

**(2025) 12 P&H CK 0015**

**Punjab And Haryana HC**

**Case No:** Civil Writ Petition No. 5071 Of 2020 (O&M)

Gurprit Singh

APPELLANT

Vs

Punjab Agricultural University,  
Ludhiana And Others

RESPONDENT

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**Date of Decision:** Dec. 4, 2025

**Acts Referred:**

- Punjab Civil Services (General And Common Conditions Of Service) Rules, 1994-Rule 8

**Hon'ble Judges:** Deepinder Singh Nalwa, J

**Bench:** Single Bench

**Advocate:** R.K. Arora, J.S. Bhogal, Jugam Arora, Bikramjit Singh Baath, G.S. Gill

**Final Decision:** Dismissed

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### **Judgement**

Deepinder Singh Nalwa, J

1. In the present writ petition, the petitioner has challenged the memo dated 05.08.2019 (Annexure P-8) vide which the representation/objection filed by the petitioner in respect of final seniority list has been rejected. The petitioner has also challenged the final seniority list issued vide memo dated 04.10.2019 (Annexure P-12) whereby, the petitioner has been shown below respondent No.6 in the seniority. In the writ petition, order/memo dated 12.02.2020 (Annexure P-14) has also been challenged whereby the case of respondent No.6 is being considered for the promotion to the post of Sub Divisional Engineer (SDO) (Civil).

2. Brief facts of the case are that respondent No.1-Punjab Agricultural University, Ludhiana (hereinafter referred to as the University) issued an advertisement No.01/2010 advertising two posts of Junior Engineer (JE) (Civil). Out of the abovesaid two posts, one post was reserved for open category i.e. General Category and the other was reserved for Scheduled Caste Category. The last date of submission of application form was 27.04.2010. Relevant extract of the advertisement is reproduced below:-

*"8. Junior Engineer (Civil) (Two posts)*

- i. At least second class Diploma in Civil Engineering from any recognized university or Institution.
- ii. Knowledge of Punjabi upto Matric level.
- iii. Age between 18 to 35 years.

*Note:- Preference will be given to persons having experience on the constructions of building, roads and surveying.*

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#### *Important Notes*

1. Applications, which are incomplete/not on the prescribed form/received after the due date/received without prescribed application fee shall not be considered. The University shall not be responsible for any postal delay or loss in transit.

2. In service candidates should apply through proper channel.

**3. The number of posts indicated in the advertisement may increase or decrease.**

4. 25% and 12% posts are reserved for candidates belonging to scheduled castes/tribes & backward classes belonging to Punjab State respectively. 13% posts are reserved for Ex-servicemen and 3% posts are reserved for physically handicapped persons. In case suitable persons from SC/ST/BC/Ex-Servicemen/Physically Handicapped are not available, the posts meant for them will be filled out of other category/categories and the points meant for them shall be carried forward for being filled from future vacancies. The certificate issued to the backward class person will be valid until the applicant is not covered under the limit of creamy layer and the applicant while applying for a post will have to give declaration in this regard.

#### 5. Age relaxation

Scheduled castes/Backward classes: Five years over and above the normal recruitment age.

Physically handicapped persons: 10 years over and above the normal age.

Ex-servicemen: As per Punjab Govt. instructions.”

3. A perusal of the advertisement would clearly show that the number of posts mentioned in the advertisement may increase or decrease. In pursuance to the abovesaid advertisement, the petitioner belonging to the reserved category i.e. Scheduled Caste Category applied for consideration for appointment to the post of JE (Civil). The petitioner was selected and appointed on the abovesaid post vide appointment letter dated 29.07.2011 (Annexure P-1). One Balvir Singh was appointed on the post which was reserved for open category. In pursuance to the abovesaid appointment letter issued to the petitioner, the petitioner joined the service on the post JE (Civil) on 19.08.2011. It transpires that after appointment of the petitioner on the post of JE

(Civil), the respondent-University decided to fill two more posts from the waiting list i.e. one post reserved for open category and another post reserved for Scheduled Caste Category. On the basis of the waiting list, respondent No.6 belonging to General Category being next in merit in open category was appointed on the post of JE (Civil) vide appointment letter dated 19.09.2011. Respondent No.6 joined the service on 01.11.2011.

4. The petitioner completed the period of his probation on 18.08.2013, whereas respondent No.6 completed his period of probation on 31.10.2013.

5. The respondent-University issued a provisional seniority list of JE (Civil) on 28.04.2014. In the abovesaid seniority list, the petitioner was placed at Sr. No.43 whereas respondent No.6 was at Sr. No.46. It transpires that the abovesaid provisional seniority list was again re-determined on 24.07.2019 and the petitioner was shown at Sr. No.45 whereas respondent No.6 was shown at Sr. No.44. In other words, respondent No.6 was shown senior to the petitioner in the seniority list in the cadre of JE (Civil).

