

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22736 of 2012 (O&M)

Date of Decision: 10.10.2014

Jasman Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Saurabh Arora, Advocate,
for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

The petitioner was appointed as a Master (Teacher) in school cadre in 1992 and respondent Nos.4 and 5 were appointed as Mistresses in March and April 1994. At the time, the rules of service were known as the Punjab State Education Class III (School Cadre) Service Rules, 1978. Male and female cadres were separate and seniority was cast accordingly and promotions made cadre-wise from two channels according to separate lists on the next higher post of Lecturers. Respondent Nos.4 and 5 were promoted as Lecturers in August 2001. The petitioner claims he did not know of this till 2010 when the seniority list of teachers in school cadre was circulated. The petitioner was promoted as Lecturer in May 2012. He had evidently been 'ignored' for promotion according to longer length of service, at the time his female juniors were promoted in 2001 from their seniority

list.

Aggrieved by being ignored for timely promotion from the date when his juniors were promoted he served a legal notice on the respondents which was not decided. He has approached this Court for an issuance of a mandamus to the State directing it to promote the petitioner with effect from the date when the juniors respondent Nos.4 and 5 were promoted eleven years before him even when they had much shorter length of service to their credit.

In *Neelam Rani vs. State of Punjab and others, 2010 (1) SCT 588*, the Division Bench of this Court considered the constitutional validity of maintaining separate lists of male and female teachers and read down Rule 3 of the rules to mean:-

"Therefore, we read down Rule 3 and the Appendix A to mean that posts other than the posts meant for female candidates are required to be filled up on the basis of merit without any classification on the basis of sex. Thus the words – Headmaster, Lecturer (Male) and Masters wherever they appear in the Rules will include the persons of both sexes. However, such declaration of law is without examining the extent of reservation in favour of women and that whether such extent of reservation violates any law."

I have heard Mr. Saurabh Arora appearing for the petitioner and Ms. Monika Chibber Sharma for the State at some length.

Mr. Arora relies on *Neelam Rani's* case to contend that the past loss of timely promotion has seriously prejudiced his client's career which deserves to be restored by according retrospective promotion to him from the dates when respondent Nos.4 and 5 were promoted as Lecturers (School Cadre). This was as a result of a constitutionally faulty rule of maintaining separate gender based seniority lists. Which has been declared bad in

Neelam Rani case. This means rule 3 of the rules was unconstitutional to start with but was saved by reading it down so that appointments itself are not upset.

In response, Ms. Sharma though cannot dispute that the petitioner was appointed prior in time to respondent Nos.4 and 5 on the same post of Master/Mistress and is, therefore, senior from the dates of initial appointment but submits that this Court in *Neelam Rani's* case specifically directed while reading down Rule 3 and Appendix 'A' of the rules, that this would mean that posts other than the posts meant for female quota candidates are required to be filled up on the basis of merit without any classification on the basis of sex. Thus the words – Headmaster, Lecturer (Male) and Masters wherever they appear in the Rules will mean both the sexes. Learned counsel has however entered a caveat citing the directions issued by the Bench in her favour that all previous appointments should not be re-opened or invalidated on the basis of law declared by the Court, but all future appointments shall be made on the basis of merit. Therefore, the Court directions are in the future and not retrospective and will not confer a right on the petitioner to claim promotion from the back date prior to the judgment.

While the protection works as a saving clause on appointments made which cannot be re-opened but would that mean after de-classification of Masters and Mistresses to remove gender discrimination, the petitioner would have no right to claim promotion from the date when his admitted juniors were promoted after the rules were read down to save appointments from being declared ultra vires the Constitution. Prospectivity of the

judgment in *Neelam Rani's* case requires to be read as one meant to save past appointments and not promotions made of female candidates which may not be open to be disturbed but retroactive rights of the petitioner for promotion from the due date the juniors were promoted to the higher post cannot be legally denied and the only possible way to remove unfair discrimination, as now declared in *Neelam Rani* case, is by ordering restitution of past loss in rank and status.

Ms. Sharma next submits that if such a direction is issued it may open up a pandora's box and cause administrative chaos in the Department where many retrospective promotions may have to be given unsettling things settled before the verdict in *Neelam Rani* was pronounced.

The argument appears at first flush attractive but on careful thought I find no substance in it. It is not for this Court to examine such an issue in its ramifications and to figure out the fallout of such a direction so long as an individual stands before the Court against unfair discrimination claiming promotion from a retrospective date, that is, w.e.f. August 2001 when respondents 4 & 5 were promoted as Lecturers. When seniority is merit based it has to be worked batch-wise. The earlier batch taking precedence over the subsequent batch in direct appointment. The petitioner's seniority would relate back to the merit determined in the initial appointment process and secure to him the next promotion from the date his juniors were promoted to the next higher post by the deeming fiction of the law declared in *Neelam Rani* which has reference in its ratio to appointments but not promotions made before the judgment was rendered. Since no one has to be displaced, respondents 4 & 5 cannot be seen as

aggrieved persons. The two separate seniority lists maintained earlier under rule 3 stand merged the day orders were pronounced in *Neelam Rani*.

Accordingly this petition is allowed. A mandamus is issued to the respondent department to promote the petitioner as Lecturer from the relevant due date in August 2001 when respondents 4 & 5 were promoted. He would accordingly be given benefit of retrospective seniority though notionally but with rights to further promotion in the changed circumstances. He would be granted notional increments in the higher pay scale of the promotional post from the due back date but not the monetary benefits thereof including difference of arrears of salary which he would not be entitled to claim before the date of pronouncement in *Neelam Rani* case which decision declared the rights of the parties for the first time by reading down rule 3 of the rules but not striking it down. However, consequential monetary benefits will flow in full from the date when *Neelam Rani* was decided. Ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

10.10.2014

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