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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102+221

CM-10925-CWP-2024 in/and
CWP-27451-2017 (O&M)
Date of Decision :09.09.2024

Daljit Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjiv Ghai, Advocate with Mr. Maninder S. Saini &
Mr. Parminder S. Kaul, Advocates for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

Ms. Anu Chatrath, Senior Advocate with
Mr. Nishant Maini, Narinder Pal Sharma,
Mr. Nikhil Singh, Advocates for respondents No.2 and 3.

Mr. Rakesh Sobti, Advocate for respondent No.4.

* * *

Harsimran Singh Sethi, J. (Oral)**CM-11894-CWP-2024**

As prayed for, application is allowed.

Annexures R-3/II to R-3/VII are taken on record.

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1. In the present petition, challenge is to the order dated 14.09.2017 (Annexure P/15) by which, the seniority in the cadre of Information Assistant has been circulated to be finalized by the respondents.

2. Certain facts need to be mentioned for the correct appreciation



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of the issue in hand.

3. The respondents-Punjab State Board of Technical Education and Industrial Training made certain appointments to the post of Data Entry Operators on contractual basis. The said appointments were made by issuing an advertisement and conducting proper selection process. The selected candidates continued working as such when in the year 2000, a joint cadre was framed as Information Assistant in which, the petitioner as well as private respondents are working. Thereafter, the respondent-Board in their 35th meeting held on 17.07.2009 took a decision to regularize the services of the employees, who were working on contractual basis.

4. As per the decision of the respondent-Board, regularization of the services of an employee was to come into effect from the date the order of regularization of services was passed. Keeping in view the said decision of respondent-Board dated 17.07.2009, the respondent-Board passed an order dated 29.07.2009 (Annexure P/4) qua all the contractual employees working with the respondent-Board regularizing their services with effect from the date of regularization order dated 29.07.2009. By the said action, the services of the petitioner as well as private respondents were regularized.

5. The grievance as being raised by the petitioner in the present petition is that once, the services of the contractual employees working in the same cadre have been regularized on the same date i.e. 29.07.2009 then, for fixing the *inter se* seniority, an employee, who is elder in age should be treated senior to the one, who is younger in age whereas, the respondent-Board in order to decide the *inter se* seniority between the employees, who

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were regularized on the same date i.e. 29.07.2009 decided that an employee, who had longer length of service as on the date of regularization is to be treated senior as compared to the employee, who has lesser length of service.

6. Learned counsel for the petitioner argues that in case, earlier service of the employees is taken into account for deciding the *inter se* seniority between the employees, the same will amount to grant of benefit of adhoc service which is contrary to the judgment of the Division Bench of this Court in **LPA-1743-2016 titled as Harpal Singh and others vs. State of Haryana and others, decided on 14.09.2016.**

7. Learned counsel for the petitioner submits that treating the employee, who had more length of service as contractual employee as senior will amount to violating the rules governing the service, according to which, benefit of adhoc service rendered cannot be given towards seniority and hence, by treating the employees, who had more length of contractual service on the date of regularization of their service as senior as compared to the employee, who had lesser length of service on contractual basis is arbitrary and illegal.

8. Learned counsel for the petitioner further submits that the State Government in somewhat similar circumstances where the services of the employees were regularized on the same date, has framed the seniority on the basis of the age as being prayed by the petitioner in the present petition and hence, respondent-Board should also follow the same criteria for the grant of benefit of seniority to the employees, who were regularized on the same date i.e. on the basis of age and not on the basis of length of service



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on contractual basis.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. The question which arises for adjudication before this Court in the present petition is as to whether criteria which has been adopted by the respondent-Board to decide the *inter se* seniority of all the employees working in the same cadre and have been regularized on the same date i.e. 29.07.2009 is valid or.

11. Before proceeding further, it may be noticed that it is a conceded position between the parties that the services of the petitioner as well as private respondents were regularized from the date of passing of order of regularization of service i.e. 29.07.2009. It is also a conceded position that no employee has been given benefit of seniority prior to the said date.

