

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

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CWP-23544-2019 (O&M)
Date of Decision: 20.03.2024

Karamjit Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Kapil Kakkar, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

AMAN CHAUDHARY, J.(ORAL)

1. The present Civil Writ Petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 15.05.2019.

2. Learned counsel would submit that the petitioner had applied for a Class-IV post, pursuant to the advertisement dated 24.06.1997, but for reasons best known, only 45 candidates were selected against the 70 posts. Accordingly, CWP-14680-1999 was preferred by him, which was disposed of on 02.12.2002, on the statement, as per which he was appointed on 01.01.2003, he being higher in merit under the general category. In compliance of direction dated 24.05.2018 in CWP-9955-2006 filed challenging rejection of his request seeking deemed seniority from 18.08.1998, the department, vide order 20.07.2018, in terms of Rule 9 of Punjab State (Class-IV) Service Rules, 1963, assigned him the correct seniority position, as per select list, which has been wrongly canceled, though

provisionally promoted as a Clerk on 10.09.2019, having qualified both english and punjabi typing tests.

3. Contrarily, learned State counsel contends that as per Rule 9 *ibid*, the earlier selection (merit list) is not to be disturbed on a ‘subsequent selection’ and that those appointed prior to the petitioner would be adversely affected. The impugned order having been rightly passed, the writ petition warrants dismissal.

4. Heard learned counsel on either side.

5. It is beyond any cavil that despite the petitioner being in merit and posts vacant relating to the advertisement of the year 1997, he was not given appointment; a writ having been filed for the vindication of his grievances, he came to be appointed in 2003 under the general category, marks obtained by him found to be higher than that of the last candidate appointed therein, though his application was for consideration in the category of freedom fighters. However, his non-placement in seniority from the date of appointment of those lower in select list, made him yet again agitate before this Court, on the disposal thereof to treat the petition as his representation, that the authorities by an order dated 20.07.2018, tentatively assigned him the correct position, which was upset by the impugned order. Hence before this Court.

6. Moving forward, a reference is apposite to be made to Rule 9 *ibid*, regarding determination of seniority, which reads thus:

“9. The seniority inter se of members of the Service holding the posts in the same grade, shall be determined with reference to the date of their appointment to such posts :

Provided that after joining they have continuously served on such posts ; and

Provided further that if two or more members are appointed in the same grade on the same date, their seniority shall be determined as follows —

(a) a member recruited by direct appointment shall be senior to a member recruited otherwise ;

(b) a member recruited by promotion shall be senior to a

person recruited by transfer ;

(c) in the case of members who are recruited by promotion seniority shall be determined according to their seniority in the appointments from which they are promoted ;

(d) in the case of members recruited by transfer from the same office, seniority shall be determined according to seniority in the appointments previously held in that cadre ;

(e) in the case of members who are recruited by transfer from different departments or offices of the Government, seniority shall be determined according to - pay preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rate of pay drawn be the same, an older member shall be senior to a younger member ; and

(f) in the case of members recruited by direct appointment seniority shall be determined by their age, an older member being senior to a younger member :

Provided that in the case of members recruited by direct appointment the order of merit, if any, drawn up at the time of the selection shall not be disbursed and persons recruited as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection :

Provided further that in the case of members whose period of probation is extended under rule 7, the date of appointment for the purposes of this rule shall be deemed to have been deferred to the extent the period of probation is extended.”

(emphasis supplied.)

7. The argument sought to be canvassed by the learned State counsel, cannot be countenanced, as, present is a case of a belated appointment, stemming from the same selection process. The issue involved is no longer *res integra*, in view of a catena of judgments. In **Sanjay Dhar v. J&K Public Service Commission**, (2000) 8 SCC 182, Hon’ble the Supreme Court held that certificate filed by the appellant before the J&K PSC satisfied the requirement of Rule 9 of the J&K Civil Service (Judicial) Recruitment Rules, 1967, thus rejection of his application holding him ineligible was not justified. He, having participated under interim orders of the High Court and secured third position, was held fully entitled to the relief of appointment w.e.f. the same date on which other candidates were

appointed from the select list of 1992-93 and deserving to be assigned notionally a place in seniority consistently with the order of merit assigned by the J&K PSC. Following it, in **C. Jayachandran v. State of Kerala**, (2020) 5 SCC 230, wherein, the appellant who was wrongfully excluded from the process of appointment on account of an illegal and arbitrary grant of moderation of marks but later appointed was granted notional seniority from the date the other candidates were appointed in pursuance of the same select list prepared on the basis of the common appointment process. It was observed that delay in deciding the seniority claim or even some of the officers having been given selection grade will also not debar the appellant to claim the notional benefit.

8. The questions of migration of category and ante-dating seniority were also addressed in **Sadhana Singh Dangi & Others vs. Pinki Asati & Others**, (2022) 12 SCC 401, wherein quite clearly, anomaly had arisen as a result of late appointments of candidates who though placed at a higher position in the select list were unfortunately not given appointments along with those at lower level, for which it was observed that they could not be held responsible. It was directed that in order to do complete justice, they shall be deemed to have been appointed on the earliest of the dates when their juniors or candidates at lower levels were appointed and their seniority shall be reckoned from such deemed date of appointment and not from their actual date of appointments. A gainful reference can also be made to **Sunil & Ors. vs. High Court of Delhi & Ors. Etc**, 2023 SCC OnLine SC 516, a case holding that the candidates whose marks get increased on re-evaluation, cannot be deprived of their position in the select list, there being no fault on their part and were required to be given the benefit of notional seniority i.e., inter se seniority on the basis of merit.

9. Evidently, realization having dawned upon the respondents, that for no fault of his, the petitioner was kept out, he was subsequently appointed and as a corollary thereto, placed at the appropriate seniority position viz. those appointed prior in time, though lower in merit, the Rule also envisaging that the merit drawn at the time of the selection is not to be disturbed. There is thus found to be no error in such a decision, it being fortified by the lucid enunciation of law. In the wake of which, the impugned order was passed by giving a short shrift and solely on the premise of impact on those lower in merit, who had even been put to notice and objections received.

10. Having held so, the next question that arises is the placement in seniority of those younger in age but secured the same marks. In **D.P. Das vs. Union of India**, (2011) 8 SCC 115, while emphasizing that determination of seniority must emanate from some principles, which are just and fair, it was observed that, the law is clear that seniority is an incidence of service and where the rules prescribe the method of its computation, it is squarely governed by such rules.

11. In the case at hand, the rule position being crystal clear leads to a cogent conclusion that indeed the petitioner was deserving of being placed higher in seniority, on account of being older in age. The order dated 20.07.2018, thus was perfectly in consonance thereof. But for the lopsided approach of the respondents, this third bout of litigation could well have easily been avoided.

12. In sum, on an overall circumspection, the impugned order is liable to be and hereby set aside. The petitioner be granted notional seniority, pay fixation and consequential benefits arising therefrom, by placing him above the ones' lower in merit *albeit* appointed prior to him, as also those younger in age within a

period of two months. However, no actual monetary benefits would enure to him for the said period.

13. Disposed of.

20.03.2024

Rajeev (rvs)

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No