



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

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Date of decision: 25.02.2025

CWP-16171-1995

GURPREET SINGH AND OTHERSPetitioner

VERSUS

STATE OF PUNJAB AND OTHERSRespondents

CWP-15374-2014

VED PARKASH DHINGRA AND OTHERSPetitioner

VERSUS

STATE OF PUNJAB AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Himmat Singh Sidhu, Advocate
for the petitioner in CWP-15374-2014.

Mr. V.K. Sandhir, Advocate
for the petitioner in CWP-16171-1995.

Mr. Balwinder Singh, AAG, Punjab.

Mr. Bikramjit Singh Patwalia, Advocate with
Mr. Gaurav Jagota, Advocate
for respondents no. 4, 6 and 7 in CWP-16171-1995.

Mr. Ankur Goyat, Advocate for
Mr. Ramesh Goyat, Advocate
for respondents No. 3 and 4 in CWP-15374-2014.



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VINOD S. BHARDWAJ, J. (Oral)

Raising an issue as to whether the seniority was drawn in terms of Rule 11, 12 and 13 of the Punjab Public Works Department (Irrigation Branch), Ziladars' State Service Class-III, Rules, 1955 (hereinafter referred to as "Rules, 1955) from the date of the confirmation of the members in service as per Rule 13 or from the date of joining or the length of service, as opined by the Legal Remembrancer, Punjab, these writ petitions have been filed.

2. While the petitioners in CWP-15374 of 2014 claim that the seniority list prepared by the respondents has not been drawn in accordance with the said service Rules and therefore have challenged the tentative seniority list as circulated on 01.04.2013 on the basis of length of service. The petitioners in CWP-16171-1995 are the ones who claim that the seniority has to be determined on length of service and hence has to be drawn from the date of their appointment irrespective of the date of passing of the Departmental Revenue Examination and that further promotions to the posts should be made on the basis of such seniority list.

3. In order to appreciate the said controversy, it would be apposite to refer to the governing provisions of the Rules, 1955.

"11.(1) Persons who are appointed against permanent vacancies in the Service, shall remain on probation, for a period of two years, in the first instance. During the period of probation all persons shall be allowed pay in the time scale. They shall also be eligible to draw increments during the period of probation provided their work is satisfactory.

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Explanation-Officiating service or service spent on deputation to a corresponding or higher post shall be reckoned as period spent on probation, but no person who is officiating in any appointment, shall, on completion of the requisite period of two years in such appointment, be entitled to be confirmed until he is appointed against a permanent vacancy and has earned at least two good annual reports in succession on his work. Provided that the seniority according to the list of accepted candidates as laid down in Rule 13(2) shall not be changed, that is to say, a candidate cannot be appointed on probation from a date prior to that from which his senior is so appointed.

11(2) If the work or conduct of any person during his period of probation is, in the opinion of the Chief Engineer, not satisfactory, the Chief Engineer, may, at any time during the period of probation or prior to his confirmation dispense with his services, if recruited direct, or revert him to his former post, if he had been recruited otherwise than by direct appointment.

11(3) On the completion of the period of probation specified in sub-rule (1) of any person, the Chief Engineer may confirm such person in his appointment, or if his work or conduct has, in the opinion of the Chief Engineer, not been satisfactory, or he has failed to pass the Departmental Revenue Examination referred to in rule 12, dispense with his services, if recruited direct, or, as the case may be, revert him to his former post, if he had been recruited otherwise



than by direct appointment, or extend the period of his probation (but not so as to increase it beyond three years, except in the case provided in Rule 12), and upon the completion of such extended period of probation, the Chief Engineer may pass such orders as could have been passed under sub-rule (2).

12. Every Zilladar on probation shall be required to pass the Departmental Revenue Examination before he is confirmed in his appointment:

Provided that the Chief Engineer may, if he thinks fit, extend the period of probation up to a date two years subsequent to the date of issue of a notification appointing a person as a Zilladar on probation, if such extension is necessary in order to enable such person to make a further attempt or attempts to pass the aforesaid examination.

