

Before Surya Kant and Sudip Ahluwalia, JJ.

NAVJEET KAUR—Appellant

versus

NAVNEET WALIA AND OTHERS—Respondents

LPA No.1504 of 2013

May 19, 2017

(A) *Punjab Department of Technical Education and Industrial Training (Technical Education Wing) Group-A Service Rules, 2001—Rls. 2(d), 3 and 9—Punjab Civil Services (General and Common Conditions of Service) Rules, 1994—Rl.8—Seniority inter se the persons (Lecturers) appointed from different batches of selection—Rule 9 of 2001 Rules and Rule 8 of 1994 Rules do not provide any mode of determination of seniority between the persons appointed from different selection lists of different batches—Therefore, Rule 8 of 1994 Rules is of no assistance in resolving issue being totally silent on how the common seniority in a case where the person of a later batch gets appointed first than the person of earlier batch—Where candidate of earlier batch cannot be blamed for the delay in his appointment—Sr.No.8 of Appendix "B" of the 'Institutional Cadre Polytechnic' also merely suggest method of preparing workable seniority' of Lecturers appointed in different branches only for the purpose of their promotion as Senior Lecturer in Modern Office Practice which also came into force only on 02.03.2001 which cannot be applied retrospectively—In the absence of Rules, only Executive Instructions can supplement Rules if no instructions than principles of fairness, just and good conscience have to be invoked to resolve the controversy—Punjab Government instructions dated 24.11.1962 are squarely applicable in present situation—Criteria evolved therein for assignment of seniority from the date of making recommendations by the Services Selection Commission most appropriate especially when distinct posts are amalgamated in a common pool so that a workable common seniority can be prepared for the purpose of promotion to higher posts—For delay in the process of completion of ministerial exercise of verification and medical examination formalities, if a candidate of earlier batch is appointed later in time and a candidate of later batch is appointed earlier, it may lead to a totally iniquitous, unjust and arbitrary consequences if their common seniority inter se is determined on the basis of their joining—To avoid such incidental*

consequences the State Govt. issued instructions dated 24.11.1962 which are still in vogue—The 1962 instructions lay down an equitable criteria which does not offend Articles 14 and 16 or any other settled principles of service jurisprudence—The ministerial inaction, deliberate or otherwise, cannot work to the disadvantage of candidates of earlier batch—No reason to deny or delay appointment of appellant being recommended earlier by Selection Board—She will be entitled to rank senior in order of her merit to those recommended in the later batch, irrespective of her joining later in time.

Held that, the first respondent, on the other hand, was selected pursuant to the advertisement dated 26.08.1995 and recommendations for his appointment were made on 25.01.1996. He joined on 25.03.1996. The appellant and the first respondent both were selected through different selection processes, therefore, there is no *inter se* merit determined between them. Further, they were appointed against different posts though comprising same cadre of MOP hence the principal Rule 8 of the 1994 Rules which provides that seniority *inter se* of persons appointed to a post in each cadre of a service shall be determined by the length of continuous service is also not attracted. Similarly, third *proviso* to Rule 8 cannot be applied to dislodge the appellant from her claim because respondent No.1 being a selectee of the next selection process could claim seniority above her under the said *proviso* only if she had failed to join the post within the stipulated period given for joining the post and was permitted to join “after expiry of the said period of four months...”. Learned Single Judge has thus rightly held that Rule 8 of 1994 Rules is irrelevant to determine the seniority dispute between the parties.

(Para 22)

Further held that, Secondly, Appendix ‘B’ relied upon by learned Single Judge is not the source for determination of seniority. Appendix ‘B’ is referable to Rule 7 which deals with “method of appointment and qualifications” to a post in the service. Sr.No.8 in Appendix ‘B’ of the ‘Institutional Cadre Polytechnic’ merely suggests the method of preparing ‘workable seniority’ of Lecturers appointed in different branches for the purpose of their promotion as Senior Lecturer in Modern Office Practice. Such a workable seniority needs to be determined only at the stage of making promotion to the post of Senior Lecturer. It is not a criteria for determining seniority at the initial stage on appointment as Lecturers. Thirdly, the criteria of determining workable seniority for the purpose of promotion as Senior Lecturer too

came into force on 25.03.2001 and not prior thereto. Such a criteria, therefore, cannot be applied retrospectively to determine the seniority fate of Lecturers appointed in the year 1996. The 2001 Rules, therefore, do not advance the case of the either party.