6. The petitioner filed objection to the abovesaid re-determination of seniority list, whereby the petitioner was shown junior to respondent No.6. The objection was considered by the respondent-University and the same was rejected vide memo dated 05.08.2019 (Annexure P-8). The petitioner again submitted a detailed representation dated 07.08.2019 (Annexure P-10) to respondent No.2. The respondent-University finally issued a final seniority list dated 04.10.2019 (Annexure P-12) whereby the petitioner has been shown in the seniority at Sr. No.45, whereas respondent No.6 has been shown senior to the petitioner at Sr. No.44. The respondent-University vide memo dated 12.02.2020 (Annexure P-14) considered the case of respondent No.6 for promotion on the post of SDO (Civil) in order of the abovesaid final seniority list.

7. As the petitioner is shown junior to respondent No.6 in the seniority list and the case of respondent No.6 has been considered for promotion on the post of SDO (Civil). Aggrieved against the abovesaid orders dated 05.08.2019 (Annexure P-8), 04.10.2019 (Annexure P-12) and 12.02.2020 (Annexure P-14), the petitioner has filed the present writ petition challenging the abovesaid impugned orders.

8. Learned senior counsel appearing on behalf of the petitioner submits that appointment made subsequently on two posts was not permissible in law as the appointment cannot be made beyond the posts advertised. He further submits that the petitioner was recommended and appointed before respondent No.6, as such, respondent No.6 cannot be shown senior to the petitioner. Learned senior counsel also contended that as the decision was taken for filling up of two posts in the month of September, 2011 and the petitioner was appointed in the month of June 2011, on this ground also respondent No.6 cannot be shown senior to the petitioner. The last contention raised by the learned senior counsel is that, after five years, the seniority list cannot be re-determined. Learned senior counsel appearing on behalf of the petitioner has placed reliance on the judgments of the Hon'ble Supreme Court titled as Shiba Shankar Mohapatra and others Vs. State of Orissa and others, 2011 (1) SCT 359, Rakhi Ray and others Vs. The High Court of Delhi and others, 2010 (1) SCT 720 and Arup Das and others Vs. State of Assam and others

9. Learned counsel appearing on behalf of the respondent-University contends that in light of the 'note' given in the advertisement that the posts indicated in the advertisement may increase or decrease, it is always open for the respondent-University to fill up the posts beyond the posts advertised. He further submits that the merit list prepared by the respondent-University is valid for a period of four months. The object of keeping the abovesaid merit list valid for four months is for the reason that, the respondent-University can always fill up posts beyond the posts advertised from the waiting list.

10. I have heard learned counsel appearing on behalf of the parties at length.

11. In regard to contention raised by learned senior counsel appearing on behalf of the petitioner that the posts beyond the posts advertised cannot be filled, is concerned, a perusal of the abovesaid advertisement would show that the posts indicated in the advertisement may increase or decrease. The object behind the abovesaid note given in the advertisement permits the respondent-University to fill up posts in excess of the posts advertised in the advertisement. Otherwise, the object of incorporating the abovesaid 'note' in the advertisement will have no meaning. Reliance is made on the judgment dated 17.10.2025 passed by the Hon'ble Supreme Court in SLP (Civil)-14980-2024 titled as Sanjay Kumar Mishra and others Vs. District Judge, Ambedkar Nagar (U.P.). In the judgment, the Hon'ble Supreme Court has held that in view of the rider in the advertisement that the posts can increase or decrease, it is permissible in law for an employer to fill up posts beyond the posts advertised. Relevant extract the abovesaid judgment is reproduced below:-

***"10. As we noticed, the advertisement specifically indicated that there could be an increase or decrease of vacancies, which as on the date of advertisement was also indicated as twelve posts. The said recital in the advertisement would clearly indicate that the Appointing Authority intended that a wait list be maintained so as to fill up the vacancies arising in excess of those notified, which was permissible as per the rules. As has been pointed out from the counter affidavit after the advertisement of 2000, the next advertisement was only in 2008 and then in 2015. Definitely vacancies arose within the said period, and this is the reason why the appellants were appointed on various dates subsequent to the appointment to the twelve vacancies advertised. We are definite that the very same situation arose in Naseem Ahmed and the learned Single Judge as also the Division Bench erred in not accepting the said contention, especially having ignored the clear recital of the notification that the vacancies could be increased or decreased from twelve, as notified.***

12. In light of the note given in the abovesaid advertisement and the judgment passed by the Hon'ble Supreme Court in Sanjay Kumar Mishra's case (supra), it is held that the respondent-University can always fill up the posts and make appointments beyond the number of posts advertised. In regard to contention raised by learned senior counsel appearing on behalf of the petitioner that as the recommendation and appointment of the petitioner was before respondent No.6 and as such, the petitioner cannot be shown junior to respondent No.6 is

concerned, mere recommendation and appointment of the petitioner before respondent No.6 would not mean that the petitioner has to be ranked senior to respondent No.6 for the reason that the recommendation and appointment made in favour of respondent No.6 was on the basis of same selection and merit list and otherwise also, seniority is always fixed as per the rules.

