

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

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**CWP No.11988 of 2017
Date of Decision : 22.2.2024**

*Rakesh Kumar**..... Petitioner**versus**Guru Jambheshwar University of science and Technology, Hisar**..... Respondent***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: None for the petitioner

Mr. Puneet Gupta, Advocate and
Mr. Ravindra Singh, Advocate, for the respondent

TRIBHUVAN DAHIYA J. (ORAL):

The petition has been filed impugning the order dated 22.5.2017, Annexure P-18, whereby the petitioner was reverted from the post of Superintendent to that of Deputy Superintendent.

2. Briefly, facts of the case are, the petitioner, who belongs to Scheduled Caste (SC) category, was appointed as Data Entry Operator (DEO) in the respondent/University on 8.4.1997. A common seniority list of three parallel cadres, i.e., Assistants, Stenographers and DEOs, was circulated on 8.7.2005. The petitioner did not object to the same, wherein he was placed at no.13. As per this seniority list, employees placed at no.1 to 3 were promoted as Deputy Superintendent in general category on 12.7.2005; the petitioner, despite being at no.13, was promoted as such alongwith them under twenty per cent quota meant for Scheduled Caste

category, as per the roster point. Later, the State Government issued instructions, dated 16.3.2006, regarding reservation of posts for Scheduled Caste and Backward Classes in government service, wherein it was provided that Scheduled Caste employees will be entitled to accelerated seniority also as a consequence of promotions under the reservation policy. Since the instructions were applicable to the University, based upon the accelerated seniority the petitioner was further promoted as Superintendent vide office order dated 3.4.2010.

2.1. However, the instructions dated 16.3.2006, providing accelerated seniority to Scheduled Caste employees, were challenged before this Court in CWP No.17280 of 2011 titled *Prem Kumar Verma and others v. State of Haryana*. The same were quashed, vide judgment dated 7.8.2012, holding that decision of the government granting accelerated seniority to the Scheduled Caste employees as a consequence of promotion under the reservation policy is *ultra vires* as it runs contrary to law laid down by the Supreme Court in *M. Nagraj and others v. Union of India and others*, (2006) 8 SCC 212. Based upon that, the University vide notification, dated 26.3.2013, decided that '*all the consequential benefits including promotions etc. granted to the Scheduled Caste Employees under these instructions are also withdrawn with immediate effect. Further, the financial recovery on this account will not be made.*' Subsequent instructions issued by the government, dated 28.2.2013, providing reservation in promotions under government/government undertakings and local bodies etc. were also quashed by this Court vide judgment, dated 14.11.2014, rendered in CWP No.25512 of 2012, titled *Rajbir Singh v. State of Haryana and others*, holding as under :

The contention of some of the counsels for the private respondents that promotions already granted to some of them should not be disturbed as they may be entitled to accelerated promotion after new policy is framed by the Government is also totally misconceived, as any promotion granted in terms of the 2006 and 2013 policies, which have been quashed, certainly deserves to be recalled. Acceptance of this argument would mean putting cart before the horse. As and when any policy is framed by the Government, whosoever will be entitled to any benefit thereunder, may claim and get the same. The benefit cannot be granted in anticipation as the provisions of Article 1 (4A) of the Constitution of India are merely enabling and not mandatory.

For the reasons mentioned above, the writ petitions are allowed. The 2013 policy, issued on 28.2.2013, providing for reservation in promotion is set aside. The 2006 policy, issued on 16.3.2006, had already been set aside by this court in Prem Kumar Verma's case (*supra*). Any accelerated promotion/seniority granted on the basis of the aforesaid policies, is liable to be reversed. Ordered accordingly. Necessary action be taken within a period of 3 months from the date of receipt of a copy of the judgment.

2.2. Apparently, it was held that promotions already granted under instructions which have been quashed, cannot be maintained and have to be reversed. Further, promotions can only be given in accordance with the new policy/instructions as and when issued by the government.

3. In the backdrop of these facts, learned counsel for the University contends that the issue of reservation in promotion was finally settled by the Supreme Court in Civil Appeal No.629 of 2022, titled *Jarnail Singh and others v. Lachhmi Narain Gupta and others*, holding that conclusion arrived at in *M. Nagaraj* case (*supra*) requiring the State to collect quantifiable data showing backwardness of the Scheduled Caste and Scheduled Tribes, being contrary to the law laid down by Nine Judges Bench of the Supreme Court in *Indra Sawhney and others v. Union of*

India and others, 1992 Supp. (3) SCC 217, is invalid to that extent.

3.1. He further contends that in view of the law laid down in *Jarnail Singh* case (*supra*), the government again issued instructions, dated 7.10.2023, in the matter of backwardness and inadequacy of representation of Scheduled Caste in promotions in Group-A and B posts. These instructions are also under challenge before this Court. However, accelerated seniority to the Scheduled Caste employees has not been given therein, nor is there any policy of the University to give such benefit to its employees. Therefore, the claim raised by the petitioner is not maintainable. Accordingly, following the law laid down and in compliance of the University notification, dated 26.3.2013, by reverting the petitioner to the post of Deputy Superintendent w.e.f. 16.3.2006, it was also ordered that his seniority will be decided accordingly.

4. Heard.

5. The facts placed on record as well as the law laid down, mentioned herein above, establish that the instructions, dated 16.3.2006, providing accelerated seniority to Scheduled Caste employees, based upon which the petitioner was promoted as Superintendent on 30.4.2010, already stand quashed. The University itself, vide notification dated 26.3.2013, has decided to withdraw all promotions, including consequential benefits granted to Scheduled Caste employees based upon the instructions dated 16.3.2006, and the notification is not under challenge before this Court. There is no material or document on record establishing that the petitioner is entitled to accelerated seniority on account of promotion as a Scheduled Caste employee. Consequently, no exception can be taken to the impugned order of reversion dated 22.5.2017.

6. In view thereof, the petition stands dismissed.
7. Pending miscellaneous application(s), if any, stands disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

22.2.2024
Ashwani

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