(Para 24)

Further held that, the appellant has placed on record the Executive Instructions dated 24.11.1962 which, in the absence of anything contrary thereto, are squarely applicable in the case in hand. These Instructions, in no uncertain terms, lay down that seniority of the candidates recommended for appointment by the Commission shall be determined “with reference to the date of issue of recommendations”. It is irrefutable that if these Instructions are given effect then the appellant deserves to rank senior to the first respondent for the reason that the appellant was recommended for appointment on 05.12.1995 whereas the first respondent on 25.01.1996.

(Para 26)

Further held that, there is a lot of rationality and logic behind the criteria evolved in these Instructions for assignment of seniority from the date of making recommendations by the Commission. It is a matter of common knowledge that there are numerous posts, especially in teaching cadres, for which separate selection processes are conducted keeping in view the academic/professional qualifications, nature of experience, duties and responsibilities. Such distinct posts are eventually amalgamated in a common pool so that a workable common seniority can be prepared for the purpose of promotion to higher posts.

(Para 27)

Further held that, these Instructions, nonetheless, cannot be applied for determining the seniority dispute *inter se* of the candidates of the same selection batch, for their seniority has to be determined strictly in order of merit fixed by the Commission or Board. Similarly, if there is any conflict between the Rules framed under *proviso* to Article 309 of the Constitution or the Executive Instructions, the Rules being statutory in character shall prevail upon the Executive Instructions. The 1962 Instructions come into play thus only in a situation where a batch of more than one direct recruits is to be placed in a common seniority list along with another batch of direct recruits or those appointed through other sources of recruitment and where such *inter se* placement is not regulated by any provision of the Rules. Since the 1962 Instructions lay down an equitable criteria which does not offend either Articles 14&16 of the Constitution or any other settled

principle of service jurisprudence, we are inclined to follow these Instructions to resolve the seniority dispute between the appellant and the first respondent.

(Para 29)

(B) Punjab Department of Technical Education and Industrial Training (Technical Education Wing) Group-A Service Rules, 2001—Rls.2(d), 3(2) and 9—Punjab Civil Services (General and Common Conditions of Service) Rules, 1994—Rl.8—Ex-cadre post—Seniority inter-se the persons (Lecturers) appointed from different batches of selection—Once the post is amalgamated in the common cadre for the purpose of seniority and promotion, it cannot be termed as an ex- cadre post—A Lecturer-in-Commerce is not alien to the category of Modern Office Practice—Appeal allowed.

Held that, Secondly, Rule 3(2) of the 2001 Rules unequivocally provides that from the date of publication of these Rules, there shall be constituted a ‘Service’ known as the Punjab, Department of Technical Education and Industrial Training (Technical Wing) Group-A Service which shall consist of... “persons appointed in the Department of Technical Education and Industrial Training as per the policy approved by the Government from time to time”. The appellant was admittedly a person already appointed in the Department of Technical Education as a Lecturer-in-Commerce. Her post thus stands included in the ‘Service’ defined under the Rules. Thirdly, Rule 4 which deals with the number and character of posts provides that the service shall consist of such number and cadres and each cadre shall comprise such number of posts as are shown in Appendix ‘A’. Its *proviso* further says in so many words that nothing in these Rules shall affect “the inherent right of the Government to add to or to reduce the number of such posts or to create new posts with different designations and scales of pay, whether permanently or temporarily”. The nomenclature of a post mentioned in Appendix ‘B’ is therefore not a *sine qua non* for the purpose of its encadrement in the service. Fourthly, a Lecturer-in-Modern Office Practice is illustrated in Sr.No.12 of Appendix ‘B’ to include ‘Commercial Practice’, ‘Commercial and Computer Practice’ and ‘Accountancy’ etc. The qualification for these posts is M.Com. 1st Class with relevant subject at B.Com. level. A Lecturer-in-Commerce is thus not alien to the category of Modern Office Practice. We thus hold that the appellant has been appointed and is occupying a post under the 2001 Rules and subject to her fulfilling the eligibility conditions, she is entitled to be considered for promotion as Senior

Lecturer and as Head of the Department or as Principal, as the case may be, under the 2001 Rules on the basis of her seniority as Lecturer w.e.f. 13.02.1996.

