *ad hoc* service cannot be given to the petitioner in terms of the Government's circular dated 20.01.1973. Therefore, the seniority for the post of Junior Scale Stenographer was revised the petitioner was placed below the private respondents. The petitioner challenged the same before this Court and during the pendency of the Writ Petition, another order was passed whereby order dated 06.01.1988 regularizing the services of the petitioner w.e.f. 04.07.1981 was superseded. The same was therefore, challenged by the petitioner before this Court. It is submitted that the petitioner was granted *ad hoc* promotion which was later on confirmed and the petitioner cannot be placed junior to the direct recruits who have been appointed in the year 1983 and thereafter. The order dated 06.01.1988 was not challenged by any person and had attained finality, and the petitioner had been further promoted to the post of Senior Assistant on the said basis. His promotion was also not challenged by any person before any Court.

4. Learned counsel for the petitioner submits that he had submitted a detailed representation against order dated 20.11.1992, however, the

respondents have not addressed to the said submissions. It is further submitted that the circular dated 20.01.1973 would have no application to the petitioner who was an *ad hoc* promotee and was later on confirmed against the promotion post. In support of his submissions, learned counsel for the petitioner has also relied on the judgment in the case of **Baleshwar Dass** Vs. **State of U.P.**; 1980 (4) SCC 226 rendered by the Supreme Court.

5. *Per contra*, learned counsel for the private respondents submits that they are the direct recruitees appointed against the substantive posts and persons, who are working on *ad hoc* basis, cannot claim seniority over and above the private respondents.

6. Learned State counsel supports the order passed by the respondents and submits that the *inter se* seniority of the members of the service as per Rule 10 of the Punjab Excise & Taxation Commissioner's Office (State Class III) Rules, 1954 is to be determined by the date of their substantive appointment to such posts. The services of the petitioner were regularized against a substantive post on 06.01.1988 and therefore, he cannot claim seniority over the private respondents.

7. Learned State counsel has also invited the attention of this Court to the circular dated 20.01.1973 to submit that the petitioner could not claim benefit of *ad hoc* service for the purpose of seniority. Learned State counsel has further stated that objections were invited but the petitioner did not respond and therefore, the *inter se* seniority was determined.

8. I have carefully considered the submissions of the learned counsel for the parties.

9. The action of the respondents in changing the seniority of the petitioner, and also superseding the order dated 06.01.1988 by issuing an order on 13.07.1994, denying seniority benefit, is required to be examined.

10. So far as the petitioner is concerned, he is a promotee who was promoted on the post of Junior Scale Stenographer on *ad hoc* basis on 04.07.1981 and vide order dated 12.07.1984, he was confirmed on the said post. Thus, he is a promotee to the post of Junior Scale Stenographer and therefore, has no *lis* with the persons who are appointed directly. The law is settled in this regard by the apex Court in the case of **Hariharan and Others** Vs. **Harsh Vardhan Singh Rao and Others**; 2022 SCC Online SC 717 is with reference to the *ad hoc* appointees and direct recruitees *inter se* alone. However, so far as *inter se* seniority between promotees and direct recruitees are concerned, it is well settled law that their *inter se* seniority would be separately determined. So far as a promotee is concerned, he may be promoted on *ad hoc* basis and later on confirmed from the said date, but so far as direct recruitee is concerned, he will get his appointment benefits only from the date he is appointed. If an *ad hoc* appointment is made against a direct recruitment post, then such *ad hoc* appointee cannot claim seniority over and above a direct recruitee who has been substantively appointed. However, it appears that the respondents have confused the case of the petitioner with that of direct recruitees treating him as direct recruitee on the post of Junior Scale Stenographer. The circular of 20.01.1973 has been applied which would only apply amongst the direct recruits of persons appointed on *ad hoc* basis on direct recruitment post. Petitioner's promotion

from 1981 which was confirmed vide order dated 06.01.1988, therefore, was not required to be interfered with.

11. Moreover, there is no challenge to the order dated 06.01.1988 by any person before any Court. So far as direct recruitees are concerned, they have been given their due promotion on the post of Senior Assistant when they became eligible. So far as the petitioner is concerned, he being a promotee, has been promoted further to the post of Senior Assistant against the promotion post prior to the direct recruits, obviously as he was promoted to the post of Junior Scale Stenographer in the year 1981. The service rendered as a promotee w.e.f. 1981 cannot be discounted as it is not akin to *ad hoc* service against a direct recruitment post.

12. In view of the above, the very basis of issuing of the impugned orders is found to be misconceived and erroneous. The impugned orders have to be set aside and accordingly orders dated 20.11.1992, 05/13.07.1994 are set aside. The petitioner would get all consequential benefits. If there has been any further promotions made, the petitioner would be entitled to claim the same.

13. The Writ Petition is allowed accordingly.

14. No costs.

15. All pending applications in this Writ Petition stand disposed of accordingly.

January 29, 2024

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No