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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-79-2020 (O&M)

Date of decision: 15.01.2024

Avtar Singh

....Petitioner

Versus

State of Punjab and Others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Sandeep Kumar, Advocate for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

Mr. Sehajbir Singh, Advocate for respondents No.2 to 6.

NAMIT KUMAR J. (Oral)

Prayer in this writ petition filed under Article 226 of the Constitution of India, is for issuance of a writ in the nature of certiorari, for quashing the seniority list of Upper division Clerks issued vide letter dated 14.05.2007 (Annexure P-5) and further to issue a writ in the nature of mandamus, directing the respondents to prepare the seniority list of Upper Division Clerks as per Regulation No.12 of the Punjab State Electricity Board Ministerial Class-3 Regulations, 1985 (Annexure P-1).

In the written statement filed by the respondents, it has been stated that the present writ petition has been filed after a period of about 13 years and the petitioner has availed two promotions to the post of Circle Assistant and Senior Assistant, which were made on the basis of the said impugned seniority list. Further no affected employees have been impleaded in the present petition over whom the petitioner is

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claiming the seniority and therefore the present writ petition is also liable to be dismissed on account of non-joinder of necessary parties.

The Hon'ble Supreme Court in ***“Shyam Lal Gupta and ors vs State of Punjab and Ors.”***, 2012(1) SCT 198, while considering the plea of delay has held as under:-

“6. A perusal of the aforesaid para would show that the question of delay cannot be explained merely because a judgment favourable to an employee has been delivered by the Courts including the Hon'ble Supreme Court which is considered as declaration of law under Article 141 of the Constitution. If in that situation explanation of delay could not be accepted it would be well-nigh impossible to accept the explanation rendered by the appellant on the ground that the Full Bench of this Court in Kartar Singh's case (supra) has upheld the validity of instructions dated 21.07.1978. Accordingly, we find that the writ petition suffered from delay and laches and ought to have been dismissed on that ground by the learned Single Judge. Accordingly following the aforesaid reasoning we are inclined to dismissed the appeal.”

The Hon'ble Supreme Court in ***“S. Sumnyan & Ors. Vs Limi Niri & Ors.”***, 2010(3) SCT 289, has held that the seniority cannot be challenged after a reasonable period has elapsed. The operative part of the said judgment, is reproduced hereunder:-

“28. It is, thus, clearly established that the respondent No. 1 was inducted into Government service by a separate mode of recruitment than that of the appellants and therefore their cases cannot be equated. The statement of the Government of Arunachal Pradesh that the provisional seniority lists were regularly published by the Public Works Department Secretariat from time to time

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since 1990 to 1999, with ample time being given to the incumbents to reply against any anomaly in the seniority list and that the respondent No. 1 never submitted any representation in that regard is not disputed. The respondent No. 1, therefore, had challenged the established seniority position after about 10 years and that too without challenging the basic and the fundamental orders of giving the appellants the benefit of regularised service from their initial date of appointment as Assistant Engineers.

29. The challenge appears to us to be belated and in this regard we would endorse the same view as expressed by this Court in the case of **Shri L. Chandrakishore Singh v. State of Manipur & Ors. reported in 1999(4) S.C.T. 469 : (1999) 8 SCC 287** at para 15 which is extracted hereinbelow :-

"15. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in **G.P. Doval and Anr. v. Chief Secretary, Government of U.P. and Ors. [(1984) 4 SCC 329]**."

Further the Hon'ble Supreme Court in "**Virendra Singh Malhan and Ors. Vs State of Haryana and Ors.**", 2022(4) SCT 158, has held that the seniority cannot be claimed against a person, who has not been impleaded as a party in the petition. The relevant portion from

the said judgment, reads as under:-

“23. It is further observed by the Division Bench that no writ petition claiming benefit of adhoc service towards seniority can be entertained and is liable to dismissed outrightly if all those employees whose seniority is likely to be affected are not impleaded as party respondents.

*24. In the case of **State of Haryana and others v. Rajni Bhalla, 2017 (4) SCT 63** the necessity of impleading persons, who were adversely affected was again emphasized. It is reiterated that no benefit can be granted to fence-sitters. Reference can also be gainfully made to the judgment of Hon'ble Supreme Court in **Malook Singh and others v. State of Punjab and others, 2021 SCC Online SC 876**, wherein the Hon'ble Supreme Court has also referred to its earlier judgment in **Direct Recruits Class II Engineering Officers' Association v. State of Maharashtra, (1990) 2 SCC 715** wherein it is held that "once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account considering the seniority.”*

Keeping in view the above, since there is an inordinate delay in filing the present writ petition, which has been filed after a period of 13 years and that too after availing 02 promotions, on the basis of the same seniority list and affected persons have not been impleaded as parties, therefore, no relief can be granted to the petitioner in the present writ petition, therefore, finding no merit, the same is dismissed.

(NAMIT KUMAR)
JUDGE

15.01.2024

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No