(Para 35)

Gurminder Singh, Senior Advocate
with RPS Bara, Advocate
for the appellant

Rajiv Atma Ram, Senior Advocate
with Nishant Bhardwaj, Advocate
for respondent No.1

Rajesh Bhardwaj, Addl. AG Punjab

SURYA KANT, J.

(1) This Letters Patent Appeal assails the order dated 03.04.2013 whereby learned Single Judge allowed the writ petition filed by the first respondent and had quashed the orders dated 11.11.2010, 16.11.2010 (P18 to P20) vide which, the State Government resolved the seniority dispute and declared the appellant senior to respondent No.1 in the cadre of Lecturers and issued the final seniority list dated 16.11.2010 (P20) of Lecturers in Stenography, Commercial and Secretarial Practice/Commerce. The show cause notice of the even date issued to first respondent as to why his antedated promotion to the post of Head of the Department w.e.f. 21.06.2000 be not reviewed – has also been annulled. Consequently, first respondent has become senior to the appellant.

Facts:

(2) The Punjab Public Service Commission (in short, ‘the Commission’) on 19.11.1994 (P1) invited applications for various posts of Lecturers including four posts of Lecturers-in-Commerce for appointment in the Government Polytechnics under the Department of Technical Education and Industrial Training, Punjab. The appellant was also a candidate for the post of Lecturer-in-Commerce for which interviews were held in August, 1995. The Commission vide memo dated 05.12.1995 recommended names of the following candidates in order of merit for appointment:-

1. Rajiv Puri
2. Ms. Navjeet Kaur (appellant)

3. Dharminder Singh

4. Baljeet Singh

(3) The Department processed the recommendations and offered appointment to the first candidate in order of merit (Rajiv Puri) on 13.02.1996. The appointment letters of the rest of the selected candidates were, however, not issued for the reasons best known to the Department. While candidates placed at No.3&4 in the merit list were appointed on 02.04.1996, the appellant was offered appointment only on 11.07.1996 pursuant to which she joined on 16.07.1996. It is, however, an admitted fact that the reason for the delay in issuance of appointment letter was not attributable to the appellant.

(4) The Commission issued yet another advertisement on 26.08.1995 (P3) inviting applications for recruitment to three posts of Lecturers-in- Commerce and Secretarial Practice for appointment in Government Polytechnics under the Department of Technical Education and Industrial Training, Punjab. The first respondent applied in response to the said advertisement and after conducting interviews, the Commission recommended names for appointment including that of first respondent, on 25.01.1996. The first respondent joined on 25.03.1996.

(5) It may be seen that though the dates of advertisement and selection of the appellant were prior in time as compared to those of the first respondent but she got appointment later than the first respondent. The Department issued a seniority list and applying the principle of continuous length of service placed the first respondent above the appellant. The aggrieved appellant challenged the seniority list in CWP No.15318 of 2008. It appears that owing to the seniority dispute between the appellant and first respondent as well as some other Lecturers, the State Government constituted a Committee to re-examine the whole matter.

(6) The Officers' Committee submitted its report on 08.09.2010 after hearing the Lecturers concerned. The Principal Secretary of the Department thereafter considered their objections *in extenso* against the report and after hearing the submissions made from both sides, he vide a self-speaking order dated 11.11.2010 (P18) held the appellant entitled to seniority above the first respondent subject to final confirmation by the Minister-in-Charge of the Technical Education Department. The Principal Secretary was of the view that while determining the seniority of direct recruits their *inter se* merit cannot be disturbed and since the

appellant was next to Rajiv Puri in order of merit, she was entitled to be assigned seniority immediately after Rajiv Puri, namely, above respondent No.1.

(7) In Para 17.0 of his order, the Principal Secretary concluded as follows:-

“After careful consideration of arguments of the officers and the available facts, it is observed that the dispute of seniority has arisen because the department vide its order of 25.3.2003 issued a seniority list, which is based on the joining dates i.e. length of service of these officers and inter se merit as determined and recommended by the Punjab Public Service Commission has been disturbed. All officers present during the hearing have agreed that information with regard to their letters of recommendation, letters of appointment, dates of joining, dates of birth as available on record is correct. The Department has ignored the Punjab Department of Technical Education & Industrial Training (Technical Education Wing) Group-A Service Rules, 2001 read with Rule 8 of Rules 1994 contained in Appendix-C to these Rules which clearly lays down that in determining seniority of officers directly recruited on the recommendations of the Punjab Public Service Commission, their inter se merit shall not be disturbed. The Rules referred to by Sh. Navneet Walia relate to promotion of officers and not to determination of seniority. There is apparently a specific rule with regard to determination of seniority of officers, which has not been followed. Thus, it is concluded that the revised seniority list has been rightly prepared by the department and, therefore, it should be confirmed and finalized by the competent authority i.e. Technical Education Minister. Hon’ble High Court may be apprised of the decision after approval of the Minister.”

