

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CWP-14243-2001 (O&M)**

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Naib Singh &amp; Anr.

... Petitioners

VS.

State of Punjab &amp; Ors.

... Respondents

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|----|-------------------------------------------------------------|------------|
| 1. | Judgment reserved on                                        | 11.08.2026 |
| 2. | Judgment pronounced on                                      | 03.09.2026 |
| 3. | Judgment uploaded on                                        | 03.09.2026 |
| 4. | Whether operative or full judgment                          | Full       |
| 5. | Delay in pronouncement of full judgment and reasons, if any | NA         |

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Mr. BS Patwalia, Advocate and  
Mr. Gaurav Jagota, Advocate for the petitioners

Mr. TPS Walia, AAG Punjab

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**Sandeep Moudgil, J.**

(1). The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India, *inter alia*, for issuing a writ of certiorari quashing the seniority list dated 11.08.2000 as well as the order dated 25.11.1999 whereby the petitioners have been made junior to the respondents No.3&4 and they have been promoted to the post of Research Officer. A direction is sought to the respondents to frame fresh seniority list in accordance with Rule 10 of the Punjab State Planning Board (Class III) Services Rules, 1988 i.e. on the basis of merit awarded by the Departmental Selection Committee.

(2). Notice of motion was issued in this case on 14.09.2001 and thereafter the respondents filed their respective replies to which the petitioners even filed their replication. Thereafter, the case was admitted on

26.05.2003 and was ordered to be heard with CWP-7003-2000. When the matter came up for hearing on 11.02.2026, it was noticed that during the pendency of the writ petition, the petitioners have been promoted as Research Officer and they have since retired from service, however, their claim for retrospective/notional promotion w.e.f. the date their juniors i.e. respondents No.3&4 were promoted was not taken into consideration. It was in this backdrop, this Court passed the following order on 21.07.2026:-

*“Learned State counsel seeks time to obtain instructions as to whether the Department is willing to consider the petitioner’s claim for grant of a deemed date of promotion at par with private respondents No.3 and 5, and to place the petitioners above respondents No.3 and 4 in the seniority list, in terms of the proviso to Rule 10, sub-clause (a) of the Punjab State Planning Board (Class III) Service Rules, 1988.”*

(3). Today, respondents No.1&2 have filed reply by way of short affidavit of Jagjit Singh, Addl. Secy. Planning, Department of Planning on behalf of respondent No.4, which is taken on record.

(4). Learned counsel for the petitioners has contended that the action of the respondents in placing respondents No.3 and 4 above the petitioners is contrary to Rule 10 of the Punjab State Planning Board (Class III) Service Rules, 1988 (in short, ‘the 1988 Rules’) as all the concerned employees were appointed as Technical Assistants against the posts advertised vide advertisement dated 16.04.1991 and joined on the same date. He submits that the petitioners were treated as Open category candidates and being as such, they secured higher marks than respondents No.3 and 4 and,

therefore, in terms of the *proviso* to Rule 10, their order of merit could not have been disturbed.

(5). It is further submitted that the instructions dated 14.05.1991, relied upon by the respondents, were issued after the advertisement dated 16.04.1991 and, in any event, those instructions merely provided for prior consideration/absorption of surplus employees and did not provide that such employees, after appointment, would rank senior to candidates selected through the advertised recruitment irrespective of their comparative merit. He contended that the petitioners ought to have been considered as surplus candidates, as they had already acquired the requisite M.A. qualification by the time the advertisement dated 16.04.1991 was issued. Their names, however, were not forwarded by the Industries Department along with the names of other eligible surplus candidates. According to the respondents, the petitioners' names were not included in the list due to a mistake on the part of the Industries Department.

(6). Learned counsel has further relied upon the judgment dated 04.10.2013 passed by this Court in a connected writ petition i.e. CWP-7003-2000 filed by similarly situated other employees, wherein, on the very issue concerning respondents No.3 and 4, this Court had held that the priority status of the said respondents could not furnish a basis for assigning them higher seniority in disregard of Rule 10.

