

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-35825-2019 (O&M)
Reserved on: 06.02.2024
Pronounced on: 15.02.2024

Jaswinder Singh
... Petitioner
Versus

Punjab Vidhan Sabha Secretariat, Punjab and others
...Respondents

CORAM: HON'BLE MR.JUSTICE AMAN CHAUDHARY

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Armaan Dahiya and Ms. Alisha Sharma, Advocates
for the petitioner

Mr. Vaishnav Gandhi, DAG, Punjab

Mr. D.V. Sharma, Senior Advocate with
Mr. Arshdeep, Advocate for respondent No.2

Mr. Surinder Kumar, respondent No.3 in person

AMAN CHAUDHARY, J.

1. The prayer in the present petition is for quashing of the final seniority list, Annexure P-14 as also to the order, whereby the deemed dates of promotion have been given vide order dated 13.11.2019, Annexure P-15 and the order dated 04.12.2019, Annexure P-16, promoting respondent No.2 to the post of Editor of Debates and No.3 to Principal Chief Reporter.
2. Learned Senior counsel would contend that the respondents had in the seniority list dated 13.11.2019 wrongly placed the petitioner below the private respondents by upsetting the settled position, that too after a period of 27 long years, more particularly, without affording a proper opportunity of hearing. Neither was the order of his appointment ever challenged nor were his three promotion orders. Respondent No.2-Gurkirat Singh could not be placed above him

in seniority, as he being in the waiting list in the same selection, was appointed on 05.05.1993, against a post that got vacated upon the retirement of an employee. While, respondent No.3-Surinder Kumar was appointed in a separate cadre of Reporter (English). Reliance for the purpose of determining of seniority was placed on the Punjab Vidhan Sabha Secretariat (Recruitment and Conditions of Service), Rules, 2013 as amended in the year 2019, wherein under Rule 13 thereof, it provides that in respect of matters where the Rules are silent, Punjab Civil Services (General and Common Conditions of Services), Rules, 1994 (hereinafter referred to as “1994 Rules”), would apply, which being silent with regard to the *inter se* seniority of the employees, would be governed by Rule 8 of 1994 Rules, which provides determination thereof by length of continuous service on such post in that cadre. The petitioner having joined as a Reporter on 10.12.1992, while respondent Nos. 2 and 3 on 05.05.1993 and 11.12.1992, respectively, would rank junior to him. For the reasons aforesaid, the Instructions dated 24th November, 1962 (hereinafter referred to as “1962 Instructions”), as relied upon in the speaking order were not applicable.

3. On the contrary, learned Senior counsel for respondent No.2 while taking the Court through the speaking order in its entirety, emphatically urged that the initial appointment of the petitioner was flawed inasmuch as he was, based on less mistakes, being 29, having been committed by him in the qualifying type test as per the advertisement, adjudged to be at merit no.1 as against 31½, those of the petitioner placed at No.3. However, by a process of interview, which was not contemplated in the advertisement, the petitioner was shown to be at No.1 and appointed, which was per se illegal. The speaking order was well reasoned and by it, an illegality committed in granting appointment to the petitioner, despite him being lower in merit, based on having more mistakes, was rectified. The 1962 Instructions relied upon were applicable for determination of *inter se* seniority and

based on which, the seniority list framed for the first time in the year 1999 was legal and valid.

4. Learned State counsel while concurring with the submissions made on behalf of respondent No.2 supported the impugned order.

5. Respondent No.3, who appears in person, submitted that his co-respondent could not have stolen a march over them, as he was not appointed in the same selection process, there being only one post for Hindi Reporter, against which the petitioner stood appointed and he as an English Reporter in a separate cadre.