(emphasis applied)

(8) The Minister-in-charge also confirmed the revised seniority list. The Department thus issued the final seniority list dated 16.11.2010 along with a show cause notice to the first respondent as to why his promotion as Head of the Department granted on 15.05.2007 retrospectively w.e.f. 21.06.2000 be not reviewed? The aggrieved first respondent approached this Court.

(9) There were concededly no departmental service rules in force to regulate the conditions of service of the appellant or the first respondent at the time of their appointments. The Punjab Department of Technical Education and Industrial Training (Technical Education Wing) Group-A Service Rules, 2001 (in short, the 2001 Rules) were notified on 29.03.2001. There is no provision in these Rules for determining the seniority. However, Rule 9 of these Rules says that in respect of the matters which are not specifically provided in these Rules, the members of the Service shall be governed by the provisions of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time. Both sides, nevertheless, have made reference to some of the provisions of 2001 Rules, hence the relevant provisions are briefly noticed.

RELEVANT RULES

(10) Rule 2(d) of 2001 Rules defines “service” to mean the “Punjab, Department of Technical Education and Industrial Training (Technical Education Wing) Group-A Service”. Rule 3 of these Rules defines “Constitution of Service” which includes the:-

“(1) Persons appointed in the Department of Industries under the provisions of the Punjab Industrial Training Service (Class I and II) Rules, 1974, who have been transferred to the Department of Technical Education and Industrial Training and the persons appointed subsequently in the Department of Technical Education and Industrial Training against the posts governed under the provisions of the aforesaid rules; and

(2) Persons appointed in the Department of Technical Education and Industrial Training as per the policy approved by the Government from time to time.”

(11) Rule 4 describes the number and character of post and it reads as under:-

“**4. Number and Character of Post:** The service shall consist of such number of cadres and each cadre shall comprise such number of posts as shown in Appendix ‘A’.

Provided that nothing in these rules shall effect 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.”

(12) Rule 9 of the 2001 Rules is to the following effect:-

“9. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994: (1) In respect of the matters, which are not specifically provided in these rules, the members of the Service shall be governed by the provisions of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time.

(2) The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 at present, in force are contained in Appendix ‘C’.”

(13) Appendix ‘B’ of the 2001 Rules divides the posts in two cadres, namely, (i) Directorate Cadre; and (ii) Institution Cadre Polytechnic. The posts of Principal, Project Officer, Heads of the Departments of Engineering/ Non-Engineering/Applied Sciences, Senior Lecturers Engineering/Non- Engineering and Lecturers Engineering/Modern Office Practice/Commercial Arts and Graphic Designs/Fashion Technology and Textile Design/Fashion Design etc. fall in the ‘Institution Cadre Polytechnic’.

(14) The post of Senior Lecturer in Non-Engineering to the extent of 25% are to be filled in by direct recruitment and 75% by way of promotion. The qualification and eligibility conditions for promotion to the post of Senior Lecturer Non-Engineering are as under:-

(15) According to Rule 9 of the 2001 Rules, the matters which are not specifically provided under these Rules are to be regulated in accordance with the provisions of Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (in short, ‘the 1994 Rules’). The 1994 Rules are applicable to all the posts in Class-II and III services in connection with the State of Punjab irrespective of the Department to which such posts belong. Since 2001 Rules are silent on the mode of determination of seniority, let us find out as to whether Rule 8 of 1994 Rules throws any light on the controversy in hands. The said Rule reads as follows:-

“8. Seniority- The seniority inter se of persons appointed to posts in each cadre of a service shall be determined by the length of continuous service on such post in that cadre of the service:

Provided that in case of persons recruited by direct

appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time 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 the Board, as the case may be shall not be disturbed:

Provided further that in case a person is permitted to join the post after the expiry of the said period of four month in consultation with the commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post:

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned service before the person referred to in the preceding proviso joins the person so referred shall be placed below all the persons of the next selection, who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows:-

- (a) xxxx xxxx xxxx
- (b) xxxx xxxx xxxx
- (c) xxxx xxxx xxxx
- (d) xxxx xxxx xxxx

Note- Seniority of persons appointed on purely provisional basis or on ad hoc basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.”

