

(2019) 12 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1361, 7203 Of 2017(O&M)

Amanpreet Singh & Ors.

APPELLANT

Vs

State Of Punjab & Ors.

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Punjab Food And Supplies (Class II) Service Rules, 1988 — Rule 3, 7, 8, 8B(6), 11, 19, 25(iii)
Mizoram Police Service Rules, 1986 — Rule 8(1), 8(2), 25(iii)
Constitution Of India, 1950 — Article 14, 16, 16(1)

Citation : (2019) 12 P&H CK 0003

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : Gurminder Singh, J.S. Gill, Gurinder Singh Attariwala, Kapil Sharma, Anu Chatrath, Anil Rang, Puneet Gupta, Ashwani Kumar Chopra, Akshit Chaudhary, D.S. Patwalia, Salil Sablok, A.S. Manaise

Final Decision : Allowed

Judgement

Jaswant Singh, J

CM 7375 - CWP-2018 in CWP 1361 of 2017

1. Civil Misc application for vacation of interim orders dated 27.04.2017, restraining the Respondent Authorities for holding the meeting of the Departmental Promotion Committee, has been filed by the Respondent No. 4 and 7 in CWP No. 1361 of 2017. During the course of hearing, with the consent of the parties, the main case itself is taken up for final disposal.

CWP No. 1361 of 2017 & CWP No. 7203 of 2017

2. This common order shall dispose of the aforementioned two Writ Petitions as common questions of law and facts are involved therein. For the sake of convenience and with the consent of parties, the facts have been taken from C.W.P. No. 1361 of 2017.

3. The petitioners (in both the aforementioned Writ Petitions) who are directly recruited Food and Supply Officers (hereinafter referred to as "FSO") appointed in the year 2014, have filed the present Writ Petition for quashing of impugned order dated 06.01.2017 (P-13) passed by Deputy Chief Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab, whereby the objections filed by them against the tentative seniority list of Food Supply Officers (FSOs) has been rejected; Letter/ Memo dated 27.12.2016 (P-12), whereby the seniority list of FSOs, working till 01.04.2016 in the aforesaid Department was finalized by completely ignoring the Punjab Food and Supplies (Class II) Service Rules, 1988 (for short '1988 Rules'); impugned orders dated 09.11.2012 (P-8) & 31.12.2012 (P-9), promoting the private Respondents No. 3 to 30 from the post of AFSOs to the post of FSOs by giving them relaxation in experience in complete violation of the 1988 Rules and the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (for short '1994 Rules') as well as settled law. The Petitioners further seek a writ of mandamus for issuance of directions to Respondent Nos. 1 and 2 to enter their names in the seniority list over and above the names of the private respondents in view of Rule 11 of 1988 Rules.

4. The petitioners were appointed as Food and Supply Officers by the Punjab Public Service Commission (for short 'PPSC'), vide Advertisement No. 07 dated 14.09.2012 (P-2) and their services are governed by the 1988 Rules. The said posts are to be filled up by way of promotion as well as direct recruitment in the ratio of 60:40. Rule 8 of the 1988 Rules deals with the appointment and qualification, whereas Rule 11 deals with the seniority of the members of service. As per Rule 8 Appendix B, Clause 6 of the 1988 Rules, for promotion to the post of Food and Supply Officer from the post of Assistant Food Supply Officer (AFSO), a person should have experience of three years on the said post, but Respondent No. 1, in complete violation of Rule 19 of the 1988 Rules, promoted the private respondents on temporary basis by giving them relaxation in experience, whereas the ibid Rule provides that educational qualification and experience could not be relaxed in case of promotion.

Respondent No. 1 / Secretary Department of Food and Civil Supplies and Consumer Affairs, issued tentative seniority list dated 21.07.2016 (P-10) of Food and Supply Officers, who were recruited after 05.11.2011 either by way of promotion or direct recruitment while inviting the objections. As private respondents were illegally and arbitrarily shown senior to the petitioners, one of the petitioners, namely, Gurpreet Singh Kang filed objection vide representation dated 05.08.2016 (P-11). In complete violation of the relevant provisions of law, Respondent No. 2 finalized the seniority list on 27.12.2016 (P-12) without taking into consideration the objections. Thereafter, Respondent No. 2, who is not competent to decide the objections, dismissed the same without any basis vide Order dated 06.01.2017 (P-13). Hence, the present Writ Petitions.

5. Upon notice, Ms. Rajdeep Kaur, Deputy Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab has filed reply on behalf of Respondent

Nos. 1 and 2 stating therein that the Respondent-Department has sanctioned 74 posts of FSOs in the cadre and as per 1988 Rules, 60% quota (44 posts) are to be filled up by way of promotion and 40% quota (30 posts) to be filled up by direct recruitment. In 2012, against 30 posts of direct quota, only 05 were filled and for filling up the remaining 25 posts, a requisition was sent by letter dated 26.06.2012 to the PPSC. Out of aforesaid 05 filled posts, one FSO, namely, Sh. Simranjeet Singh Kahlon resigned as he got selected in the Indian Railways and Postal Services, therefore, 26 posts of direct quota were available. Out of 44 posts of promotional quota, 32 posts were lying vacant in the year 2012. Against these 32 vacant posts, 15 were filled by promoting AFSOs to the post of FSOs on 09.11.2012 after following due procedure. Due to the retirement of 03 FSOs on 30.11.2012, who were holding the posts under promotional quota, 20 posts were available under promotional quota. Due to the non-availability of suitable candidates under direct quota despite requisition having been sent to the PPSC on 26.06.2012, the Department has promoted 28 AFSOs to the post of FSOs against the available 20 vacancies of promotional quota only because of the shortage of the Officers in the districts and ongoing procurement season/ Public Distribution System implementation. However, the promotions over and above 20 promotional posts were made with a clear stipulation that they would be reverted back without prior notice on the availability of direct recruits. Due to unavoidable circumstances, few other promotions were also done later on, but all these promotees got retired or adjusted against the post of promotional quota prior to the new batch of direct recruits joined in February, 2014. As such, at the time of joining of aforesaid new batch (including petitioners), not even a single post of direct recruit was occupied by the Officer of promotional quota. It is also worthwhile to mention here that the promotion made against the vacant posts of direct quota were with the rider that in case direct recruit joins, then the said Officers will be reverted back without any prior notice.