13. (1) The seniority of members of the Service shall be determined by the date of confirmation in the Service:

Provided that if two or more members are confirmed on the same date, seniority shall be determined according to pay, preference being given to the member drawing a higher rate of pay and if the rate of pay drawn is the same, seniority shall be determined according to length of total service as Zilladar, preference being given to the member having the longer service; and if the length of service is also the same, seniority shall be determined according to age, the older member being senior to a younger member.



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13(2) The seniority of candidates appointed in one batch during the calendar year shall be determined according to age.

Appointment to the Service as Zilladars on probation against permanent vacancies will be made according to the order in which the names stand on the list so prepared."

4. Learned Senior Counsel for the petitioners in CWP-15374-2014 and the private respondents in CWP-16171-1995 contend that a conjoint reading of the aforesaid Rules of 1995 clearly shows that a person appointed in the service is to initially remain on probation for a period of two years and that he is entitled to be confirmed on completion of probation as per Rule 11 (3).

5. Attention is also drawn to Rule 12 as per which a Zilladar on probation is required to pass a Departmental Revenue Examination before he is confirmed for appointment and seniority is to be drawn as per Rule 13 (1) as per which the date of confirmation is the determinant date for the seniority of members of service. It is thus contended that Rule 11 which deals with the date of appointment and probation is not the Rule which governs the determination of seniority and the same has to be done in accordance with Rule 13 as per which the date of confirmation, for which passing of Departmental Revenue Examination is a mandatory pre-requisite, is the date on the basis whereof the seniority is to be determined. They further refer to the reply filed by the respondent-State in CWP-16171-1995 wherein the State has taken a specific stand which is as under:-



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“The recruitment to and conditions of services of Zilledars, in the Department are regulated under The Punjab Public Works Department (Irrigation Branch) Zilledar State Services Class-III, Rules-1955, herein after referred to as under”-

Rules 11 of Zilledars Service Rules 1955 relates to probation of persons for a period of two years, which can be extended further but not beyond and period of three years, in any case. Rule 12 and 13 relates to passing of Departmental Revenue Examination within the period of probation and determination of inter-Se-Seniority respectively. The ibid rules 12 and 13 are reproduced below for the convencie of the courts-

<i>Examination to be passed.</i>	<i>“12”</i>	<i>Every Zilledar on probation shall be required to pass: the Departmental Revenue Examination before he is confirmed in his appointment</i>
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Provided that the Chief Engineer may if he think fit extend the period of probation up to date two years subsequent to the date of issue of a notification appointing persons as Zilledar on probation, if such extension is necessary in order to enable such persons to make a further attempt or attempts to pass the aforesaid examination."

member of service. “13” The Seniority of member of the service shall be determined by the date of confirmation in the service.

Provided that if two or more members are confirmed on the same date, seniority shall be determined according to pay preference being



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given by the member drawing a higher rate of pay and if the rate of pay drawn is the same seniority shall be determined according to length of total service as Zilledar, preference being given to the member having the longer service and if the length of service is also the same, seniority shall be determined according to the age, the older member being senior to younger member".

In view of Rules 11,12 and 13 of ibid it is very clear, that passing of Departmental Revenue Examination is a pre-requisite qualification before a Zilledar is confirmed and then the seniority is to be determined by the date(s) of confirmation.