6. Learned Senior counsel for the petitioner in rebuttal submitted that the Speaker is the competent and appointing authority as per Rule 13 of the above Draft Rules of 2019 as also it is settled that in case in the advertisement, there is no basis to draw merit, as was in the present case, there being only a qualifying test in shorthand, thus, the conducting of interview was rightly devised as a method for preparing the same. In the Noting Annexure P3, signed by the Secretary and the Speaker on 02.12.1992, it was specifically recorded that the candidates kept in the waiting list, as also the remaining candidates, who have not passed the test, be informed of it. Respondent No.2 cannot be heard to say that he was not aware of the petitioner being appointed on having been placed at No.1. Even in case, the 1962 Instructions are made applicable to the instant case, still respondent No.2, cannot be held senior, on account of the fact that there was only one post advertised against which the petitioner was appointed, therefore, the concept of seniority being determined *inter se* them based on merit determined in the selection process, cannot apply.

7. Having heard the matter at length, there is found to be substance in the arguments canvassed on behalf of the petitioner.

8. It may be accentuated at the outset that the petitioner and respondent No.2, had applied for appointment against the single post advertised of Reporter(Hindi) on 12.06.1992, wherein shorthand test was prescribed to qualify for selection. They both having passed the same, the number of mistakes committed by each became inconsequential thereafter. Since there was no specific criteria mentioned for the purpose of preparing a merit in the selection process, the same was evolved by the Competent Authority, to be an interview, which cannot be faulted with. Concededly, neither the same was challenged nor the selection of the petitioner. During the interregnum the petitioner-Jaswinder Singh, had earned a number of promotions after his initial appointment and so did respondent No.2. By no stretch of imagination, can it be construed that he being part of the same very office was oblivious of everything. Thus, he had in essence, acquiesced. Still, giving it to him, evidently, even the Right to Information Act, had come into operation in the year 2005, therefore, if he wanted or was vigilant enough, could have obtained any information thereunder. The raking up of all of this, after nearly three decades, that too before the authorities, was misconceived, to say the least. The clock, in any case, at this stage cannot be put back.

9. Notably, there was also no occasion for the administration in the year 2019 to set at naught the appointment of the petitioner made by the competent authority wayback in the year 1992, in a manner that it did to hold that respondent No.2, was the one to have been appointed in his place. He, as a matter of fact by such time, had even forfeited his right to get redressal from the Court of law. This being a case of appointment, the challenge, if any, ought to have been made within a reasonable time, as held by Hon'ble the Supreme Court in **Pooran Chand vs. King George Medical University**, (2021) 16 SCC 682. In this regard, the judgment in the case of **P.S. Sadasivaswamy vs. State of T.N.**, (1975) 1 SCC 152, would also be worthwhile to be referred to, wherein it was observed and held that,

“A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.” Following the dictum of law laid down above, the Division Bench of this Court in **Harvinder Singh vs. State of Punjab**, 2005(1) PLR 193, had also dismissed a writ petition challenging the appointment after 7 years, as that would amount to settled matters, being unsettled.

10. Trite it is that when there is a single cadre and posts are more than one, in a situation like such, the seniority is to be based on the *inter se* merit, rather than the date of joining. However, the said principle would not apply in the instant case as, undisputedly there was a single post, against which respondent No.2 competed with the petitioner and was placed in the waiting list. The same would have lapsed upon the appointment of the selected candidate-the petitioner. Be that as it may, by operating it, respondent No.2 was appointed, *albeit* against a subsequent vacancy, that arose on retirement of an employee, which speaks for itself. There being no challenge to the same, this Court would not delve any

further. As a corollary, the 1962 Instructions that provide for determination of seniority based on the order of merit in the selection, as relied upon by the administration to rule in favour of respondent No.2, were so to say, misplaced and the *inter se* placing of the petitioner and respondent No.3, would be governed by length of service, as also envisaged by the 1994 Rules, which would hold the fort.

11. Upon a holistic consideration of the matter, the present petition deserves to be and is hereby allowed. Sequentially, the orders dated 13.11.2019 and 04.12.2019, Annexures P-14, 15 and 16 are set aside. The authorities are directed to now draw the seniority list based on the observations made hereinabove.

12. Disposed of accordingly.

15.02.2024
Hemant

(AMAN CHAUDHARY)
JUDGE

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