On the question of relaxation in experience given to AFSOs is concerned, it is submitted that relaxation in experience was given to the promotees after due approval from the State Council of Ministers being the competent authority. It was done to meet out the exigencies of shortage of Field Supervisory Staff on procurement and PDS Schemes. When the direct recruits joined in February, 2014, the AFSOs, earlier promoted to the post of FSOs, have already completed three years' experience, as prescribed under the Rules. Hence, even if relaxation in experience was not given, they would have been become eligible to be promoted as FSOs in the year 2013, much before the new batch joined against direct recruit posts in February, 2014.

The tentative seniority list was circulated on 21.07.2016, inviting objections within 21 days from the issuance thereof. After considering the objections, final seniority list was circulated on 27.12.2016. Promotions were made as per promotional quota of each category. The promotions, if any, made over and above the quota, the same was conditional.

6. Separate written statement has been filed by the private respondents stating therein that they were promoted from the posts of AFSOs to the posts of FSOs in the year 2012, whereas the petitioners were appointed against the posts of direct recruits in the year 2014. The appointment to the service of the petitioners and the private respondents has been specified in Appendix B to the 1988 Rules. The seniority list was finalized after following due procedure. The petitioners have sought quashing of promotions of the private respondents, who were promoted after granting one time relaxation by the competent authority. They have not challenged the order of grant of relaxation. The private respondents have completed requisite experience on the promoted posts and prayed for dismissal of the writ petitions.

7. The contentions raised on behalf of the petitioners with reference to both the writ petitions are as under:-

i) That Rule 8 of the 1988 Rules deals with the appointment and qualification and Rule 11 of the 1988 Rules pertains to the seniority of the members of service. As per Rule 8 Appendix B, Clause 6 of the 1988 Rules, for promotion to the post of Food and Supplies Officer from the post of Assistant Food and Supplies Officers, a person should have experience for three years on the post of Assistant Food and Supplies Officer but respondents in complete violation of Rule 19 of the 1988 Rules promoted private respondents from the post of Assistant Food and Supplies Officers on temporary / officiating basis by giving relaxation in experience whereas the ibid Rule provides that educational qualification and experience could not be relaxed in case of promotion.

ii) Respondent No. 1 issued tentative seniority list of Food and Supplies Officers who were recruited after 05.11.2011 either by way of promotion or by direct recruitment and also invited objections. As private respondents were illegally and arbitrarily shown senior to the petitioners, they filed objections vide representations dated 05.08.2016 (Annexure P-11). But in complete violation, official respondents finalized the Seniority List on 27.12.2016(P-12), without taking into consideration the objections filed by the petitioners. Thereafter, official respondent who is not competent to decide the objections, dismissed the same after finalization of the seniority list without any basis by passing the order dated 06.01.2017 (Annexure P-13).

iii) That the determination and fixation of seniority of members of service is provided in Rule 11 of the 1988 Rules, which inter-alia provides that for the batch of direct recruits, the order of merit of the members of service as determined by the Commission or other recruiting authority of the Government shall not be disturbed and further that the seniority of the members of service who were appointed on purely provisional basis shall be determined as and when they were regularly appointed. Further there is no order of regular promotion in their favour till today.

iv) The promotion of the private respondents on temporary basis, vide order

dated 09.11.2012(P-8) and 31.12.2012(P-9) from the feeder cadre of AFSO to the post of FSO and consequent finalization of the seniority list without their regularization is completely illegal and arbitrary as well as violative of Rule 11 of the 1988 Rules. The petitioners further pleaded that the private respondents cannot be assigned seniority over and above the petitioners as firstly, when the private respondents were promoted from the feeder cadre of AFSO to FSO, the selection process of the petitioners and the other candidates was in process (in fact the same was almost completed, however, due to filing of CWP No. 25413 of 2012 before this Hon'ble Court, the selection process was ordered to be kept in abeyance by this Hon'ble Court vide order dated 21.12.2012 and ultimately after dismissal of the writ petition on 01.05.2013, the petitioners were offered letter of appointment dated 10.02.2014 (Annexure P-4).

v) The promotion of private respondents is not on regular basis; but purely on temporary/adhoc basis and thus in view of Rule 11 of the Rules, 1988, the seniority is to be determined as and when the members of service are regularly appointed. Meaning thereby, the action of the respondents for assigning seniority to the private respondents over and above the petitioners are totally illegal and arbitrary as well as in violation of the Rule 11 of the Rules, 1988. Even in one of the impugned order dated 31.12.2012 whereby 28 persons were promoted probation period is not mentioned therein.

vi) In view of prohibition to grant relaxation in respect of experience as provided in proviso to Rule 19 of the 1988 Rules, the official respondents have illegally and arbitrarily given relaxation in experience to private respondents at the time of alleged promotion as there is no power to relax the provisions related to the educational qualification and experience at the time of promotion.

vii) Some promotions were made in excess of quota against direct quota posts. As per the submission, there are 74 sanctioned posts of FSO, out of which 44 posts falls to share of promotion quota and 30 for direct recruitment. The private respondents were given promotion against the quota meant for direct recruits. As per additional affidavit dated 13.12.2018 filed by K.A.P Sinha Principal Secretary, Government of Punjab, it is admitted fact that 17 FSOs were promoted against the vacancy of direct quota.

viii) Attempt by the official respondent to mislead the Hon'ble Court by misstating the vacancy positions as clarified in the Affidavit dated 13.12.2018 filed by the Principal Secretary admitting the fact that 17 promotions were made against the direct quota and earlier figures given by the respondent department were wrong.