Thus passing of Departmental Revenue Examination of the petitioners viz-a-viz. Respondents is as under:-

<i>Sr. No</i>	<i>Name of member s/shri</i>	<i>Date of appointment</i>	<i>Date of passing Departmental Revenue Examination.</i>	<i>Date of confirmation</i>	<i>Place in the seniority list.</i>
<i>Petitioners</i>					
<i>1.</i>	<i>Gurpreet Singh</i>	<i>8.12.72</i>	<i>3/92</i>	<i>1.4.92</i>	<i>105</i>
<i>2.</i>	<i>Inderjit Singh</i>	<i>25.10.77</i>	<i>5/93</i>	<i>1.6.93</i>	<i>106</i>
<i>3.</i>	<i>Sulakhan Singh</i>	<i>5.5.80</i>	<i>3/90</i>	<i>1.4.90</i>	<i>102</i>
<i>Respondents</i>					
<i>4.</i>	<i>Dharma Singh</i>	<i>23.4.73</i>	<i>26.4.85</i>	<i>1.5.85</i>	<i>68</i>
<i>5.</i>	<i>Charanjit Singh</i>	<i>25.4.78</i>	<i>23.4.84</i>	<i>1.5.84</i>	<i>64</i>
<i>6.</i>	<i>Bhupinder Singh</i>	<i>9.6.82</i>	<i>25.10.85</i>	<i>1.11.85</i>	<i>74</i>



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7.	Varinder Kumar	5.5.80	20.10.83	1.11.83	63
8.	Mohinder Singh	9.5.78	26.4.85	1.5.85	71

In view of the above, it is crystal clear that the petitioners have passed Departmental Revenue Examination during 3/92, 5/93, and 3/90. Where as the respondents 3 to 7 have passed Departmental Revenue Exami-nation prior to the petitioners i.e. 4/85, 4/84, 10/85, 10/83 and 4/85. Therefore the names of the respondents appears in the seniority list of Zilledars at Sr. No.68, 64, 74, 63 and 81 and the petitioner at Sr. No.105, 106 and 102 It is evident from the face of the fact that the petitioners are junior to that of the respondents and their names cannot be considered for the promotion of Deputy Collectors when their seniors are available for promotion. This writ may be dismissed on this score only.

2. *That the present writ petition is barred by law of limitation. The petitioners have challenged the seniority of Zilledars circulated during 1983 and 1988 after a lapse of 12 years without any reasons.*

3. *That the petitioners have not come to this Hon'ble Court with clean hands. The petitioners were selected as candidate Zilledars during 9.12.72, 25.10.77 and 5/80, but they could not qualify the Departmental Revenue Examination during their probation. They qualified during 3/92, 5/93, and 3/90. Therefore they KM cannot claim their seniority prior to passing the Departmental Revenue Examination required under the rules.”*



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6. Referring to the above, Counsel contends that the interpretation of the statutory Rules by the State is correct and that the seniority list ought to be drawn on the said principles of law, which are admitted by the respondent-State.

7. Learned Counsel appearing for the private respondents No.4, 6 and 7 in CWP-16171-1995 further refers to the specific plea taken in the reply filed by them that two separate Civil Suit were filed before the Sub Judge, First Class, Nabha and the Senior Sub Judge, Faridkot which were decreed on 18.09.1990 and 31.07.1989 respectively. The challenge in the said suit was to the order of the Government whereby the confirmation was made from the date of passing of the departmental examination. In both the suits the decision of the respondent-State was to confirm the Zilledars on the date of passing of the DRE examination and the said decision was upheld. The above Civil Court decree had already attained finality (since no further challenge was made to these two judgments). He thus submits that in view of the Civil Court decree, the seniority is to be drawn from the date of passing of the departmental examination/confirmation.

8. Learned Counsel for the petitioner in CWP-16171-1995 on the other hand contends that the Government has taken into consideration all the subsequent developments and thereafter passed an order on 25.06.2014. The relevant extract of the decision reads thus:-

“5. Whereas after the judgment passed by the Hon'ble High Court in Civil Writ Petition No. 5427 and 5428 of 1984, the matter was referred to the Legal