12. The argument which has been raised by the learned counsel for the petitioner in the present petition is that taking into account the length of service of contractual appointment in order to frame seniority of the employees will amount to grant the benefit of adhoc service towards seniority, which is not permissible and keeping in view the fact that the State Government in similar circumstances where the services of the employees have been regularized on the same date, *inter se* seniority has been decided on the basis of the age of the employees on the date of regularization of service, hence, the petitioner being senior to the private respondents in age on the date when the services of the petitioner as well as private respondents were regularized, is to be treated senior to the private



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respondents.

13. It may be noticed that in case, the argument of the learned counsel for the petitioner is accepted, the same will lead to a very anomalous situation.

14. It is a conceded position that private respondents have longer length of service on contractual basis as compared to the petitioner. The employee, who has longer length of service has a better claim for regularization of service as compared to an employee, who has lesser length of service on contractual basis.

15. The respondent-department in order to streamline, decided to regularize the services of all the employees irrespective to their length of service, on the same date. Once, the services of all the employees including the petitioner as well as private respondents have been regularized on the same date, the criteria has rightly been chosen by the respondent-Board that employee, who has longer length of service on contractual basis will be given benefit of seniority while framing *inter se* seniority despite the fact that the services of the petitioner as well as private respondents were regularized on the same date.

16. The claim of the petitioner that the seniority should be decided on the basis of age and not on the basis of length of service rendered on contractual basis will cause prejudice to large number of employees, who despite serving the respondent-Board for number of years will be treated junior to the employees, who have lesser length of service on contractual basis but are elder in age. For instance, in case, an employee has 10 years of service to his credit and another employee has 03 years of service to his

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credit and the regularization policy demands minimum 03 years of service, and both the employees having 10 years and 03 years of service are regularized on the same date, merely that an employee, who has 03 years of service to his/her credit but is elder in age cannot be granted seniority over and above the employee having 10 years of service to his/her credit on date when their services are regularized.

17. The criteria adopted by the respondent-Board to decide the *inter se* seniority between all the employees whose services were regularized on the same date i.e. 29.07.2009 is perfectly valid and legal so as to avoid the eventuality that the employee, who has lesser length of service on contractual basis but is elder in age as compared to another employee, who has more length of service, is to be treated as senior merely that services of both the employees were regularized on the same date.

18. Further, the argument of the learned counsel for the petitioner that treating an employee, who has more length of service on contractual basis to be senior will amount to giving benefit of adhoc service, which is arbitrary and illegal, is totally fallacious as the services of all the employees have been regularized on the same date and it is only for the purpose of fixing the *inter se* seniority of the employees, who were regularized on the same date, a criteria has been adopted by the respondents to frame the *inter se* seniority on the basis of the length of service on contractual basis and benefit of adhoc/contractual service has not been given to any employee.

19. It is not the case of the petitioner that the private respondents have been regularized from retrospective effect as compared to the petitioner, who has been regularized prospectively. All the employees



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including the petitioner as well as private respondents have been regularized prospectively and hence, argument of the learned counsel for the petitioner that the criteria to decide the *inter se* seniority between all the employees whose services were regularized on 29.07.2009 on the basis of the total length of service rendered by them on contractual basis will amount to grant of benefit of adhoc service, cannot be accepted.

20. As far as the reliance which is being placed upon the judgment of the Division Bench of this Court in **Harpal Singh (supra)**, the same is also misplaced. In the said case, the benefit of seniority was being claimed with regard to the contractual/adhoc service rendered by the petitioners therein. In the present case, there is no such grant of benefit to the private respondents. Further, in the said case, though, the services of the particular set of employees were regularized on later date but they were claiming benefit of seniority from their initial date of appointment i.e. on adhoc basis, which claim was rejected.

