
(2015) 05 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 5059 of 2011(O&M), CWP No. 23165 of 2012, CWP No. 13170 of 2012 (O&M), CWP Nos. 19531, 19995, 20040, 20811, 21269, 23323, 23725, 23934 and 24668 of 2012, CWP No. 19158 of 2013 (O&M), CWP No. 12593 of 2014, CWP No. 23750 of 2012, CWP No

Harpal Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 27-05-2015

Acts Referred:

Citation : (2015) 05 P&H CK 0081

Hon'ble Judges : Arun Palli, J

Bench : Single Bench

Advocate : Pranav Chadha, Advocate for Arjun Prtap Atma Ram, Manpreet Kaur, Advocate for Sandeep Arora, Amrik Singh, Kapil Kakkar, Advocates, Pawan Kumar, Advocate for Amit Chopra, Kewal Krishan, Advocate for Harinder Sharma, Sameer Sachdeva, Advocates, Viranjeet Si

Final Decision : Disposed off

Judgement

Arun Palli, J.

1. What has been assailed in this bunch of 36 petitions, is the seniority list of Lecturer School Cadre dated 07.03.2011 (Annexure P7). A multiple challenge is laid thereto. An application bearing Civil Misc. No. 6796-2015 was moved in one of these petitions i.e. CWP-5059-2011, and the issues that would require consideration of this court as regards the validity of the seniority list in question (Annexure P7) have been culled out. In response, an affidavit dated 27.05.2015, of Director Public Instructions (SE), Punjab, Department of School Education, has been filed in court today, by learned Additional Advocate General, Punjab, and the same is taken on record. Copy supplied to learned counsel for the petitioners and also for the private respondents.

2. It appears that the controversy can be resolved. Broadly, an analysis of the

affidavit dated 27.05.2015, reveals that concededly the issues that have been raised, require consideration and consequently reconsideration of the seniority list dated 07.03.2011 (Annexure P7). Further, the department is ready to re-visit the matter in issue, in terms of the decision rendered by this court in R.L. Bhagat v. State of Punjab and others, 2010(3) SLR 737, and also the instructions issued by the Government dated 10.10.2014. And that being so, the department shall afford all the effected persons i.e. effected by seniority list dated 07.03.2011, a chance to represent their cases. Thereafter, all those who would file representations would also be afforded a personal hearing individually or even in a representative capacity. It is suggested that post receipt of the representations, the process of personal hearing would commence by 10.07.2015 and would take nearly two months. Thereafter, a final decision as regards the seniority list dated 07.03.2011 would be reached by the Government by 30.09.2015. And interim order(s) passed by this court would continue to operate in the interregnum i.e. till the matter is decided afresh. It would be apposite to refer to the affidavit dated 27.05.2015, that has been filed in complete and the same reads as thus:

"1. That the above writ petition is pending before this Hon"ble Court and is now fixed for 27.05.2015. A number of similar petitions have been clubbed with the present writ petition, wherein seniority list dated 07.03.2011 has been challenged.

2. That it is submitted that an application has been filed by the petitioners wherein he has raised certain issues, with respect to the seniority list dated 07.03.2011. Primarily the issues raised are as to whether the catch up rule will apply as envisaged in the judgment of Hon"ble Supreme Court of India in Ajit Singh Janjua v. State of Punjab, and whether the said catch up rule has been followed or not, while preparing the seniority list dated 07.03.2011. Further the issue has been raised as to whether, once the Government of Punjab has issued instructions that only accelerated promotion is to be granted to the reserve category candidates and not seniority, then how the seniority has also been granted to the reserve candidates while framing the seniority list dated 07.03.2011. Further issue has been raised as to whether the seniority list which has framed by complying 85th amendment to the constitution of India, without there being any quantifiable date prepared by the State of Punjab as envisaged in the judgment of M. Nagraj, is correct or not. Further, the petitioners have also raised the issue as whether the seniority list of 2009 can be altered, which was being defended by the State of Punjab as being correct and that too, only on the direction given by the National Schedule Castes Commission.

3. That the Department has considered the issues raised by the petitioners in the present application in the light of the orders passed by the Committee by which the seniority list dated 07.03.2011 was finalized. In para 2(1) of the Committee has been mentioned that the catch up rules was only applicable till the 85th Constitution amendment which came into being from 17.06.1995 and the catch

up rules as envisaged in Ajit Singh Janjua's case is not available thereafter. Further it has been mentioned that in paragraph-3 of the order that the seniority is to be given on the basis of roster point. Department is of the opinion that these issues prima facie needs consideration and consequent reconsideration of seniority list dated 07.03.2011, keeping in view the judgment of this Hon'ble Court in R.L. Bhagat's case as well as the instructions which have been issued by the Government of Punjab dated 10.10.2014.

That law laid down by this Hon'ble Court in R.L. Bhagat's case interpreting the reservation Act 2006 issued by State of Punjab that there is no consequential seniority to be given to the reserve category candidate has escaped the notice of the authorities while framing the seniority list dated 07.03.2011.

4. That the department will give the affected persons i.e. effected by the seniority list dated 07.03.2011 a chance to represent their case to the Government and thereafter, all those who file representations, will be given the hearing individually or in a representative capacity and thereafter, a decision will be taken by the Government in respect of the seniority list dated 07.03.2011 in the light of the law which prevails in the State of Punjab, including the instructions issued by the State on this issue. Till then, the interim orders passed by the Hon'ble Court will continue and no promotion or reversion will be done.

5. That it is prayed that for revisiting the issue of seniority list dated 07.03.2011, the department proposes that an advertisement will be given in the news paper and notice will be published on the website by dated 10.06.2015. In the said notice, time will be given to the affected parties, who oppose the seniority list dated 07.03.2011 or support the seniority list dated 07.03.2011 to make representations by 25.06.2015. Thereafter, scrutiny the representations so received, the affected parties will be called for personal hearing either individually or in the representative capacity and the hearing will commence by 10.07.2015. As the cadre strength of lecturer in the Dept. of School is 12,245. Hence, it is expected that a large number of objections are expected to be filed. Hence, the process of hearing their objections in person or through representatives will take nearly 2 months. That after the hearing is complete, all the date will be complied and a decision in respect of the seniority list dated 07.03.2011 will be taken keeping in view law or present as well as the instructions issued by the State of Punjab. The said decision will be taken by the Government by 30.09.2015.

7. That in case the above is acceptable to the petitioners in all the writ petitions and to this Hon'ble Court, the above mentioned writ petition as well as other connected writ petitions may kindly be disposed of in-terms of the above.

8. As the case involves policy relating to reservation and the decision taken in this case to be applicable to all other departments, it is suggested that the review Committee heard by the Department will be assisted by appropriate representatives from Deptt. of Personnel and Deptt. of Welfare."

3. In the wake of the position as set out above, learned counsel for the parties are ad idem that let these petitions be disposed of in terms of the affidavit, dated 27.05.2015, of the Director Public Instructions (SE), Punjab. It is conceded by all the learned counsel, that the parties to the lis shall abide by the assurance/undertaking/terms of the affidavit dated 27.05.2015. None has expressed any disagreement to the suggested course. Learned State counsel, on instructions, submits that after a final decision is reached by the Government by 30.09.2015 as regards the seniority list dated 07.03.2011, consequential promotions or reversions, if any, shall be effected within a further period of two months thereafter.

4. That being so, these petitions are disposed of strictly in terms of the duly sworn affidavit of Director Public Instructions (SE), Punjab, Department of School Education, dated 27.05.2015. Needless to assert, the respondent-department shall strictly adhere to the process that has been suggested in the affidavit and would abide by the designated time schedule.