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Remembrance (LR) for his/her opinion on the subject. The L R in the opinion dated 09.1.1995 had opined by making reference to the Rule 12, as well as sub rule 2 of rule 13 that on appointment to the service as Ziliadar on probation against permanent vacancies, the seniority list will be made according to the order in which the names stand in the list so prepared which may be kept in view. The opinion thus was that Rule 12 & Rule 13 has to be read together. According to the Rule 12, the incumbent is to be confirmed in service after successful completion of the probation period and the clearing of (D:R.E), test. Whereas, sub rule 2 of the Rule provides that after the completion of the probation period against permanent vacancies, the seniority would be fixed in accordance with the order in which the name stand in the list prepared at the time of joining the service. Even in the rule 11(1) of the service rules, It is provided that the employee would be confirmed after the completion of the probation period and he having earned two good annual reports in succession, provided that the seniority according to the list of accepted candidate as lard down in the Rule 13(2) shall not be changed, therefore undisputedly Rule 13 (2) overrides Rule 11 as well as Rule 12. Thus the net result is that, whenever an employee has to be confirmed against permanent post, irrespective of date on which he may clear the DRE, his seniority would be fixed according to the number where his name figures in the list prepared at the time of joining. It is worth to mention here that clearing DRE test is essential/compulsory condition for promotion alone not the date on which the said test is cleared.



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6. *Whereas it is clearly evident from the rules discussed above that the seniority list of Zilladars finalized by the department in the year 2003/2010 is in compliance of Hon'ble High Court order dated 28.2.1997 passed in Civil Writ Petition No. 5427 and 5428 of 2984, in view the legal opinion tendered by Legal Remembrance Punjab dated 09.1.1995 and Government instructions contained in letter dated 30.1.1996. The department has filed a counter affidavit in Civil Writ Petition No 20811 of 2006 in which the department has strongly defended the seniority list of Zilledars finalized in the year 2003 citing above reasons and concluding that the seniority list finalized in 2003 is legal and valid.*

The grievances of the petitioners mentioned in the writ of Civil Writ Petition No. 27099 of 2013 have been considered from all angles and no merit is found in their claim as the seniority list prepared on the basis of date of passing D.R.E. In the year 1983, as demanded by the petitioners in the writ has been set aside by the Hon'ble Punjab and Haryana High Court vide judgment dated 28.2.1997 passed in C.W.P No. 5427 and 5428 of 1984. The above judgment has acquired finality as none of the parties choose to file appeal against the judgment. The matter regarding seniority of Zilladars is already under the consideration of Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 20811 of 2006 and 7940 of 2008. The annexure P-7 attached in Civil Writ Petition No. 27099 of 2013 was prepared by the committee of Superintendents formed by Chief Engineer/Canals which has not been approved by the competent authority and as such this draft tentative seniority list is neither legal nor



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valid document, hence no relook can be made on this document.

I have examined all aspects of the case of the petitioner Sh Ved Parkash Dhingra with thoughtful consideration in view of the orders of the Hon'ble High Court dated 10.12.2013. The representation dated 19.12.2013, of the petitioners has been considered and the same is hereby rejected.”

9. They also submitted that in the reply filed by the respondent-State in CWP-15374-2014, the stand is now converse to what has been submitted by them in the reply filed in CWP-16171-1995.

10. Counsel for the respondent-State, however, submits that it was in view of the judgment passed by this Court in CWP-5427 of 1984 and the opinion given by the Legal Remembrancer, Punjab that they had taken a decision to determine the seniority from the date of the regular appointment irrespective of the passing of the Departmental Revenue Examination.

11. Responding to the above, Counsel for the petitioner contends that the reliance on the order dated 28.02.1997 passed in CWP-5427 of 1984 is misplaced and that the said judgment would be *per incuriam* since the provisions of the statutory rules i.e. Rule 11, 12 and 13 have not been taken into consideration while passing the said order. The writ petition therein was decided only on the basis that there was a delay of more than 10 years in challenging the seniority list that had already attained finality. Thus, since, the statutory rules have not been examined by the Court in its order, the same cannot lay down any binding judicial precedent. The opinion of Legal



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Remembrancer as obtained by the respondents is also based on the said judgment and not on interpretation of the statutory rules.