(16) Rule 8 *ibid* though covers up various eventualities of seniority conflicts, nevertheless, it is totally silent and does not enlighten as to how to determine the common seniority in a case where the selectee of a later batch gets appointed earlier than the selectee(s) of the first batch? We thus cannot fall back upon Rule 8 also to resolve the instant controversy and the observations to this effect made by learned Single Judge are apparently correct.

EXECUTIVE INSTRUCTIONS

(17) The first respondent in his writ petition relied upon the executive Instructions dated 27.04.1982 circulated by the Department of Personnel Administrative Reforms (P24) to urge that the date of occurrence of the vacancy shall be taken as the relevant date for determining the eligibility for promotion to a higher post, and if that is so, the appellant did not fulfill the condition of five years' professional and/or teaching experience after acquiring the minimum qualification as on 21.06.2000 when the vacancy in the post of Head of Department occurred as she, having been appointed as a Lecturer-in-Commerce on 16.07.1996 was thus lacking in five years' experience.

(18) The appellant has placed on record the instructions dated 24.11.1962 (A1) which pertain to the determination of seniority of the candidates appointed through direct recruitment. These Instructions are to the following effect:-

“I am directed to invite a reference to Punjab Government letters No.1028-GII-57/27804, dated the 29th March, 1957 and No.946-4GS-62/8282, dated the 16th March, 1962, which lay down that the seniority of candidates should be determined with reference to the date of issue of the Subordinate Services Selection Boards recommendations. Many references have been received from time to time from the various departments to ascertain the procedure to be followed in case of recommendations of the Punjab Public Service Commission. I am to reaffirm that the same procedure applies to the recommendations of the P.P.S.C. As far as inter se seniority is concerned, the date of recommendation by the Punjab Public Service Commission will determine seniority for direct recruits as well as appointments by transfer. As far as inter se seniority among direct recruits is concerned the order of merit suggested by the P.P.S.C. will be maintained.”

(emphasis by us)

FINDINGS BY LEARNED SINGLE JUDGE:

(19) In the light of the facts narrated above read with the provisions of 1994 and 2001 Rules, learned Single Judge has held that Rule 8 of the 1994 Rules does not respond to the quandary which has arisen out of the facts in hand as the appellant and the first respondent had not been appointed pursuant to one and the same selection and there is no *inter se* merit determination between them. Learned Single Judge has further held that since Appendix 'B' (Sr.No.8) of 2001 Rules,

which contains provision for promotion to the post of Senior Lecturer Non-Engineering (MOP) provides that “*inter se seniority of Lecturers*” for such promotion shall be kept in view “...*from the respective dates of appointment against the post...*”, hence the first respondent deserves to rank senior to the appellant in their *inter se* seniority as Lecturers as he had joined earlier than the appellant. Hence this Intra Court Appeal by the aggrieved appellant.

(20) Having heard learned counsel for the parties at a considerable length and after going through the record, we find that the following questions fall for determination in this appeal:-

(i) Whether the appellant is entitled to rank senior to the first respondent on the plea that her name was recommended for appointment prior in time and she is not responsible for the delay caused in issuing appointment letter to her or that respondent No.1 is entitled to be placed above the appellant as he joined as Lecturer well before the appellant?

(ii) Whether seniority *inter se* between the appellant and the first respondent is to be determined as per Rule 8 of the 1994 Rules read with Appendix ‘B’ of 2001 Rules or in accordance with the Executive Instructions read with the general principles governing fixation of seniority?

(iii) Whether the appellant has been appointed as Lecturer against an ex-cadre post, and if so, whether she is ineligible for promotion to the post of Senior Lecturer (MOP) and Head of Department (MOP) under the provisions of 2001 Rules?