Apart from the above contentions, the petitioners have also relied upon judicial pronouncements which shall be considered later on.

8. Learned Counsel for the private respondents have opposed the submissions made on behalf of the petitioners while relying upon the judgments of the Hon'ble Supreme Court, reported as 'S.P. Chengalvaraya Naidu (dead) by LRs

Versus Jagannath', (1994) 1 SCC 1, 'Meghmala Versus G. Narsimha Reddy', (2010) 8 SCC 383 and contended that the petitioners have played fraud with the Court by submitting that all the private respondents have given the benefit of relaxation, which is factually incorrect. He further relied upon the judgment of Hon'ble Supreme Court of India in case titled as 'Ram Sarup Versus State of Haryana' 1979 (1) SCC 168 holding that appointment in violation of requirement of necessary experience is merely irregular and as such is not void.

9. After scrutinizing the rival contentions and pleadings with the able assistance of the counsel for the parties, this Court is of the opinion that the plea of the petitioners has merit and thus deserves to be accepted.

The question of inter se seniority between 'promotees' and 'direct recruits' has been brought at the behest of the petitioners who are direct recruits in both the Writ Petitions against the Respondent No. 3 to 30 in the CWP No. 1361 of 2017 and Respondent No. 4 to 46 in the CWP No. 7203 of 2017.

10. Before proceeding to deal with the issues, it is necessary to refer to the relevant provisions of "1988 Rules" for the purposes of deciding this matter. The relevant Rule 3 regarding number and character of posts; Rule 8 regarding method of appointment and qualification and Rule 11 pertaining to seniority of members of service are reproduced as under :-

"3. Number and character of posts:

The service shall comprise the posts specified in Appendix 'A' to these rules:

Provided that nothing in these Rules shall affect the inherent right of the Government to add to or reduce the number of such posts or to create new posts with different designations and scales of pay whether permanently or temporarily. Annexure A

Sr.

No.

Name of the

post

Number of posts

Scale of pay

Temporary

Permanent

Total

1.

Xxx

Xxx

Xxx

Xxx

Xxx

2.

Food and Supplies Officer

12

33

45

Rs. 825-25-

850-30-

1000/40-

1200/50-

1400-60-1580

8. Method of appointment and qualification:-

(1) Appointment to the Service shall be made in the manner as specified in Appendix 'B' to these rules.

(2) No person shall be appointed to the Service unless he possesses the educational qualifications and experience specified in Appendix 'B' to these Rules.

(3) All appointments to the Service by promotion shall be made on the basis of seniority-cum-merit and no person shall have any claim to any post in the Service merely on the ground of seniority.

(4) When any vacancy occurs or is about to occur in the Service, the appointing authority shall determine the manner in which the vacancy is to be filled.

(5) No person shall be recruited to the Service by direct appointment unless he possesses knowledge of Punjabi language of Matriculation Standard or its equivalent or passes test in Punjabi language in Matriculation Standard to be held by such authority as may be specified by Government in this behalf from time to time.

APPENDIX 'B'

(See Rule 8)

Sr.

No.

Designation of the post

Percentage for appointment by

Educational Qualifications and experience for
appointment by

Promotion

Direct

appointment

Transfer

Promotion

Direct

appointment

Transfer

1

2

3

4

5

6

7

8

2.

Food

and

60 percent

40 percent

If

no

From

From

From

Supplies
suitable
amongst
amongst the
amongst the
Officer
person
is
the
candidates,
persons
available
Assistant
who have
holding
for
Food and
passed the
identical or
appoint-
Supplies
Punjab Civil
similar posts
ment
by
Officers
Services
in the
promotion
working

(Executive
Government
or
by
under the
Branch)
of India or a
direct
control of
Examination
State
appoint-
Director
as specified
Government.
ment
who have
in the Punjab
an
Civil
experience
Services
of working
(Executive
on the post
Branch)
for a
(Class I)
minimum
Rules, 1970

period of
three years

11. Seniority of Members of Service:-

The Seniority inter-se of members of the Service in each cadre shall be determined by the length of continuous service on a post in that cadre of Service: Provided that in case of members recruited by direct appointment who join within the period specified in the order of appointment or within such period as may from time to time be extended by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Commission or other recruiting authority of the Government, as the case may be, shall not be disturbed:

Provided further that in case a candidate is permitted to join the Service after the expiry of the said period of four months in consultation with the Commission or other recruiting authority, as the case may be, his seniority shall be determined from the date he joins the Service:

Provided further that in case any candidate of the next selection has joined the Service before the candidate referred to in the proceeding proviso joins the candidate so referred shall be placed below all the candidates of the next selection who join within the time specified in the first proviso:

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 recruited by direct appointment shall be senior to a member recruited otherwise;

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

(c) in the case of members recruited 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 the length of service in that appointment and if the length of service is the same, an older member shall be senior to a younger member.

