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

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**CWP-20449-2021 (O&M).
Date of Decision: 06.03.2025.**

VIKASH KUMAR

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sube S. Kaushik, Advocate,
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the order dated 02.06.2020 (Annexure P-18) whereby the respondent No.2-Registrar, Cooperative Societies Department, Haryana, has modified the condition of absorption/appointment of the petitioner as well as respondent No.4-Charwinder Singh Saini dated 31.07.2013, after a period of nearly 07 years and directed that the seniority of the petitioner and respondent No.4 be determined in accordance with their seniority in the field cadre instead of date

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of joining in Head Office. A further prayer has been made to refix the seniority of the petitioner above respondent No.4.

2 Learned counsel appearing for the petitioner contends that the Haryana Staff Selection Commission had advertised post of Clerk for the Field Cadre in the office of respondent No.2-Registrar, Cooperative Societies Department, Haryana. The petitioner being eligible applied for the same and on being successful, was appointed to the post of Clerk in Field Cadre on 17.02.2012. Thereafter, the respondents issued an offer letter regarding absorption of Clerk(s) from field cadre to Head office cadre, with a condition that the applicant will not claim the past seniority of field cadre of Clerks. The petitioner submitted an application that he will not claim his past seniority of Field Cadre of Clerks. Similar application was also submitted by respondent No.4. Eventually, vide order dated 31.07.2013, the petitioner as well as respondent No.4 were absorbed in the Head Office Cadre of Clerks. The order of absorption dated 31.07.2013 bearing Endst. No.Admn. II(5)/8619-27 reads thus:-

“Consequent upon the consent of Sh. Vikas Kumar, Clerk presently detached in Head Office from the office of ARCS Panchkula and Sh.Charwinder Singh, office of AOCS, Ambala for absorption in Head Office Cadre, approval is accorded to absorb them in Head Office Cadre from the field cadre subject to the condition that they will not claim their past seniority of field cadre of Clerk and their seniority in Head Office Cadre will be kept at the tail in the seniority list of the Clerks in Head office

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and seniority will be determined from the date of their joining in Head office Cadre.”

3 Learned counsel for the petitioner submits that the seniority list clearly mentions that the petitioner joined the Head Office Cadre on 01.08.2013 whereas respondent No.4 joined on 08.08.2013. Hence, respondent No.4 was junior to the petitioner. The tentative seniority list of clerks in the Head Office cadre was thereafter circulated by the respondent Department as on 31.07.2015 wherein petitioner was shown as senior to Charwinder Singh-respondent No.4. While the petitioner was shown at Sr. No.21, respondent No.4 was shown at Sr. No.22. Eventually, the petitioner was promoted to the post of Assistant on 13.10.2016 and later on respondent No.4 was also promoted to the post of Assistant on 12.04.2017. A tentative seniority list dated 09.07.2019 was prepared in the Head Office Cadre wherein the petitioner was again shown senior to respondent No.4. He submits that notwithstanding that the seniority list reflecting the petitioner as senior to respondent No.4 not only as a Clerk but also as an Assistant, respondent No.2 yet passed the impugned order dated 02.06.2020 whereby the Registrar modified the office order dated 31.07.2013 (the order of absorption of the petitioner as well as respondent No.4) and ordered that the seniority of the employees will be determined according to their seniority in the Field Cadre instead of determination of seniority from the date of their

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joining in the Head Office Cadre. The order dated 02.06.2020 is extracted as under:-

“Whereas Shri Charwinder Singh, Assistant in H.O. vide his application dated 04.06.2018 had stated that he and Shri Vikas Kumar while working as Clerk in the Field Cadre were absorbed in the Head office Cadre vide orders dated 31.07.2013 whereas he was senior to Shri Vikas Kumar in the Field Cadre and accordingly now he has requested for correction of his seniority as per Rules, 1989.

Whereas consequent upon the request of Shri Charwinder Singh, Assistant in H.O. the case was examined in the light of relevant provisions of the applicable Rules and the legal advice of Deputy District Attorney was obtained resultantly it was found that in the orders of recommendation issued by the Haryana Staff Selection Commission, Panchkula dated 10.02.2012 the name of Shri Charwinder Singh is at Sr. No.09 and the name of Shri Vikas Kumar is at Sr. No.30 and this sequence cannot be disturbed in any manner, hence, the request dated 04.06.2018 of Shri Charwinder Singh, Assistant in H.O. was found correct.

