



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-286-2018 (O&M)

Date of decision: 06.03.2025

The Punjab and Haryana High Court through
its Registrar and others

....Appellants

V/s

Asha and others

....Respondents

**CORAM: HON’BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON’BLE MR. JUSTICE SUMEET GOEL**

Present: Ms. Divya Sharma, Advocate for the appellants.
Mr. Salil Sabhlok, Advocate (Amicus Curiae)
with respondent No.1-Asha in person.
Mr. K.K. Saini, Advocate for respondent No.2.
None for respondent Nos.3 to 32.

SUMEET GOEL, JUDGE

CM-713-LPA-2018

Having perused the pleading(s) set-out by rival parties as also upon hearing them, this Court deems it appropriate to condone the delay in filing the appeal.

Ordered accordingly.

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1. This intra-court appeal, filed under Clause X of the Letters Patent, takes exception to the judgment dated 02.12.2016 (*hereinafter to be referred as ‘impugned order’*) passed by the learned Single Judge allowing the writ petition filed by the respondents (herein). The said writ petition had



Panchkula Sessions Division dated 10.05.2012, in service appeal jurisdiction, thereby setting aside the order dated 30.12.2010 passed by the learned District & Sessions Judge, Panchkula which in turn had accepted the representation, filed by the respondents (herein), for granting them accrued seniority on transfer from the Ambala Sessions Division to the Panchkula Sessions Division.

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated, thus:

i) The respondents (herein), originally appointed in the Ambala Sessions Division, were given the option of transfer following its bifurcation and the creation of the Panchkula Sessions Division in May 2005. Therefore, the respondents (herein), along with certain other similarly situated employees working at the Ambala Sessions Division opted for being transferred to the Panchkula Sessions Division.

ii) Some of the employees, similarly situated to the respondents (herein), were transferred to the Panchkula Sessions Division with due recognition of their past service in the Ambala Sessions Division, ensuring preservation of their seniority. On the grounds of administrative exigencies, the initial exercise of option for transfer to the Panchkula Sessions Division by the respondents (herein) was declined.

iii) The respondents (herein) individually submitted applications seeking transfer on request under Rule 10 of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (*hereinafter to be referred as 'Rule 10'*). Upon due consideration, their request(s) were acceded to, consequent whereupon, they stood transferred



from the Ambala Sessions Division to the Panchkula Sessions Division (hereinafter referred to as the 'transfer in question'). Rule 10 reads thus:

“10. Liability of Service To Transfer: A member of a service may be transferred to any equivalent post:

- (1) Within the Sessions Division, by the District and Sessions Judge.
- (2) Every member of the service shall be liable to transfer under the orders of the Chief Justice anywhere within the State of Haryana.
- (3) On his written request, anywhere within the State by the High Court, if post is available subject to the following conditions:-

(a) That he will not claim any seniority over and above the officials already working in the cadre of the Sessions Division to which he is seeking transfer.

(b) No T.A./D.A. will be permissible and he will not avail joining time. Provided that official has put in at least 5 years of service in the Sessions Division in which he is initially appointed:

Provided that High Court in a given case may relax the requirements of condition of 5 years of service.”

(iv) A seniority dispute subsequently arose between the respondents (herein), who were transferred to the Panchkula Sessions Division, and the officials already stationed there. The respondents (herein) submitted a representation dated 21.03.2007, seeking adjudication of their seniority vis-à-vis the existing officials. By order dated 30.12.2010, passed upon said representation, the learned District & Sessions Judge, Panchkula, directed that tenure served by the respondents-herein in the Ambala Sessions Division be reckoned for seniority computation.

(v) Subsequently, the Administrative Judge of the Panchkula Sessions Division vide his order dated 10.05.2012, nullified the order dated 30.12.2010 passed by the learned District & Sessions Judge, Panchkula.

(vi) Aggrieved thereof, the respondents (herein) invoked the writ jurisdiction of this Court by preferring a writ petition i.e. *CWP No-13868 of*



2012, wherein this Court vide the *impugned order*, had set aside the aforesaid order dated 10.05.2012 and extended to the respondents (herein) the benefit of their tenure served at the Ambala Sessions Division for the purpose of seniority computation vis-à-vis the officials already stationed at the Panchkula Sessions Division.

(vii) The appellant (herein) has accordingly implored this Court on the premise that the impugned order is not sustainable in the eyes of law as the same has been passed in absolute negation of settled principles of law.

3. Learned counsel for the appellant has contended that the interpretation of *Rule 10* rendered by the learned Single Judge in the *impugned order* is patently erroneous. It has been urged that the transfer in question was effectuated at the behest of the respondents herein under *Rule 10*, which unequivocally stipulates that a transferee making such a request must forfeit his seniority upon acceptance thereof. Learned counsel has further argued that, rather than assailing the order dated 23.05.2005 — whereby their exercise of option for transfer upon bifurcation of the Sessions Division was declined — the respondents herein voluntarily sought transfer under *Rule 10*. Consequently, they cannot claim parity with those transferees who were transferred pursuant to the exercise of option upon the bifurcation of the Sessions Division. It is further submitted that by invoking *Rule 10* to seek transfer, the respondents (herein) have unequivocally acquiesced to the forfeiture of their past service tenure for the purpose of seniority computation in the Panchkula Sessions Division. Having consciously elected this course, they are now estopped from approbating and reprobating, seeking to retract from the position they voluntarily adopted in their transfer



application under *Rule 10*. Additionally, the learned counsel has impugned the reliance placed by the learned Single Judge on the purported non-communication of the order dated 23.05.2005 to the respondents herein. It has been iterated that when the respondents accessed records concerning the transfer of employees with whom they now seek parity, it was incumbent upon them to ascertain and examine the order dated 23.05.2005, which expressly denied their exercise of option for transfer upon bifurcation. On the strength of these submissions, allowing the appeal in hand has been entreated for.