(7). Per contra, learned State counsel has relied upon the stand taken in the affidavit filed pursuant to the order dated 21.07.2026. It is submitted that the State cannot resile from the decision taken in 1991 pursuant to the Government instructions dated 14.05.1991, whereby the surplus staff of the

Industries Department was required to be absorbed before making direct recruitment. According to the respondents, the names of respondents No.3 & 4 were forwarded by the Industries Department for absorption whereas the petitioners were sponsored through the Employment Exchange and were considered thereafter. It is, therefore, contended that the two sets of candidates were considered through separate exercises and respondents No.3 and 4 were rightly placed above the petitioners. It is further submitted that the petitioners' names did not figure in the list forwarded by the Industries Department and that the final seniority list dated 23.05.1996 was not challenged by them at the relevant time.

(8). Having considered the rival submissions and the material on record, this Court finds that the controversy is required to be examined primarily in the light of Rule 10 of the 1988 Rules. The said Rule provides that the inter-se seniority of members of the Service in each cadre shall ordinarily be determined by the length of continuous service on a post in that cadre. The proviso thereto, insofar as relevant, further provides that in the case of members recruited by direct appointment who join within the prescribed period, *“the order of merit determined by the Board shall not be disturbed.”* The Rule thus does not merely prescribe the date of appointment as the governing consideration. It expressly protects the order of merit determined by the competent selection authority. Rule 10 of the 1988 Rules is reproduced as under:-

***“10. 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 the post in that cadre of the service;*

*Provided that in the 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 Board shall not be disturbed.*

*Provided further that in the case of a candidate who is permitted to join the service after the expiry of the said period of four months in consultations with the Board, 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 preceding 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 recruitment shall be senior to a member appointed otherwise;*
- (b) a member appointed by promotion shall be senior to a member appointed by transfer;*
- (c) in the case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments 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 those appointments; and if the length of such service is also the same, an older member shall be senior to a younger member.*

*Note: Seniority of the members appointed on purely provisional basis shall be determined as and when they are regularly appointed, keeping in view the date of such regular appointments.”*

(9). There is no dispute that under Appendix ‘B’ to the 1988 Rules, the post of Technical Assistant is required to be filled in 100% by direct recruitment with prescribed qualification as Master's Degree in the specified subjects together with the requisite experience. The petitioners and respondents No.3 & 4 were ultimately brought into the same cadre of Technical Assistants and joined the posts pursuant to the selection exercise undertaken against the advertisement issued on 16.04.1991.

(10). The principal justification furnished by the official respondents for disturbing the comparative merit is that respondents No.3 & 4 belonged to the surplus category and were, therefore, required to be absorbed on priority in terms of the instructions dated 14.05.1991. The said instructions, however, cannot be read as conferring upon the surplus employees any independent or overriding right of *inter se* seniority after their appointment to the cadre. The direction that surplus employees be considered or absorbed before direct recruitment is one thing as against the conferment of seniority over and above the direct recruits, notwithstanding their lower merit in the selection. The instructions dated 14.05.1991 does not expressly provides that a surplus employee, once appointed to the cadre, shall rank above a candidate appointed to the same post despite having secured lesser merit.

(11). In *Rajni Kant Ojha v. State of Bihar, (2015) 15 SCC 172*, the Supreme Court, while considering a claim of seniority by surplus employees, drew a distinction between the source of their earlier selection and the basis on which their seniority was to be determined in the subsequent cadre. The Supreme Court held that seniority in the cadre in which the employees are subsequently inducted has to be determined in accordance with the statutory rules and the terms governing such induction.

(12). A somewhat analogous principle is discernible from the judgment of the Division Bench of the Gujarat High Court in *S.S. Thakore v. State of Gujarat, 1991 SCC OnLine Guj 354*, wherein the dispute was between employees already working as Clerks in the Directorate of Civil Supplies (Accounts) and certain employees who had initially been appointed in other departments through the Public Service Commission but were subsequently declared surplus and accommodated in the said Directorate. The surplus employees claimed that their seniority in the receiving Directorate should relate back to their initial appointments in the parent departments. Rejecting the claim, Gujarat High Court held that in the absence of any statutory provision permitting carry-forward of previous seniority, their accommodation in the new Directorate amounted to fresh appointment in that cadre and they could not claim seniority over employees already borne on the cadre merely on account of their status as surplus employees. The Court further noticed the Government policy of giving priority to surplus employees for accommodation, but held that such priority in absorption could not, by itself, confer a right to superior seniority in the receiving cadre.