Note- Seniority of members appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment."

Further Rule 19 deals with the power of relaxation and the same is mention herein under:-

"19. Power to relax:

Whereas the Government is of opinion that it is necessary or expedient to do, it

may, by order for reasons to be relax these rules, the Government shall decide the same.

Provided that the provisions relation to educational qualification and experience shall not be relaxed."

(Emphasis supplied)

A close reading of the relevant provisions of '1988 Rules' as mentioned above clearly reveal that the service of the petitioners and private respondents are governed by Punjab Food Supply Officers (Class II) Service Rules, 1988. As per the 1988 Rules, recruitment as FSO shall be from two sources, namely by "direct recruitment" and by way of "promotion". Furthermore, quota has also been provided for both these channels i.e. 60% by way of promotion and 40% by way of direct recruitment. The service of the direct recruits is to be counted from the date of discharging the duties of the post and on successful completion of the probation within two years or extended period and on confirmation thereof by the Government, they become a member of the service in substantive capacity. Similarly, the promotees shall be recruited in view of Appendix B of Rule 8 of the Rules, 1988 a minimum working experience of 3 years is required for promotion from the post of AFSO to the post of FSO and the Clause 6 of Appendix B of Rule 8 is relevant for that purpose and the said requirement of experience is not relaxable in view of proviso to Rule 19 of 19988 Rules.

11. It is a well recognised principle of service jurisprudence that any rule of seniority has to satisfy the test of equality of opportunity in public service as enshrined in Article 14 and 16 of the Constitution of India. The prerequisite of the right to inclusion in a common list of seniority is that all those who claim that right must broadly bear the same characteristic. In a democratic setup, like ours, governed by Rule of law, it is necessary for the appropriate government that the political executive should have the support of an efficient bureaucracy. Our constitution enjoins upon the executive and charges the legislature to lay down the policy of the administration in the light of the directive principles. The executive should implement them in a fair and transparent manner to establish the rule of law as enshrined in the preamble of the Constitution.

Since statutory Rules are legislative in character, therefore, must be applied and interpreted in a manner to give life and force to each word, phrase and no part thereof should be rendered nugatory or a surplusage. Resort to iron out the creases could be had only when the construction of the relevant rule, phrase or word would lead to unintended absurd results.

12. As rightly argued by Ld. Senior Counsel for the petitioners that the determination and fixation of seniority of members of service is provided in Rule 11 of the 1988 Rules which has to be read in conjunction with Rule 8 (1), (2) and Appendix-B, which postulates that candidate / employee not only must possess the stipulated essential qualifications and experience but also has to be appointed on regular / substantive basis against a post available in the

prescribed quota of direct recruits (40%) and promotees (60%). Further, in the 'Note' appended to Rule 11 specifically provides that seniority of members appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment.

The above said contention is relevant in reference to the reply filed on behalf of the official respondents by way of an affidavit dated 18.05.2017 of Rajdeep Kaur, Deputy Secretary, Department of Food, Civil Supplies and Consumer Affairs, Punjab, it has been explained in Para 2 of the reply, the relevant extract is as under:

".....In the year 2012 out of 30 posts of direct quota, only 5 were filled. To fill the remaining 25 posts of direct quota, a requisition was sent to Punjab Public Service Commission vide letter dated 26.06.2012. Later on, out of 5 filled posts, 1 Food Supply Officer namely Sh. Simranjeet Singh Kahlon resigned from this post as he got selected in IRPS (Indian Railways and Postal Services). As such the vacancy against the direct quota become 26.

In the context of promotional quota, out of total 44 posts, 32 posts were lying vacant in 2012. Against these 32 posts 15 were filled up by promoting AFSO's to FSO cadre on 09.11.2012. These promotions were done following the due procedures. In addition to balance 17 vacant posts under promotional quota. 3 more posts became available on 30.11.2012 due to retirement, making the total no. of vacant posts to 20. Against these 20 posts under the promotional quota the department however promoted 28 Assistant Food and Supply Officers to the post of Food Supply Officers; primarily because of the fact that despite the requisition sent to PPSC on 26.06.2012 the suitable candidates under the direct quota were not made available. Because of urgency involved especially on account of shortage of officers available in districts and ongoing procurement season/ PDS implementation, it necessitated the department to promote 8 more officers with clear stipulation that the junior most would be reverted back without prior notice once the direct recruits would be made available by the PPSC. X x x
x x

It is worthwhile to mention here that due to certain unavoidable circumstances including legal pronouncements, few other promotions were also done later on, but all these promotees got retired or adjusted against seat in promotional quota much before the new batch joined in February, 2014.

The aforesaid status was demonstrated in tabulated form in Para 2 of the said affidavit.

In reference to the above stand of the Respondent Department, Ld. Senior Counsels for the petitioners further contend that promotions of the promotees, being temporary in nature and thus not in consonance with the 1988 Rules, do not confer any substantive right to the posts. Their seniority has to be counted only from the date of regular / substantive appointments/promotions and the service rendered from the dates of initial promotion on temporary basis till date

of substantive appointment ought to be treated as fortuitous. Further plea is that no order of regular promotion have been issued in their favour till today and there is no mention of any probation period in the order dated 31.12.2012 (P-9) whereby 28 persons were promoted.

13. Appearing for the private respondents. Ld. Senior Counsels and other Ld. Counsels for the private respondents have argued that the Private Respondents were promoted from the post of AFSOs to the FSOs in the year 2012, whereas the petitioners were appointed against the post of direct recruit in the year 2014. The appointment to the service of the petitioners and the private respondents has been specified in Appendix B in the 1988 Rules.