4. Learned counsel for the respondent Nos.1 and 2 herein has strenuously urged that the *impugned order* is in strict consonance with the settled legal principles and does not suffer from any legal infirmity. It is contended that, where similarly situated employees transferred from the Ambala Sessions Division to the Panchkula Sessions Division have been accorded the benefit of their past service for seniority computation, the respondents herein are entitled to equal treatment. Any denial thereof, would constitute an egregious violation of their fundamental right to equality enshrined under Article 14 of the Constitution. Further, the learned counsel have asserted that the exclusion of their prior service tenure from seniority computation would be manifestly unjust, as it would result in the arbitrary and unlawful negation of the years they have diligently served with unwavering commitment. It is submitted that *Rule 10* does not contemplate transfers arising from the bifurcation of a Sessions Division, where one cadre is carved out from another. The facts of the present case establish that the respondents' request for transfer was not a case of mere voluntary



relocation but was intrinsically linked to their prior exercise of option at the time of bifurcation. Accordingly, their transfer cannot be subjected to the rigours of *Rule 10*. Learned counsel have further urged that there exists no estoppel against the law. Even assuming that, the respondents had undertaken in their transfer applications to forgo the benefit of their previous tenure for seniority computation, such a waiver cannot operate to their detriment, as their claim for parity emanates from Article 14 of the Constitution, which prevails over any such undertaking. Additionally, it is contended that a considerable lapse of time has ensued since the respondents were granted seniority pursuant to the order dated 30.12.2010, passed by the Learned District & Sessions Judge, Panchkula, and the consequent promotions have also been effectuated vide order dated 17.05.2011. On the strength of these submissions, dismissal of appeal in hand is canvassed for.

5. We have heard learned counsel for the rival parties and have perused the available record.

6. Before this Court proceeds to dwell upon the disputation(s) raised by the rival counsel, a pertinent *nay* germane aspect of the matter needs to be delved into.

It is common ground between the rival parties that, pursuant to the *impugned order* passed by the learned Single Judge on 02.12.2016, the requisite seniority list has been drawn in February 2017 in pursuance of the order dated 30.12.2010 passed by the learned District and Sessions Judge (Panchkula), the same has been incessantly acted upon and various promotions have also been made on basis thereof.



At this juncture, it would be apposite to refer herein to a recent judgment of the Hon'ble Supreme Court titled as **V. Vincent Velankanni vs. The Union of India and others : Neutral Citation No. 2024 INSC 748**; relevant whereof reads as under:

*“45. This Court has time and again dealt with the effect of altering the seniority list at a belated stage and how it may adversely affect the employees whose seniority and rank has been determined in the meantime. In this connection, reference may be made to **Malcom Lawrence Cecil D'Souza v. Union of India and Others (1976) 1 SCC 599**, wherein this Court held that: -*

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years..... Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

46. In R.S. Makashi and Others v. I.M. Menon and Others (1982) 1 SCC 379, this Court observed as follows: -

“33. We must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.”

47. In K.R. Mudgal and Others v. R.P. Singh and Others (1986) 4 SCC 531, this Court observed in the following terms: -

“2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity.”



48. In *B.S. Bajwa and Another v. State of Punjab and Others* (1998) 2 SCC 523, this Court held that the seniority list should not be reopened after a lapse of reasonable period as it would disturb the settled position which is unjustifiable. The relevant extract is as follows: -

“7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable....”

49. xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx

50. Thus, much water has flown under the bridge and retrospective application of the GO issued in 2015 would open floodgates of litigation and would disturb the seniority of many employees causing them grave prejudice and heartburn as it would disturb the crystallized rights regarding seniority, rank and promotion which would have accrued to them during the intervening period. To alter a seniority list after such a long period would be totally unjust to the multitudes of employees who could get caught in the labyrinth of uncertainty for no fault of theirs and may suffer loss of their seniority rights retrospectively.”

In the attending facts and circumstances of the case, we do not deem it appropriate to allow raking up of an old seniority related matter as such intercession, at this stage, would inevitably lead to avoidable administrative complications and difficulties. It, therefore, appears to be in the interest of smoothness and efficiency of service related issues of the rival/concerned parties that *quietus* be lend to *lis* in question. *Ergo*, in the distinctively peculiar and accentuating facts of the appeal in hand, we deem it appropriate to decline interference. We must hasten to add a word of caution herein, namely, that the *dicta* of the *impugned order* passed by the learned Single Judge shall not be construed as precedent and the issue(s)-of-law are left open to be considered in an appropriate case.



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7. In view of the prevenient ratiocination, the appeal in hand is dismissed, in above terms. Pending application(s), if any, shall also stands disposed of accordingly. There shall be no order as to costs.

(SUMEET GOEL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

March 06, 2025
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes