

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

**CWP-28434-2019 and
other connected cases
Reserved on: 03.02.2023
Date of decision: 15.02.2023**

HARBHAJAN SINGH AND ORS.

..Petitioners

Versus

STATE OF PUNJAB AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajiv Atma Ram, Sr. Advocate
Ms. Sanah Sahni, Advocate
Mr. Brijesh Khosla, Advocate
for the petitioner(s) (in CWP-28434, 27859-2019)

Mr. D.S. Patwalia, Sr. Advocate.
with Mr. Kannan Malik, Advocate

Mr. Gurminder Singh, Sr. Advocate
with Jatinder Pal Singh, Advocate

Mr. Surmukh Singh, Advocate
Mr. Saurabh Arora, Advocate

Mr. Sunil Agnihotri, Advocate
for the petitioner(s) (in CWP-26119 of 2017)

Mr. Vipin Mahajan, Advocate

Mr. Ajay Kamboj, Advocate
for the petitioner(s) (in CWP-28675-2019)

Mr. Sukhdev Kamboj, Advocate
for the petitioner(s) (in CWP-8916-2022, 27147-2015)

Mr. Pardeep Singh Mirpur, Advocate
for the petitioner(s) (in CWP-28616-2019)

Mr. Pankaj Attri, Advocate for
Mr. Naresh Kaushik, Advocate
Mr. Rohit Kapoor, Advocate

Mr. Mohd. Yousaf, Advocate
for the applicant-petitioner(s)
(in CM-10697-2021)

Mr. Sandeep Bansal, Advocate
Mr. Amrik Singh, Advocate
Mr. Sunny Singla, Advocate

Mr. Kapil Kakkar, Advocate
for the petitioner(s) (in CWP-27549, 27757,
27938, 36924 of 2019 and 24311 of 2022)

Mr. G.P. Vashisht, Advocate
for the petitioner(s) (in CWP-27868-2019)

Mr. R.K. Arora, Advocate
for the applicant(s) (in CM-20539-40-2022 in
CWP-28434-2019)

Mr. Ranjit Singh Kalra, Advocate

Mr. Vikas Chatrath, Advocate
for the petitioner(s) (in CWP-28738-2019)

Mr. P.S.Khurana, Advocate,
for the applicant-petitioner(s)
(in CM-19224-CWP-2021 in CWP-28434-2019)

Ms. Alka Chatrath, Advocate and
Ms. Divya Sharma, Advocate
for the petitioner(s) (in CWP-4485-2020,
8797-2022).

Mr. Madhav Pokhrel, Advocate
for the petitioner(s) (in CWP No.21963-2014)

Mr. H.S. Thiara, Advocate

Mr. Nitesh Singla, Advocate
for the petitioner(s) (in CWP-10416, 10511,
10579, 12195 of 2021, 3780, 4064, 21965 of 2020 and CWP-
16988 of of 2022).

Mr. Vivek Sharma, Advocate

Mr. Abhishek Sharma, Advocate,
for Mr. Vishal Gupta, Advocate
for the petitioner(s) (in CWP-28466 & 28972-2019)

Mr. R.K. Arya, Advocate
for the petitioners.

Mr. S.S. Grewal, Advocate

Mr. J.S. Gill, Advocate,
for the petitioner(s) (in CWP-27830-2019)

Ms. Anu Chatrath, Sr. Advocate with
Mr. Aakash, Advocate
Mr. Nishant Maini, Advocate
for respondent No.3 to 30 (in CWP-28434-2019)

Mr. G.P.S. Bal, Advocate
for the private respondents.

Mr. Anshul Gupta, Advocate
for the applicant-respondents (in CM-11255-2020 in CWP-
26826-2019).

Mr. Satnam Preet Chauhan, Advocate
for the petitioner(s) (in CWP-21019-2020).

Mr. Gaurav Sharma, Advocate, (in CWP-16962-2015)

Mr. R.K. Kapoor, Addl. A.G. Punjab.

ANIL KSHETARPAL, J.

1. This batch of connected writ petitions (details whereof are at the foot of the judgment) has been filed by the Masters/Mistresses employed in Punjab Education Department assailing the correctness of the seniority list of Master cadre issued on 19.06.2019. The learned counsel representing the parties are *ad idem* that all these writ petitions can conveniently be disposed of by a common judgment.

