

(2016) 11 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 883 of 2011

Dr. Mohinder Pal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

Haryana Ayurvedic Department (Group B) Service Rules, 1989 — Rule 11

Citation : (2017) 1 SCT 761

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : R.N. Sharma, Advocate, for the Respondent No. 5.; Ms. Shruti Jain Goyal AAG, Haryana, for the Respondents; Anurag Goyal, Advocate, for the Respondents No. 13, 14, 16, 19, 20, 22, 23, 27, 29, 32, 34, 37, 41, 43, 44, 49, 50, 51, 56, 58.; None, Advocate, for

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. (Oral) - No one appears for the petitioner when the case is called. The position was the same on the last three dates from 14.05.2015 onward. There have been past absences as well and intermittent appearances. The petitioner appears to have lost interest in the case.

2. Heard counsel present on the prayers made in the petition.

3. The claim in the petition is for proper fixation of seniority of the petitioner as per the Haryana Ayurvedic Department (Group B) Service Rules, 1989 (for short "the Rules") in accordance with the order of merit determined by the Haryana Public Service Commission. The petitioner prays for quashing of the impugned gradation list published on July 1, 2008. Accordingly, benefit of ACP scales as restricted to the 20% of the members of the service according to ACP (Revised Pay) Rules, 2008 deserves to be granted on the basis of seniority after circulating a fresh seniority list determined in accordance with Rules. An interim direction was prayed for in the petition to the effect that during the pendency of the petition, the ACP scales be restricted to 20% of the cadre on the basis of

seniority to the private respondents.

4. Rule 11 of the Rules deals with "seniority" and prescribes that the seniority, inter se members of the service, shall be determined by the length of continuous service on any post in the service. Second proviso thereof guarantees that in case of members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority.

5. The dispute is that the petitioners are direct recruits through the Haryana Public Service Commission and their names were recommended to government before the services of the private respondents were regularized in terms of the prevailing policy instructions with effect from the dates prior to the date of direct recruits joining service and becoming members thereof.

6. The respondents have pleaded in their response/s that the petitioners are junior to the persons who were appointed on ad hoc basis but were regularized w.e.f. January 1, 1991 respectively vide orders passed in subsequently in the year 1992. There is no impugned order in this case and only the action of placing the names of the petitioners below the private respondents in the tentative seniority list is under challenge and it is prayed that this list deserves to be rectified by a mandamus to the respondents to give them seniority above the private respondents. Though it is not specifically claimed nor refuted by the State in their written statement, but there are instructions of the Punjab Government prior to regularization dated March 16, 1962 issued by the Chief Secretary, Punjab, applicable to Haryana after reorganization which confers on direct recruits a notional benefit towards seniority from the date recommended by the Public Service Commission. Grant of retrospective regularization to irregularly appointed employees as an exception to the rule of recruitment, distributed to the private respondents as State largesse should not in law be read to the disadvantage of persons like the direct recruits in this case whose selection process was initiated much before the orders came to be passed in 1992 retrospectively in terms of the regularization policy with retrospective effect from 1991. This date is claimed to be artificial between the two groups which has not rational basis to give preference to the private respondents over the petitioners in the matter of fixation of their seniority. I would, therefore, find no legal justification in conferring on the private respondents the huge benefit of seniority over the petitioners which the respondents did not earn by dint of merit in an open selection but by a regularization policy. It may be noted that the petitioners joined service in June, 1991 while the private respondents were regularized under the scheme in the 1992 Policy w.e.f. 1.1.1991. The very fact that the regularization policy came into existence after the date of joining of the petitioners cannot act to the detriment to the petitioners. The policy of regularization was not meant or designed to override direct recruitment initiatives in the pipe line. The rights of the non-official respondents are inferior to those of the petitioners and for such anomaly are the executive instructions dated March 16, 1962 a solution.

7. As a result of the above discussion, the petition is allowed. The gradation list will be read in such a manner that the names of the petitioners are placed above the private respondents in the appropriate slots in the roster. The gradation lists (Annex P-4 and P-7) are re-modulated accordingly. A fresh seniority list is directed to be recast in terms of this order expeditiously and circulated among the staff. Till then, further promotions, if any, involving the petitioners and the private respondents to the higher posts will be regulated by this order.