21. In the present case, benefit of adhoc service has neither been given to the petitioner nor to private respondents but the same has only been taken into account to decide the *inter se* seniority of all the employees, who have been regularized on the same date. Hence, in the facts and circumstances of the present case, the judgment in the case of **Harpal Singh (supra)** cannot be made applicable upon the case of the petitioner.

22. At this stage, learned counsel for the petitioner submits that the grant of seniority to the private respondents by taking into account the length of service rendered on contractual basis will violate Rule-14 (d) of the Punjab State Board of Technical Education and Industrial Training



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Service Rules, 2007.

For better understanding, the said Rule-14 is reproduced as under:-

“14. 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 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 any person of the next selection has joined a post in the cadre of the concerned service before the person referred to in the preceding proviso joins the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso:

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 person 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 by 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

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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.

Note:- Seniority of persons appointed on purely provisional basis or on adhoc basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.

23. A bare perusal of the above rule would show that adhoc service is not to be taken into account and seniority has to be given from the date when the regular appointment is given. In the present case, it is a conceded position that the petitioner as well as private respondents have been given seniority from 29.07.2009, which is the date of regularization of their service and hence, argument of the learned counsel for the petitioner that the benefit of adhoc service was given to the private respondents is incorrect.

24. In the present case, even the note given to Rule 14 has not at all been violated as asserted by the learned counsel for the petitioner.

25. It is noticed that as per Clause (d) of Rule 14 how the seniority of employees, who have appointed by way of transfer from different cadres, is to be decided. The said clause is not applicable upon the case of the petitioner as neither the petitioner nor the private respondents have been appointed by way of transfer as they were working on contractual basis in the same cadre and their services have been regularized on the same date hence, Clause 14(d) will also not come into operation in the case of the petitioner.

26. Further, even in clause 14 (d), it has been mentioned that where the persons are brought on the same date from the different

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department, their seniority is to be decided on the basis of longer length of service. It is only in the case where the length of service is same, than, age criteria is to be adopted.

27. In the present case, it is a conceded position that private respondents have more length of service on contractual basis as compared to the petitioner and hence, even if, Clause 14(d) is made applicable then also, the private respondents who have more length of service will be treated senior to the petitioner under all circumstances.

28. At this stage, learned counsel for the petitioner submits that respondents No.4 and 13 could not have been regularized as Information Assistant by converting them from the post of Data Entry Operator to that of Information Assistant and hence, the grant of seniority to them over and above the petitioner is arbitrary and illegal.

29. It may be noticed that the petitioner has attached the regularization order dated 29.07.2009 (Annexure P/4) with the present petition by which, the service of the petitioner as well as respondents No.4 and 13 were regularized. In the said order, private respondents No.4 and 13 have been regularized as Information Assistant. The said order was available with the petitioner when the objection to seniority list was filed and in case, the petitioner was aggrieved qua the regularization of the private respondents as Information Assistant, nothing stopped him to challenge the said order at any given point of time. Even in the present petition, the said order of regularization of services of respondents No.4 and 13 is not under challenge. The only argument is that they cannot be given seniority over and above the petitioner.

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30. It may be further noticed that the seniority is only a reflection of appointment of an employee. Once, the regularization of respondents No.4 and 13 is not under challenge, it cannot be said that they cannot be granted seniority in pursuance to the order of their regularization i.e. Annexure P/4 hence, the said argument of the learned counsel for the petitioner cannot be accepted.

31. Learned counsel for the petitioner submits that the said plea was raised while filing objection to the seniority list, which was not being decided by the respondents.

32. As noticed hereinabove, once, the regularization order of private respondents as Information Assistant is not under challenge, the grant of seniority to them in the said cadre cannot be objected too. Mere raising an objection once, appointment of the private respondents is not being challenged, grant of seniority cannot be objected by the petitioner.

33. No other argument has been raised.

34. Keeping in view the facts and circumstances as noticed hereinbefore, no ground for interference by this Court is made out and the writ petition is accordingly dismissed.

35. Civil miscellaneous application pending, if any is also dismissed.

September 09, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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