The official respondents advanced their submissions stating that the condition in the promotion order on temporary basis does not mean that these promotions were made on provisional or adhoc basis. It was further argued that this condition was only imposed because every promoted officer has undergone probation for one year for promotional post. Ld. State Counsel further relied on Annexure R-4 that these promotions were not on a provisional or adhoc basis promotions and vide letter dated 03.03.2017 the probation period of private respondents promoted as FSOs in the year 2012 has already been cleared and therefore, their seniority has correctly been finalized.

14. The aforesaid argument of the State is repelled by the additional affidavit dated 13.12.2018 in the amended CWP No. 7203 of 2017, filed the Principal Secretary, Government of Punjab during pendency of the writ petition, indicating :

? the vacant post available in the promotional as well as direct recruit quota for the post of Food and Supply Officers as on 08.11.2012, 09.11.2012, 31.12.2012 and 09.02.2014

? separate list of the employees having consumed the post in their respective Direct Recruit / Promotion quota between the two periods w.e.f. 08.11.2012 to 09.02.2014 and also their dates of retirement/ promotion to the next higher post.

For reference and also to answer the submissions of the private respondents and the official respondents, with the affidavit dated 13.12.2018, Annexure R-3 i.e. the order dated 31.12.2012 (corresponding to Annexure P-9 in CWP 1361 of 2017) is reproduced as under:-

Government of Punjab

Food Civil Supplies and Consumer Affairs Department,

(Establishment-1 Branch)

ORDERS OF GOVERNOR OF PUNJAB

Assistant Food and Supplies Officers working in the Department of Food, Civil Supplies and Consumer Affairs are being promoted as Food and Supplies Officer on temporary basis in the pay scale of Rs. 10300-34800+5000 Grade Pay. Sr. No.

Father's name 1 to 28 Xxxxx

2. This promotion shall be based upon following conditions:-

1) This promotion shall be purely on temporary basis and this promotion shall not construe any right of regular promotion/confirmation.

2) The Government shall have the rights to cancel the promotion made on temporary basis, as a result of which above mentioned officers can be reverted to the previous post.

3) In case any senior officer than the above mentioned officer shall get exonerated from the Court case/ disciplinary action which is pending against him, in that eventuality he shall be considered for promotion from the date from which his junior shall have been promoted. In such a situation, the junior most officer shall be reverted

4) Seniority of the above mentioned officer shall be fixed as per Rules/ instructions. If any decision is given/ taken by the Court or Department regarding seniority, then that will be implemented in letter and spirit.

5) This promotion shall be in accordance with the conditions as contained in letter No. 3/34/99-PP1/12565 dated 22.10.1999 of Department of Personnel (P.P 1 Branch), Punjab.

6 to 8) xxxxxxxx

3. xxxxxxxx

4. The promotion of officers mentioned from sr. No. 25 to 28 is being made against the quota meant for direct recruits. Therefore, after receipt of recommendations from the Punjab Public Service Commission against the direct recruit quota these four officers shall be reverted without giving any notice, if the post of promotional quota are not available at that time, against which they can be adjusted.

Dated: Chandigarh D.S. Grewal, I.A.S. 31.12.2012 Secretary to Govt. of Punjab Department of Food, Civil Supplies and Consumer Affairs In light of the Condition No.1 of the office order reproduced above, this Court does not find any merit in the arguments raised by the respondents. From the above condition mentioned in the Order dated 31.12.2012 (P-9) the promotion shall be purely on temporary basis and this promotion and the same shall not construe to confer any right of regular promotion. With this specific condition as mentioned in the order clearly stipulates that the appointment on temporary basis cannot be treated as a regular appointment.

Even the respondents failed to place on record the order passed by the Government confirming the service from temporary basis to regular basis as per Rule 7 of the Rules of 1994. The specific pleadings in Para 15 of the Writ Petition No. 1361 of 2017 that till today their service has not been regularized is also

relevant. Moreover, in one of the impugned Order dated 31.12.2012 whereby 28 persons were promoted, probation period is not mentioned therein. This Court finds that no departure is permissible in view of Rule 11 of the Rules of 1988, wherein it is specifically mentioned in the note that seniority of members appointed on purely provisional basis shall be determined as and when they are regularly appointed keeping in view of date of such regular appointment. This Court is fully convinced from the aforesaid note that appointment on temporary basis being in violation of Rules cannot be counted towards the fixation of the seniority.

15. In the case of Keshav Chandra Joshi Versus Union of India 1992 Supp (1) SCC 27, the Hon'ble Supreme Court has held as under:-

"An officer appointed by promotion in accordance with Rules and within quota and on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be counted for seniority. Ad hoc or fortuitous appointments on a temporary or stop gap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis. To give benefit of such service would be contrary to equality enshrined in Article 14 read with Article 16(1) of the Constitution as unequals would be treated as equals. When promotion is out side the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota any work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1). "

In the case of Direct Recruits class II Engineering officers Association Vs State of Maharashtra (1990) (2) SCC 715 the Constitutional Bench of the Hon'ble Supreme Court in this case has further clarified the issue in clear words and has explained the propositions A & B in paragraph 47 of the judgment stated as under:-

"(A): Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. "

In Keshav Chandra Joshi's case (supra), the Hon'ble Supreme Court has held that Employees appointed purely on ad hoc or officiating basis due to administrative exigencies, even though continued for a long spell, do not become the members of the service unless the Governor appoints them in accordance with the rules and so they are not entitled to count the entire length of their continuous officiating or fortuitous service towards their seniority.