Questions No.(i) & (ii)

(21) It is a matter of record that the advertisement against which the appellant was selected was published on 19.11.1994 and the Commission made its recommendations on 05.12.1995. It is also an admitted fact that the candidate at No.1 in order of merit (Rajiv Puri) was appointed on 13.02.1996 but the appellant who was the immediate next candidate in the merit list was offered appointment only on 11.07.1996. The fact that the appellant is not to be blamed for the said delay has been candidly acknowledged by the official respondents in their written statement in following terms:-

“Four posts of Lecturer in commerce were advertised by the Punjab Public Service Commission in the year 1994 and the

interview was held by the Punjab Public Service Commission on 08-08-1995, 9, 16, 22, 23 and 24-08-1995 and the Punjab Public Service Commission recommended the names of the following persons in order of merit vide letter dated 05-12-1995.

1. Sh. Rajiv Puri
2. Smt. Navjeet Kaur (Respondent No.4)
3. Sh. Dharminder Singh (He did not join)
4. Sh. Baljit Singh (Respondent No.5)

For the subject of Commercial & Secretarial Practice three posts of Lecturer were advertised in the year 1995, the interview was held on 18-01-1996 and Punjab Public Service Commission recommended the names of the following candidates in order of merit vide letter dated 25-01-1996.

1. Sh. Navneet Walia (Petitioner)
2. Smt. Parveen Kumari
3. No other candidates of S.C. Category except shown at Sr. No.2 was available.

Though the name of the petitioner was recommended subsequently, but he was issued appointment letter on 25-03-1996 i.e. prior to respondent No.4 and other two recommendees of 05-12-1995 batch only candidate at Sr. No.1 Sh. Rajiv Puri of selection dated 05-12-1995 was given appointment on 13-02-1996. However, respondent No.4 was issued the appointment letter on 11-07-1996 and she joined on 16-07-1996 within the period stipulated in the appointment letter. There is no fault of respondent No.4 for delay in issuance of appointment letter."

(emphasis applied)

(22) The first respondent, on the other hand, was selected pursuant to the advertisement dated 26.08.1995 and recommendations for his appointment were made on 25.01.1996. He joined on 25.03.1996. The appellant and the first respondent both were selected through different selection processes, therefore, there is no *inter se* merit determined between them. Further, they were appointed against

different posts though comprising same cadre of MOP hence the principal Rule 8 of the 1994 Rules which provides that seniority *inter se* of persons appointed to a post in each cadre of a service shall be determined by the length of continuous service is also not attracted. Similarly, third *proviso* to Rule 8 cannot be applied to dislodge the appellant from her claim because respondent No.1 being a selectee of the next selection process could claim seniority above her under the said *proviso* only if she had failed to join the post within the stipulated period given for joining the post and was permitted to join “after expiry of the said period of four months...”. Learned Single Judge has thus rightly held that Rule 8 of 1994 Rules is irrelevant to determine the seniority dispute between the parties.

(23) As regard to the 2001 Rules, it appears to us that provisions of these Rules cannot be relied upon to resolve the seniority claim between appellant and the first respondent. We say so for the reason that firstly these Rules came into force w.e.f. 29.03.2001 whereas the appellant and first respondent were appointed in the year 1996 and their seniority has to be determined in the year of their respective appointments only.

(24) Secondly, Appendix ‘B’ relied upon by learned Single Judge is not the source for determination of seniority. Appendix ‘B’ is referable to Rule 7 which deals with “method of appointment and qualifications” to a post in the service. Sr.No.8 in Appendix ‘B’ of the ‘Institutional Cadre Polytechnic’ merely suggests the method of preparing ‘workable seniority’ of Lecturers appointed in different branches for the purpose of their promotion as Senior Lecturer in Modern Office Practice. Such a workable seniority needs to be determined only at the stage of making promotion to the post of Senior Lecturer. It is not a criteria for determining seniority at the initial stage on appointment as Lecturers. Thirdly, the criteria of determining workable seniority for the purpose of promotion as Senior Lecturer too came into force on 25.03.2001 and not prior thereto. Such a criteria, therefore, cannot be applied retrospectively to determine the seniority fate of Lecturers appointed in the year 1996. The 2001 Rules, therefore, do not advance the case of the either party.

(25) We have thus reached a stage where neither the 1994 Rules nor that of 2001 can be pressed into aid. In the absence of Rules, one has to see whether there are any Executive Instructions, to supplement the Rules? If not, then what are those principles of fairness, just and good conscience which can be invoked to resolve the controversy?