(13). This distinction assumes significance in the present case because the advertisement for filling up the posts of Technical Assistant had already been issued on 16.04.1991, whereas the instructions relied upon by the respondents were issued subsequently on 14.05.1991. More importantly, the said subsequent instructions did not amend Rule 10 of the statutory 1988 Rules or prescribe any different principle for determining the inter se seniority of persons ultimately appointed to the same cadre.

(14). The aforesaid conclusion also finds considerable support from the judgment of this Court dated 04.10.2013 in **CWP-7003-2000 (Ram Saran Goyal and others v. State of Punjab and others)**, involving similar controversy in relation to the same advertisement. A Coordinate Bench of this Court, after noticing Rule 10 of the 1988 Rules, held that the reasoning adopted by the official respondents was contrary to the rule of seniority, which protected the merit determined by the Board/Recruitment Authority. It was specifically observed that there was no occasion to assign respondents No.3 and 4 a higher place in the seniority list, particularly when there was no dispute regarding their dates of joining. The writ petition was consequently allowed and the petitioners therein were held senior to respondents No.3 and 4 and entitled to consideration for promotion as Research Officer from 25.11.1999.

(15). Moreover, neither the 1988 Rules nor the executive instructions dated 14.05.1991 authorised the official respondents to create two classes of members of the same cadre for the purpose of seniority and place the surplus employees above candidates having higher merit after the candidates were appointed to the same cadre and joined on the same date. Even otherwise

also, the administrative instructions may regulate the manner in which a category of eligible persons is to be considered or absorbed, but in the absence of an express statutory provision, they cannot be construed to override the service rules governing seniority.

(16). There is yet another aspect which cannot be ignored. The present petitioners had secured higher marks than respondents No.3 and 4 in the selection. The State's own case, as noticed from the record, is that candidates from the second selection process who had secured marks higher than respondents No.3 & 4 were placed in the waiting list. Thus, acceptance of the State's interpretation would result in a candidate securing lower merit being placed senior merely because he belonged to a priority category, although the statutory seniority rule contains no such mandate. Such an interpretation would render the protection expressly granted to the order of merit under Rule 10 substantially otiose.

(17). In view of the aforesaid discussion, this Court finds that the respondents were not justified in placing respondents No.3 & 4 above the petitioners merely on the ground of their status as surplus employees. Once the petitioners and respondents No.3 & 4 entered the same cadre pursuant to the recruitment to the post of Technical Assistant, their inter-se seniority was required to be determined in accordance with Rule 10 of the 1988 Rules, and the order of merit determined by the competent Selection Committee could not be disturbed in the manner done by the respondents.

(18). Consequently, this writ petition is allowed and the the seniority list dated 11.08.2000, insofar as it places respondents No.3 and 4 above the petitioners, is quashed. The consequential promotion of respondents No.3 &

4 to the post of Research Officer vide order dated 25.11.1999, having proceeded on the basis of the erroneous seniority position, is also quashed.

(19). Needless to say that the petitioners shall be entitled to be treated senior to respondents No.3 & 4 and consequential consideration for promotion to the post of Research Officer w.e.f. 25.11.1999, the date on which respondents No.3 & 4 were promoted.

(20). Since the petitioners have already retired from service, the respondents shall notionally re-fix their seniority and promotion w.e.f. 25.11.1999 and re-determine their retiral and other consequential benefits on that basis. The actual monetary benefits shall be worked out in accordance with law, keeping in view the fact that the petitioners did not actually discharge the duties of the higher post during the intervening period. The exercise shall be completed within a period of two months from the date of receipt of a certified copy of this order.

(21). The writ petition stands allowed in the above terms.

(22). Ordered accordingly.

(23). Pending application(s), if any, stands disposed of.

**03.09.2026**

V.Vishal

**(Sandeep Moudgil)**  
**Judge**

1. *Whether speaking/reasoned?* :  
2. *Whether reportable?* :

*Yes/No*  
*Yes/No*