The ratio as laid down by the Hon'ble Supreme Court in Keshav Chandra Case (supra) has now recently been followed in 2019 in the case of Nand Kumar Manjhi & another Versus State of Bihar and others CIVIL APPEAL NOS.4020-4022 OF 2019, (Date of decision-22.4.2019), the Hon'ble Supreme Court has held that in order to become a member of the service the person concerned has to satisfy atleast two conditions- first appointment must be in substantive capacity, and second, the appointment has to be to the post in the service according to the Rules and within the quota to a substantive vacancy (per Keshav Chandra Joshi V. Union of India [1992 Supp (1) SCC 272: 1993 SCC (L&S) 694: (1993) 24 ATC 545]).

In the case of Devendra Prasad Sharma v. State of Mizoram & Ors. reported in [(1997) 4 SCC 422], it was held by Hon'ble Supreme Court that the relative seniority of direct recruits and of promotees shall be determined according to rotation of vacancies between direct recruits and promotees based on the quotas of vacancies reserved for direct recruitment and promotion. Rule 25(iii) is similar to Item-3 (1) of Appendix-A (Section-B). It was held by Hon'ble Supreme Court that in cases where there is rotation of vacancies between direct recruits and promotees based on quota of vacancies, the rotation has to be considered in accordance with the vacancies as and when they accrue under the rules. Therefore, the quota rule needs to be strictly adhered to, if not, it would lead to absurdity. If the contention of the appellants is accepted, it would mean that the entire group of direct recruits will have to be placed below the entire group of promotees. Having fixed the quota between the two sources of recruitment, there is no discretion with the corporation to alter the quota or to deviate from the quota.

In the case of S.G. Jaisinghani v. Union of India & Ors. reported in [AIR 1967 SC 1427], the Hon'ble Supreme Court held that having fixed the quota between two sources of recruitment, it is not open to the government to alter the quota or to deviate from the quota. In the case of Union of India & Ors. v. S.D. Gupta & Ors. reported in [AIR 1996 SC 3325], the respondents were promotees in Central Water Commission Engineering Class-I Service. The recruitment rules were made w.e.f. 15.10.1965. In the earlier litigation, the tribunal found that one Shri V.P. Misra, Extra Assistant Director was promoted on ad hoc basis on 31.3.1978 and

he was required to be confirmed with effect from the date on which vacancy was available to him in the quota of promotees. The vacancy had admittedly arisen in the quota of promotees on 3.5.1979. Shri V.P. Misra was fitted in that vacancy. While doing so, the department applied principle of rota and quota and determined the inter-se seniority of promotees and direct recruits. Consequently, the promotees were pushed down in the order of seniority which led to second round of litigation. The question which arose for determination before Hon'ble Supreme Court was whether fitment of seniority determined by the department was in accordance with the rules. He found that 60% of the vacancies were to be filled by direct recruits and 40% by promotees. Among the 40% quota, there was a further demarcation in the ratio of 25% and 15% between promotees and transferees. Admittedly, the promotees were entitled to their fitment within 25% quota. Vacancies for the promotees had arisen on 3.5.1979 and, therefore, V.P. Misra was entitled to that vacancy which arose on that date. However, as stated above, in the integrated list, the promotees were pushed down. It was contended on behalf of the promotees that the direct recruits were not born in the service when the promotees were promoted and equity requires that the promotees cannot be pushed down. The Hon'ble Supreme Court rejected the said argument by observing that the object of direct recruitment is to blend talent and experience. So long as the system continues, consequences were inevitable. Although, the direct recruits were recruited later, their fitment in the order of seniority had to be determined with reference to rota and quota prescribed under the rules. In such a case, there was no illegality even when promotees were pushed downwards in the order of seniority.

Having noticed the above said submissions and in light of the observations made by the Hon'ble Supreme Court in Keshav Chandra Joshi's case (supra) and Direct Recruits class II Engineering officers

Association case (supra), this Court does not find any merit in the submissions made by the respondents. Appointment/ promotion made contrary to the Rules as discussed above are merely fortuitous and do not confer any benefit of seniority on the appointees over and above the regular appointees to the service.

Consequently, the argument of the private respondents is liable to be rejected in view of Keshav Chandra Joshi (supra) case, as none of the two conditions is satisfied. The posts against which substantive appointments by way of promotions ought to have been made were not available in the promotion quota on the initial dates when such promotions were effected. Moreover as per the appointment order, the promotions were made on temporary basis with conditions that there could be no appointment to the service on regular basis. When there is no appointment to the service, much less substantive appointment to the service, the promotees could not be given seniority with effect from the purported date of their promotion. Although it has been asserted by the respondents in their pleadings that with effect from subsequent dates on fulfilment of the three years experience, and in some cases prior to the date of

appointment of the petitioners/direct recruits, posts on substantive basis in the promotional quota had become available; thus the respondent promotees would be deemed to be validly promoted and assigned seniority from such dates. This plea of the promotion and seniority by deeming fiction from subsequent dates is rejected as concededly no orders of regular promotion have ever been passed in favour of the private respondents, as is the requirement of 1988 Rules, specifically Note appended to Rule 11.

16. The another issue raised on behalf of the petitioners that whether the relaxation is permissible in view of Rule 19 which deals with the power of relaxation.