(26) The appellant has placed on record the Executive Instructions dated 24.11.1962 which, in the absence of anything contrary thereto, are squarely applicable in the case in hand. These Instructions, in no uncertain terms, lay down that seniority of the candidates recommended for appointment by the Commission shall be determined “with reference to the date of issue of recommendations”. It is irrefutable that if these Instructions are given effect then the appellant deserves to rank senior to the first respondent for the reason that the appellant was recommended for appointment on 05.12.1995 whereas the first respondent on 25.01.1996.

(27) There is a lot of rationality and logic behind the criteria evolved in these Instructions for assignment of seniority from the date of making recommendations by the Commission. It is a matter of common knowledge that there are numerous posts, especially in teaching cadres, for which separate selection processes are conducted keeping in view the academic/professional qualifications, nature of experience, duties and responsibilities. Such distinct posts are eventually amalgamated in a common pool so that a workable common seniority can be prepared for the purpose of promotion to higher posts.

(27-A) The process of making appointment, after the recommendations are received from the recruiting agency, is undoubtedly a ministerial exercise. Such process involves verification of antecedents, medical examination and several other formalities. The completion of these processes is not within the hands of a selected candidate. The candidate who is at No.1 in the order of merit in the very first selection list might be residing at a far off remote place and in that case the police authorities shall take more time in verifying the character and antecedents as compared to a candidate who is the lowest in merit of the last selection list but is resident of a nearby area. It is obvious that the latter candidate will secure appointment earlier than the former. It may thus lead to totally iniquitous and unjust consequences if their common seniority *inter se* is determined based upon the dates of their joining. It is with a view to avoid such like arbitrary, fortuitous and incidental consequences that the State Government issued the Executive Instructions dated 24.11.1962 which are still in vogue.

(28) These instructions supplement Rule 8 of 1994 Rules and fill in the vacuum left out by the Rule Making Authority and thus deals with a situation which has not been taken care of expressly or by implication under the said Rule.

(29) These Instructions, nonetheless, cannot be applied for determining the seniority dispute *inter se* of the candidates of the same selection batch, for their seniority has to be determined strictly in order of merit fixed by the Commission or Board. Similarly, if there is any conflict between the Rules framed under *proviso* to Article 309 of the Constitution or the Executive Instructions, the Rules being statutory in character shall prevail upon the Executive Instructions. The 1962 Instructions come into play thus only in a situation where a batch of more than one direct recruits is to be placed in a common seniority list along with another batch of direct recruits or those appointed through other sources of recruitment and where such *inter se* placement is not regulated by any provision of the Rules. Since the 1962 Instructions lay down an equitable criteria which does not offend either Articles 14 & 16 of the Constitution or any other settled principle of service jurisprudence, we are inclined to follow these Instructions to resolve the seniority dispute between the appellant and the first respondent.

(30) It goes without saying that had the Department acted reasonably, the appellant, in all circumstances, would have been appointed along with Rajiv Puri on 13.02.1996. The ministerial inaction, deliberate or otherwise, cannot work to her disadvantage. Once the recommendations made by the Commission were accepted and acted upon by the competent authority, there was no reason to deny or delay the appointment of appellant who was within the advertised posts and next in order of merit after Rajiv Puri. For this reason alone, it is imperative to direct that the appellant shall be deemed to have been appointed along with Rajiv Puri on 13.02.1996.

(31) It is a matter of record that Rajiv Puri was assigned seniority w.e.f. 13.02.1996. Similarly, candidates below in the order of merit who joined on 02.04.1996 were also assigned seniority from the dates of their joining. The appellant in every eventuality was entitled to be appointed before the candidates lower in merit and for this reason also, she deserves to be taken to have been appointed w.e.f. 13.02.1996.

(32) In the light of the above discussion, we hold that the reasoning assigned by learned Single Judge to the effect that the criteria prescribed in Appendix 'B' of 2001 Rules for preparation of the workable seniority for promotion as Senior Lecturer is relevant to determine seniority between the appellant and the first respondent, is not a correct statement in law. The finding to that extent is, hereby, set aside. We further hold that keeping in view the Executive Instructions dated 24.11.1962 coupled with the principles of equity, just

and fairness, the appellant being a selectee of 1995 is entitled to seniority above that of respondent No.1 who was selected subsequently in January, 1996, for the delay in appointment of the appellant is not her fault. We further hold that the appellant was entitled to be appointed along with the candidate at No.1 in order of merit hence she is deemed to have been appointed as Lecturer w.e.f. 13.02.1996 and consequently shall rank senior to first respondent in the cadre of Lecturers. Questions No.(i) & (ii) stand answered accordingly.