Whereas after absorbing these Clerks from Field Cadre to Head Office Cadre and considering the promotion case from Clerk to Assistant in head Office, Shri Vikas Kumar, Clerk was promoted as Assistant in H.O. on 13.10.2016 while treating him senior to applicant Shri Charwinder Singh and thereafter, the case of Shri Charwinder Singh was considered and he was promoted as Assistant on 12.04.2017 which require modification of earlier order dated 31.07.2013.

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Therefore, in partial modification of this office order issued vide Endst. No.Admn. II(5)/8619-27 dated 31.07.2013, the seniority of those employees will be determined accordance to their seniority in the Field Cadre instead of determination of seniority from the date of their joining in Head Office Cadre.”

4 It is further submitted by the learned counsel that the petitioner submitted an affidavit giving the undertaking that he would not claim previous seniority of Field Cadre of Clerk as per condition prescribed by the respondent department. Reference is made to the copy of affidavit dated 02.07.2012 wherein the petitioner stated that "I will not claim the past seniority in the seniority list of Clerk of field office and will claim seniority in the list of clerks of the Head Office.”

5 Learned counsel for the petitioner has raised the following arguments: -

(i) That the absorption order specifically prescribed that the seniority of the persons is to be fixed from the date of joining in the Head Office cadre and since the petitioner had joined prior to respondent No.4, hence the seniority as reflected in the tentative seniority list of the clerks and thereafter as Assistants was correct and was in accordance with the terms and conditions incorporated in the absorption order;

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(ii) He further contends that the aforesaid seniority position continued to be reflected for a period of nearly 07 years and no objection was ever raised by respondent No.4 at any point in time and as such, the modification of the essential conditions in the office order dated 31.07.2013 is thus hit by the principle of delay and laches;

(iii) He further submits that even though the said order has been passed by respondent No.2 by virtue whereof, the seniority of respondent No.4 has now been fixed over and above the petitioner, however, no notice of opportunity of hearing was ever granted to the petitioner prior to passing of the said order. A representation was later on submitted by the petitioner espousing his grievance, however, the same has not been considered.

6 Learned State counsel, on the other hand, contends that the services of the Group -C employees are governed by the Haryana State Cooperation Department Head Office and Sub Offices (Group C) Service Rules, 1989 (for short 'the Rules of 1989') and Rule 11 of the aforesaid Rules prescribes the determination of seniority inter se of the members of the services. He submits that as per Rule 11 (1)(C) of the Rules of 1989, the seniority of the members, who have been appointed in the service by promotion or by transfer, shall be determined according to the seniority of such members in the appointment from which they were promoted or

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transferred. Further, as per Rule 11 (1) (d) of the Rules of 1989, the length of service is again a criteria in respect of persons who have been transferred from different cadres. He submits that respondent No.4 had submitted a representation against being shown lower than the petitioner in the seniority list. On said error being brought to the notice of the competent authority, the order has been modified to bring it in conformity with the service rules of 1989. He further submits that if an illegality has gone unnoticed, the same would not estop the authorities from rectifying the same at a later stage. He further submits that in any case the seniority list circulated by the Department was tentative and had not been finalized, hence, it was available to a candidate to file an appeal against the seniority list as and when such wrong fixation is noticed. He submits that since the office order dated 31.07.2013 was contrary to the statutory provisions, hence, there is no error of law in partial modification of the office order. It is further argued that so far as the submission of the representation by the petitioner is concerned, the same was dealt with by the respondents and the order so passed has been conveyed to him on 28.06.2021.

7 Responding to the above, learned counsel for the petitioner contends that a perusal of the order dated 28.06.2021 shows that the same is a non-speaking order and it is only a communication that the petitioner's representation has been filed by the Registrar of the Cooperative Societies after consideration.

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8 I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition with their able assistance.

9 The ground(s) espoused by the petitioner are that the seniority list ought to be drawn in terms of the order dated 31.07.2013 which prescribed that the seniority in the Head Office has to be determined from the date of joining and since the petitioner had joined prior to respondent No.4, hence, he would be senior to respondent No.4 and that any subsequent modification of the letter of appointment is bad. A further reliance has been made on the ground that such modification has been carried nearly 07 years after the order of absorption.

