



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

708

CWP-5963-2004

Date of decision: 05.04.2025

Vinod Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : None for the petitioner.

Mr. Swapan Shorey, DAG, Punjab.

AMAN CHAUDHARY, J. (Oral)

1. Prayer made in the present petition is for directing the respondents to release the same benefit as granted to juniors in the same seniority list.
2. This Court had vide order dated 02.08.2005 directed that this writ petition heard alongwith CWP-16925-2003, which alongwith a batch of 6 more petitions were dismissed on 05.01.2011, observing therein that the petitioners have no right to claim benefit of Malook Singh's case even if they are similarly or better placed, relevant paras whereof read thus:-

“In the present cases, some of the private respondents who were beneficiaries of ad hoc service are not entitled to claim seniority over and above the petitioners who were appointed by due process of selection by Recruitment Board in consonance with the mandate of Article 14 and 16 of the Constitution of India in implementation of Malook Singh's judgment which does not bind the petitioners in these writ petitions. These writ petitions are, thus, allowed. The impugned Notice dated 12.01.1994 (Annexure P-7) and the impugned seniority list dated 14.01.1994 (Annexure P-8) are hereby quashed qua these writ petitioners and their seniority position prior to the impugned seniority shall be restored forthwith.

Petitioners in Civil Writ Petition No.16925 of 2003 and 4490 of 1994 were engaged on ad hoc basis and thereafter regularized with effect from 01.04.1977 along with writ petitions in Malook



Singh's case (CWP No.2780 of 1980). They are claiming the benefit of Malook Singh's case for annexing their ad hoc service towards the total length of service for counting their seniority in the cadre of service. Admittedly, they were not parties in Malook Singh's case which has been held not to be a correct law. In view of the settled proposition of law referred to above, for determining the seniority, these writ petitioners cannot claim benefit of their ad hoc service for counting their seniority on the analogy of Malook Singh's case.

Mr.R.N. Raina, learned counsel submits that these writ petitioners are entitled to claim parity being similarly situated with writ petitioners in Malook Singh's case. His further contention is that all similarly situated persons are to be granted benefit of seniority. I am unable to accept this contention of Mr. Raina. The petitioners being not parties in Malook Singh's case, are not entitled to benefit of judgment which is available only for the writ petitioners therein on account of finality of the judgment. However, on a question of law, the petitioners in these petitions have no right to claim seniority over and above the directly recruited members of the service. It is equally settled law that Article 14 of the Constitution of India, carries a positive concept. The concept of parity does not operate to perpetuate an illegality rather where the outcome of equality and parity is to perpetuate an illegality, it is impermissible even under Article 14 of the Constitution of India itself.

In the case of Chandigarh Administration and another Vs. Jagjit Singh and another, JT 1995(1) SC 445, and laid down the law in the following words:-

“8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority. has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be



corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law, but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law."

3. In view of the above, the present petition is dismissed.

(AMAN CHAUDHARY)
JUDGE

05.04.2025

Hemant

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