Question No.(iii)

(33) It was urged by Shri Rajiv Atma Ram, learned senior counsel for the first respondent that the appellant was appointed as Lecturer-in-Commerce much before the 2001 Rules came into force. However, the said post has not been included by the Rule Making Authority at Sr.No.12 of Appendix 'B' of these Rules which means that the post of Lecturer-in-Commerce has not been encadared under these Rules. He further relied upon the "Remarks" column at Sr.No.8 "Senior Lecturer Non-Engineering" of Appendix B to urge that even for the purpose of promotion to the post of Senior Lecturer (MOP) Lecturer-in-Commerce has not been included amongst the different categories of Lecturers whose workable seniority is required to be prepared. He thus argued that the appellant has no locus to seek determination of seniority vis-à-vis the first respondent as she is neither eligible for promotion as Senior Lecturer (MOP) nor as Head of Department (MOP) under the 2001 Rules.

(34) We are, however, not impressed by the submission. Firstly, the State of Punjab in their written statement has categorically averred that the trade of Modern Office Practice (MOP) earlier carried the nomenclature of Commercial and Secretarial Practice and that there are four subjects viz. Stenography Punjabi, Stenography English, Secretarial Practice (CSP) and Commerce included in the trade of MOP. The averments to this effect are made in preliminary submission No.1 of the written statement, the relevant extracts whereof are as under:-

“That the petitioner was selected as Lecturer in the subject of Commercial & Secretarial Practice in the trade of Modern Office Practice (hereinafter referred to as MOP). This trade was earlier having nomenclature of Commercial & Secretarial Practice. In the trade of Modern Office Practice there are four subjects viz Stenography Punjabi,

Stenography English, Commercial and Secretarial Practice (C.S.P.) and Commerce. The seniority of these lecturers is common for promotion to the post of Senior Lecturer/Head of Department. The respondents No.4 and 5 belongs to the subject of Commerce.”

(35) Secondly, Rule 3(2) of the 2001 Rules unequivocally provides that from the date of publication of these Rules, there shall be constituted a ‘Service’ known as the Punjab, Department of Technical Education and Industrial Training (Technical Wing) Group-A Service which shall consist of... “*persons appointed in the Department of Technical Education and Industrial Training as per the policy approved by the Government from time to time*”. The appellant was admittedly a person already appointed in the Department of Technical Education as a Lecturer-in-Commerce. Her post thus stands included in the ‘Service’ defined under the Rules. Thirdly, Rule 4 which deals with the number and character of posts provides that the service shall consist of such number and cadres and each cadre shall comprise such number of posts as are shown in Appendix ‘A’. Its *proviso* further says in so many words that nothing in these Rules shall affect “the inherent right of the Government to add to or to reduce the number of such posts or to create new posts with different designations and scales of pay, whether permanently or temporarily”. The nomenclature of a post mentioned in Appendix ‘B’ is therefore not a *sine qua non* for the purpose of its encadrement in the service. Fourthly, a Lecturer-in-Modern Office Practice is illustrated in Sr.No.12 of Appendix ‘B’ to include ‘Commercial Practice’, ‘Commercial and Computer Practice’ and ‘Accountancy’ etc. The qualification for these posts is M.Com. 1st Class with relevant subject at B.Com. level. A Lecturer-in-Commerce is thus not alien to the category of Modern Office Practice. We thus hold that the appellant has been appointed and is occupying a post under the 2001 Rules and subject to her fulfilling the eligibility conditions, she is entitled to be considered for promotion as Senior Lecturer and as Head of the Department or as Principal, as the case may be, under the 2001 Rules on the basis of her seniority as Lecturer w.e.f. 13.02.1996.

(36) For the reasons stated above, the appeal is allowed; order of learned Single Judge dated 03.04.2013 is set aside and the writ petition filed by the first respondent is dismissed. Resultantly, the order revising the seniority list passed by the State Government on 11.11.2010 is upheld. The follow up action shall be taken by the

competent authority within three months from the date of receipt of the certified copy of this order.

(37) Ordered accordingly.

Reporter