10 Undisputedly, the reply in the present case has been filed by the respondents on 30.09.2022, with a copy in advance to the counsel for the petitioner specifically relying on Rule 11 of the Rules of 1989 for determination of seniority inter se the members of the different cadres. No replication or rejoinder to the specific defence taken by the respondents for modification of the order has been filed by the petitioner to counter as to how the said statutory rule would not be applicable for determination of the inter se seniority. The said Rule is extracted as under: -

“11. (1) Seniority, inter se of members of the Service shall be deter-mined by the length of continuous service on any post in the service:

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Provided that where there are different cadres in Service, the seniority shall be determined separately for each cadre:

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the Board shall not be disturbed in fixing the seniority:

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

(a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;

(b) member appointed by promotion shall be senior to a member appointed by transfer;

(c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointment from which they were promoted or transferred; and

(d) in the case of members appointed by transfer from different cadres, their 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 rates of pay drawn are also the same then by their length of service in the appointment, and if the length of such service is also the same, the older member shall be senior to the younger member.”

(emphasis supplied)

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11 A perusal of the aforesaid rule shows that as per the proviso 'C' to Rule 11 sub rule (1), it is specifically provided that when there are more than one person appointed on the same day in a specific cadre, their seniority is to be determined, in the event of appointment by way of transfer or promotion according to the seniority of such member in the appointment from which they were promoted or transferred. Clause (d) provides the mode for determination of seniority in case the members are appointed by transfer from different cadres and the same is to be decided in accordance with their pay, preference and the person claiming higher salary being senior and thereafter, their length of service in the original cadre.

12 Undisputedly, in the original cadre as clerks, the respondent No.4 was senior to the petitioner.

13 Notwithstanding the said statutory provision, the order of absorption of the petitioner as well as respondent No.4 mentions that the seniority has to be determined from the date of joining which such order of absorption by way of transfer was clearly in disregard to the statutory rule as provided for under Rule 11 proviso (c). The position in law needs no more elucidation that in the event any condition incorporated in the order of appointment/promotion is contrary to statutory rule, the condition as mentioned in the office order must be brought in conformity to the statutory rule. The office order cannot supersede or override the statutory provisions.

The Hon'ble Supreme Court of India in the matter of **Union of India Vs.**

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Ashok Kumar Aggarwal, reported as (2013) 16 SCC 147, observed that office memorandums only supplement the statutory rules but do not supplant them. The relevant part of the judgment is extracted hereunder: -

“59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya (1977) 1 SCC 606, P.D. Aggarwal v. State of U.P. (1987) 3 SCC 622, Paluru Ramkrishnaiah v. Union of India (1989) 2 SCC 541, C. Rangaswamaiah v. Karnataka Lokayukta (1998) 6 SCC 66 and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation (2011) 5 SCC 435.”

14 Further, it is also noticed by this Court that the tentative seniority list, whereupon much reliance has been placed by the counsel for the petitioner, was not finalized and it was merely a tentative list. Evidently, the Registrar of Cooperative Societies has rectified the said mistake on a representation dated 04.06.2018, submitted by respondent No.4, after taking legal opinion. The order under challenge has been passed on lawful consideration of the statutory provisions and the rectification cannot be said to be illegal or perverse.

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15 The only grievance of the petitioner which thus survives and is worth consideration is that the order has been passed by the Registrar Cooperative Societies without affording any opportunity of hearing to the petitioner. On a first glance, the argument is attractive and needs consideration, however, the undisputed fact of the matter also remains that the representation was submitted by the petitioner later on and the same was filed. Ordinarily, this Court under similar circumstances would have sent the matter for reconsideration to the competent authority to pass a fresh order after granting an opportunity of hearing to the respective parties, however, taking into consideration the facts of the present case and the failure of the counsel to advert to the specific query as to what is an illegality that has been committed by respondent No.2 in passing the impugned order and determination of seniority as per the statutory rules, he is not in a position to refer to any judgment or law to the contrary.

16 Hence, the plea of non-compliance of principles of natural justice becomes a mere technical objection and an empty formality with no substantive prejudice that is shown to be caused. Since the factual aspects of the present case are not in dispute and only a legal interpretation is required to be carried out and the plain reading of the statutory provision does not lend any support to the argument of the petitioner, I find that remanding the case to the Registrar Cooperative Societies would only be a protraction of the litigation already going on. No useful purpose would be served by such

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remand. In order to give finality to the proceedings, I thus deem it appropriate to consider the merits and to over-rule the aforesaid objection/argument advanced by the counsel for the petitioner.

17 Considering the case from all the perspectives, I find that there is no illegality or perversity in the order dated 02.06.2020 (Annexure P-18). The same does not suffer from any violation of rules and rather is in the nature of correcting an error that had already crept in the order.

18 The present writ petition is accordingly dismissed.

March 06, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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