12. Counsel for the parties also do not dispute that all the petitioners as well as the private respondents have since then superannuated.

13. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record.

14. The statutory rules are not the subject matter of dispute, it is evident from a perusal of the same that on appointment in service, a Zilledar is required to be on probation for a period of two years and that during the period of probation he is required to pass the Departmental Revenue Examination before his confirmation and thereafter the rules stipulate that the seniority is to be determined by the date of confirmation in the service. Thus, the sequence of the Rules prescribes the modalities for determination of seniority which mandates passing of the Revenue Departmental Examination as a pre-requisite before a confirmation can be done and the date of confirmation has been made as the basis of determination of seniority. The order dated 28.02.1997 passed in CWP-5427 of 1984 that has been relied upon by the respondent-State in its order of 25.06.2014 and the subsequent opinion by the Legal Remembrancer are primarily based upon the aforesaid decision of 28.02.1997 and not based upon the interpretation and applicability of the Service Rules. The seniority thus has to be determined from the date of confirmation into service as per Rule 13 (1) of the Rules of 1955 supra.



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15. I find that the plain reading of the relevant Service Rules clearly lay down the mode and manner in which the seniority is to be determined. So far as the reference to the order dated 28.02.1997 in CWP-5427 of 1984 is concerned, the order dated 28.02.1997 did not delve into the question of legality of drawing the seniority list which is to be governed by Rule 13. Since, the said order did not take into consideration the Service Rules, the same is *per incuriam* and does not lay down any binding precedent.

16. Whenever the State is to take a decision, it is expected to take into consideration the specific rules applicable and not be governed by an order wherein the service rules were not even a subject matter of consideration or interpretation by the Court.

17. Further, so far as the contentions by the respondent-State that challenge to the seniority list is belated is concerned, the same does not hold much weight at this juncture since the document Annexure P-10 shows that the seniority list in CWP-15374-2014 was circulated for consideration of the parties only on 01.04.2013. The petitioners therein having joined the service as Zilledars' in the year 1996 onwards figured in the seniority list circulated on 01.04.2013 and a representation was immediately submitted which was not decided. The petitioners accordingly approached this Court in CWP-27099-2013 titled as "*Ved Parkash Dhingra and others versus The State of Punjab and another*" which was disposed of by this Court on 10.12.2013 wherein a direction was given to decide the representation within a period of three months. Thereafter, order under challenge dated 25.06.2014 had been passed. The writ petition was preferred immediately thereafter in the year



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2015 and it cannot be held that the writ petition in question is filed at a belated stage. Similarly, insofar as this objection in CWP-16171-1995 is concerned, the petitioners therein were claiming finalization of the seniority, on the basis of the date of their appointment, in view of the directions given to finalize the seniority list vide order dated 16.02.1995. The seniority list at that point in time had not been finalized by the respondent-State. As regards the claim of the petitioners in CWP-15374-2014 is concerned, they never had any grievance at that point of time to espouse or to approach this Court.

18. Under the given circumstances, I find that the order dated 25.06.2014 passed by the respondents and under challenge in CWP-15374-2014 is not based upon correct reading and interpretation of the service rules. The plain reading of the Rules clearly shows that there is no ambiguity or doubt about the manner in which the seniority is to be fixed. Hence, the writ petition i.e. **CWP-15374-2014 is allowed** and the order dated 25.06.2014 is set aside whereas the **CWP-16171-1995** seeking directions to the respondents to finalize the seniority list on the basis of the date of appointment **is dismissed** to the said extent.

19. Since all the parties herein stand retired on completion of service, the respondents are directed to complete the exercise of determination of seniority as per the provisions of Rule 13 i.e. from the date of confirmation, consequent upon passing of the Departmental Revenue Examination, and to disburse the admissible benefits to the petitioner in terms thereof. Let the needful be done by the respondent-Department within a period of four months of receipt of a certified copy of this order.

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20. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)

FEBRUARY 25, 2025

JUDGE

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No