It is argued on behalf of the petitioners that in view of the proviso to Rule 19 of the Rules of 1988, there is no power to relax the provisions relating to the educational qualification and experience. Therefore, there is no justification to deviate from the Rule due to administrative exigencies or expediency by relaxing the condition of experience for promotion in case of some of the private respondents.

Although, the respondents have tried to justify that for all purposes the respondent Department have considered the private respondents, who were given relaxation towards the requisite experience of 03 years, as eligible in the year 2013 when they completed 3 years experience. Even from the reply filed by official respondents, it is admitted position that in 2012, against 30 posts of direct quota only 5 were filled up and for remaining 25 posts, a requisition was sent vide letter dated 26.06.2012 to Punjab Public Service Commission. Out of 5 posts filled, one Food and Supply Officer namely Sh. Simranjeet Singh Kahlon resigned as he got selected in Indian Railways and Postal Services, therefore, 26 posts of direct quota were available. Out of 44 posts of promotion quota, 32 posts were lying vacant in 2012. Against these 32 vacant posts, 15 were filled up by promoting Assistant Food and Supply Officers to the post of Food and Supply Officers on 09.11.2012 by relaxing the condition of experience as prescribed under the 1988 Rules.

In P.K Ramachandra Iyer and others Versus Union of India and others AIR 1984 SC 541, the Hon'ble Supreme Court while dealing with the similar issue, held that once it is established that there is no power to relax the essential qualifications, the entire process of selection of the candidates was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.

In Secretary, A.P. Public Service Commission Versus B. Swapna and others, 2005 (2) SCT 415: (2005) 4 SCC 154, the Hon'ble Supreme Court held that:

" Another aspect which this Court has highlighted is scope for relaxation of norms... Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. "

In Food Corporation of India and others Versus Bhanu Lodh and others, 2005 (2) SCT 151: AIR 2005 SC 2775, the Hon'ble Supreme Court held:

"Even assuming that there is a power of relaxation under the Regulations..... the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases.... We do not think that they are intended as an "open sesame" for all and sundry. The wholesale go-by given to the Regulations, and the manner in which the recruitment process was being done, was very much reviewable as a policy directive, in exercise of the power of the Central Government under Section 6(2) of the Act "

In Bhupendra Nath Hazarika and another Versus State of Assam and others reported as (2012) 12 SCR 587, the Hon'ble Supreme Court held as under:-

"46. As has been observed by the learned single Judge which has been accepted by the Division Bench, there was no decision to relax the rules in favour of the special batch recruits. That apart, whenever there has to be relaxation about the operation of any of the rules, regard has to be given to the test of causation of undue hardship in any particular case. That apart, the authority is required to record satisfaction while dispensing or relaxing the requirements of any rule to such an extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner. The language of the Rule really casts a number of conditions. It provides guidance. It cannot be exercised in an arbitrary manner so as to dispense with the procedure of selection in entirety in respect of a particular class, for it has to be strictly construed and there has to be apposite foundation for exercise of such power. It is to be borne in mind that if a particular rule empowers the authority to throw all the rules overboard in all possibility, it may not withstand close scrutiny of Article 14 of the Constitution. Be that it may, no decision was taken to relax the rules and, the concept of deemed relaxation is not attracted and, therefore, the relief claimed by the special batch recruits has no legs to stand upon. "

This Court does not find any merit in the submissions made on behalf of the Respondent No. 14 and 24 also that private respondents were never granted relaxation as on the date of promotion and regarding the relaxation in experience as all the respondents completed the statutory period of 3 years experience for which relaxation was given to them, before appointment of the petitioner in February 2014.

The submissions made by the Ld. Senior Counsel on behalf of the Respondent Nos. 4 to 46 in connected writ petition are also on the similar lines with respect to the factual position as well as law as discussed above. Although, it has been submitted in the written submissions that private respondents were never granted any relaxation, as alleged by the petitioners, but the same is factually incorrect as discussed above. He further relied upon the judgment of Hon'ble Supreme Court of India in Ram Sarup Versus State of Haryana 1979 (1) SCC 168

holding that appointment in violation of requirement of necessary experience is merely irregular and as such is not void. Again there is no substance in the submissions made by the Ld Senior Counsel in view of the reasons mentioned above and also in view of the law laid down in Keshav Chandra Joshi case (supra).

17. In service jurisprudence a distinction is made between substantive appointment and an officiating/ temporary appointment. While substantive appointment confers on the person so appointed a substantive right to the post, an officiating/temporary appointment does not confer any such substantive right. On the other hand this Court cannot ignore the settled position of law that when the appointment is made de hors the Rules, the appointee cannot claim any seniority from the initial date even if his appointment is later on regularized.

After giving anxious consideration, this Court is of the opinion that in view of the Rule 19 of the 1988 Rules, there is no power to relax the provisions relating to the educational qualification and experience. There is no justification in the reply which could demonstrate the urgency to deviate from the said Rule due to administrative exigencies or expediency by relaxing the experience condition for promotion.

Ld. Senior Counsel Sh. Gurminder Singh has specifically invited the attention to the fact that the respondent department has tried to mislead this Court by misstating the details of the number of the persons promoted against the direct quota posts. In the impugned order dated 31.12.2012(P-9), it was mentioned therein that 4 persons were promoted against the direct quota posts, whereas in the written statement filed by the respondent/department, it is mentioned that 5 persons were promoted against the quota meant for direct quota vide order dated 31.12.2012. In the additional affidavit dated 13.12.2018 filed by K.A.P Sinha, Principal Secretary, it has been specifically admitted that total 17 promotions were made against the direct quota and at the time of joining of the petitioners, two promotees were working against the posts of direct quota.