13. As far as the last contention raised by learned senior counsel appearing on behalf of the petitioner that after five years, the respondent-University could not re-determine the seniority list is concerned, a perusal of the facts of the present case would show that earlier, provisional seniority list was issued by the respondent-University which could always be re-determined by the respondent-University taking into consideration the relevant rules.

14. In regard to reliance placed by the learned senior counsel appearing on behalf of the petitioner on the judgments passed by the Hon'ble Supreme Court are concerned, in regard to judgment relied by the learned senior counsel on **Shiba Shankar Mohapatra's case (supra)**, is concerned, in the abovesaid judgment, the Hon'ble Supreme Court has held that the seniority list cannot be challenged after inordinate delay by someone. In case, somebody challenges the seniority list, he/she has to give explanation for delay and latches in approaching the adjudicated forum. In the present case, the petitioner had duly filed objections to the provisional seniority list and thereafter, the final seniority list was issued by the respondent-department. Mere delay in revising the seniority list does not automatically bars the department for correcting the same, until and unless, the change is not arbitrary or mala fide. Taking into consideration the abovesaid facts, **Shiba Shankar Mohapatra's case (supra)**, will not support the case of the petitioner. In **Rakhi Ray's case (supra)**, it has been held by the Hon'ble Supreme Court that an appointment cannot be made beyond the number of posts advertised. In the abovesaid case, the Hon'ble Supreme Court was considering the terms and conditions mentioned in the advertisement issued by the High Court of Delhi. In the abovesaid judgment, the Hon'ble Supreme Court was not dealing with the note or condition that indicated in the advertisement that the number of posts can be increased or decreased. In the present case, there is a specific note given in the advertisement, wherein it has been mentioned that the posts indicated in the advertisement can increase or decrease, as the terms and conditions of the advertisement in **Rakhi Ray's case (supra)**, were different, as such, the ratio laid down by the Hon'ble Supreme Court in **Rakhi Ray's case (supra)**, would not be applicable in the case of the petitioner. In regard to the judgment referred by the learned senior counsel for the petitioner on **Arup Das's case (supra)**, is concerned, the Hon'ble Supreme Court has held that appointment cannot be made beyond the number of posts advertised in government service. The Hon'ble Supreme Court in the abovesaid case was also considering the advertisement issued by the State of Assam. In the abovesaid advertisement also, it was nowhere indicated that the number of posts as advertised in the advertisement can increase or decrease, as such, the abovesaid judgment also does not support the case of the petitioner.

15. In regard to fixation of seniority of JE (Civil) in the University is concerned, the respondent-University is following all the Punjab Government Rules and other service conditions in respect of their employees as applicable to the corresponding posts. Rule 8 of the Punjab Civil Services (General & Common Conditions of Service) Rules, 1994 deals with fixation of seniority.

Relevant portion of the Rule 8 is reproduced below:-

**“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 posts in that cadre of service;

**Provided that in case of person 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 said period of four months in consultation with the Commission or the Board, as the case may be, his Seniority shall be determined from the date of 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 persons referred to in the proceedings proviso joins, the person so referred shall be placed below all the persons of the next selection, who joins 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) a person appointed by direct appointment shall be senior to a person appointed otherwise:*

*(b) a person appointed by promotion shall be senior to person appointed by transfer:*

*(c) In the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in appointments from which they were promoted or transferred; and*

*(d) In the case of persons appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn as also the same, then by their length of service in these appointments and if the length of service also the same an older person shall be senior to be younger person.*

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

16. A perusal of the abovesaid rules would show that in case of a person recruited by direct appointment, the order of merit determined by the Commission or Board as the case may be shall not be disturbed. In other words, the seniority has to be reckoned on the basis of merit determined by the Commission/Board/Competent Authority.

17. A perusal of the facts of the case would show that admittedly, respondent No.6 is higher in merit than the petitioner as per the merit determined by the respondent-University. It is not the case of the petitioner that posts were created after the appointment of the petitioner on which the respondent No.6 was appointed and appointment of respondent No.6 was on temporary basis. A perusal of the facts of the case would also show that there is no inordinate delay by the respondent-University in filling two more posts after the appointment of the petitioner. Once, this Court has held that the respondent-University can fill up posts beyond the posts advertised, taking into consideration the Rule 8 of the Punjab Civil Services (General & Common Conditions of Service) Rules 1994, respondent No.6 has to be held senior to the petitioner.

18. A perusal of the facts of the case would also show that the petitioner has also not challenged the 'note' given in the advertisement, whereby the respondent-University is competent to increase or decrease the number of posts indicated in the advertisement.

19. Taking into consideration the facts of the case and the relevant terms and conditions of the advertisement and judgment passed by the Hon'ble Supreme Court on Sanjay Kumar Mishra's case (supra), this Court finds no infirmity or illegality in the abovesaid impugned orders. Accordingly, the present writ petition is dismissed.

20. Pending miscellaneous application(s), if any, also stand(s) disposed of.