It is a conceded position, which is reflected in the second affidavit filed by K A P Sinha, Principal Secretary that discrepancy is there in the figures projected in the Annexures earlier attached with the affidavit dated 18.05.2017 and again repeated in the affidavit dated 10.07.2017 filed by Ms. Rajdeep Kaur, the then Deputy Secretary, Food, Civil Supplies because of Para 4 of the order of then Secretary dated 31.12.2012 (Annexure R-3). Although, inconvenience caused to this Court is deeply regretted by the official Respondents, but there is no reasonable explanation to justify the same and the apology is tendered in the affidavit in a very casual manner. This Court could not expect from the State to file an affidavit with wrong facts in the judicial proceedings that too on the aspect which constitutes the core of the controversy. Moreover there is no explanation with respect to the order dated 31.12.2012 (P-9), whereby 28 persons were promoted and moreover there is no mention about the probation period. Once it is conceded position of the parties that the promotions of the private respondents was in excess of their quota fixed, the same cannot be termed as

valid appointment and it can be treated as a regular appointment only when a vacancy is available against the promotion quota against which the said appointment can be regularized on possessing of prescribed experience.

Furthermore, after filing of the first Writ Petition on 21.01.2017, the Government issued an order dated 02.03.2017 (R-4, R-5) giving permission to complete probation satisfactorily. It shows that department is not fair in their action from the onset of the controversy. This Court has no hesitation to record that to give benefit of such service would be contrary to equality clause enshrined under Article 14 read with Article 16(1) of the Constitution as unequal would be treated as equal.

18. In view of the above facts, the promotees (some of the private respondents) being in excess of their promotional quota (60%) and against posts meant for direct quota (40%), the action of the respondents in granting the private respondents seniority over and above the petitioners is totally illegal and liable to set aside.

19. The another aspect which the petitioners have urged is that the official respondents have wrongly rejected the objections dated 05.08.2016 (P-11) against the tentative Seniority List dated 21.07.2016 (P-10) by passing an erroneous order dated 06.01.2017 (P-13). They further pleaded that the objections were filed by the petitioners within the stipulated period, however, before or at the time of finalization of the Seniority vide letter dated 27.12.2016 (P-12), the official respondents have not considered the same and rejected the objections on 06.01.2017(P-13) without a semblance of assigning any reasons. In the opinion of this court, the approach of the official respondents is wholly unfair. The Hon'ble Supreme Court in the case of State of Orissa Versus Dr. Binapani Dei and others 1967 AIR 1269 has held as under:-

" It is one of the fundamental rules of our constitution's setup that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the tails of justice be ignored and an order to the prejudice of 'a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken. "

In view of the above settled principles of law, this Court is of the view that the official respondents are not fair while rejecting the objections of the petitioners against the tentative seniority list. A bare perusal of the contents of the decision

dated 06.01.2017(P-13), this Court has no hesitation to say that the department has passed the rejection order without application of mind. The impugned order of rejection passed by the official respondents is a non-speaking without assigning any proper reason.

This Court is of the considered opinion that while passing an order of this nature, the administrative authority is supposed to record sufficient reasons in taking a decision or arriving at a particular conclusion. The reasons should be such that it demonstrates that the decision has been arrived at on an objective consideration of the material on record after due application of mind.

20. In view of the aforesaid facts, circumstances, and law points discussed hereinabove, both these petitions are allowed and the aforesaid impugned orders dated 06.01.2017 (P-13) whereby the objections filed by them against the tentative seniority list of Food Supply Officers (FSOs) has been rejected; Letter/Memo dated 27.12.2016 (P-12), whereby the seniority list of FSOs was finalized; impugned orders dated 09.11.2012 (P-8) & 31.12.2012 (P-9) whereby the private respondents were promoted are quashed / set aside with the following directions:

- i. Upon the setting aside of the impugned promotion Orders of the Private Respondents, the official Respondents shall pass the fresh promotion orders of the Private Respondents in the Cadre of FSOs strictly in consonance with the requirements of Appendix B read with Rule 8 of the 1988 Rules keeping in consideration the quota and the condition regarding the minimum experience;
- ii. Once the fresh promotion Orders of the private Respondents in terms of (i) above with effect from respective retrospective dates are issued and probation periods completed, thereafter, fresh exercise of fixation of seniority of the two streams of FSOs i.e. the Directly Recruited and the Promotees in the cadre of FSOs shall be made by assigning/placing them from due dates;
- iii. Thereafter, the consequential revisited / revised promotional orders and fixation / re-fixation of seniority of the affected Officers in higher ranks shall be made in accordance with the requirements of the relevant Recruitment Rules governing the respective higher ranks;
- iv. While implementing the above directions, if the consequential promotion, of the persons who have already retired or dead or are in service is affected in any manner to their prejudice, the emoluments already drawn and payments made on account of earlier promotion or benefits granted based on the challenged seniority to them shall not be recovered.

The re-fixation of pay etc., in case be with retrospective date then in that event the monetary impact qua the employees shall operate prospectively w.e.f. the date of passing of this order by this court. v. The respondents shall carry out the aforesaid exercise within a period of one (01) months from the receipt of the certified copy of this Order, till then 'status quo' as existing on the date of this

order pertaining to the posts held by the parties shall be maintained. However, in the event of any affected Officer retiring, henceforth, with effect from date of this order his pensionary benefits would be liable to be determined keeping in view the fresh exercise undertaken by the respondent department pursuant to the directions at (i) to (iii) above.

Allowed in the aforesaid terms.

No orders as to costs.