2. In order to understand the controversy involved, the relevant facts, in brief, are as follows:-

On 28.12.1994, a recruitment notice was published inviting applications for recruitment of large number of Masters and Mistresses in various streams including Social Studies, Agriculture, Fine Arts, Music, Home Science, Mathematics, Punjabi, Hindi, Physical Education and Science. The result of the selection was declared subject wise from time to time i.e. on different dates. The result of Social Studies was declared on 30.12.1996, Mathematics on 18.11.1996, Physical Education on 16.12.1996 and Science on 27.02.1996. Before the final selection and appointment of

the masters under the afore-mentioned recruitment notice, another recruitment notice dated 12.07.1996 was issued to fill up the large number of existing vacancies, to the post of Masters in various subjects, in addition to the recruitment notice dated 28.12.1994. Under the afore-said subsequent notice, the posts of masters/teachers in Mathematics, Hindi, Science, Physical Education, Art and Craft, Sewing, Sanskrit, were advertised. In **Civil Writ Petition No.19832 of 2003, titled as “Charandas Sharma Vs. State of Haryana**, the petitioner was employed as Social Studies Master pursuant to the recruitment notice dated 12.01.1996. He was selected by the Select Committee but was appointed to the said post only pursuant to the directions of the Punjab and Haryana High Court. He prayed for determining his seniority as per the Punjab State Education Class III (School Cadre) Service Rules, 1978 (hereinafter referred to as the '1978 Rules'). The aforesaid petition was allowed while directing the authorities to determine his seniority as per the order of merit in which the candidates were recommended by the Select Committee.

3. As already noticed, the Service Rules regulating the service conditions of masters were issued in the year 1978. At this stage, it would be appropriate to notice that a Division Bench of this High Court in **Neelam Rani Vs. State of Punjab, 2010 (1) SCT 588** examined the challenge to the constitutional validity of the 1978 Rules on the following two questions:-

“1. Whether separate cadre for men in the service i.e. Punjab State Education Class III (School Cadre) Services Rules, 1978, is discriminatory and violates Article 16(2) of the Constitution of India?”

2. Whether such cadre will include women as well to avoid vice of discrimination prohibited under Article 16 of the Constitution of India?”

4. The afore-extracted questions were answered in the following

manner:-

“36. However, in respect of the posts which are said to be meant for men category, we are of the opinion that women cannot be excluded from competing against the posts specified to be filled up from amongst men. Neither Article 15 nor Article 16 contemplates reservation of posts in favour of men. Such posts are required to be filled in on the basis of merit alone and if on the basis of merit women are meritorious, they are entitled to be appointed against the posts described as reserved for men to the extent of posts meant for women.

37. As per the judgments mentioned above, a combined merit list of all the candidates is required to be prepared. If on such merit, women candidate are not selected to the extent of posts reserved for them, only then women lower in merit will be selected and appointed to fill up the requisite posts meant for such women candidates. Such course alone will be an act of horizontal reservation and in accordance with the mandate of Articles 14 to 16 of the Constitution of India.

38. 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.

39. It is since the year 1955, Rules prescribe separate cadre of men and women. Such cadres have been found to be not tenable. Therefore, principles laid down in this judgment shall be applied prospectively. All the previous appointments shall not be reopened or can be said to be invalid on the basis of law declared by this judgment but all future appointments shall be made on the basis of merit in the manner discussed above.

40. The petitioners who were initially appointed on merit will be adjusted in the cadre from the date of initial appointment and shall be entitled to pay and allowances and seniority from the dates of their initial appointment with any break in service as leave of the kind due.”

5. On 16.11.2011, a seniority list was issued. On 19.07.2013, another seniority list was issued for Masters and Mistresses with respect to the persons claiming promotion to the post of Lecturers in different streams.

As many as 70 writ petitions were filed challenging the correctness of the seniority list dated 19.07.2013. All these writ petitions were disposed of vide a common order in **“Sweety Badwal and others Vs. State of Punjab and others”, Civil Writ Petition No.185 of 2014, decided on 16.12.2016,** the operative part of which reads as under:-

“At the time of hearing today, learned State counsel has filed in Court an affidavit dated 15.12.2016 of the DPI (SE), Punjab along with Annexures R.1 containing List-I, List-II & List-III, wherein it has been averred that on reconsideration of entire matter, it has been decided that a single joint seniority list of almost 50,000 Masters/Mistresses of all streams/subjects appointed upto December 2016 will be finalized within a period of four months i.e upto 30.4.2017. It has further been submitted in the affidavit that within a further period of three months, the promotions to the posts of 8000 Lecturers made in 2008,2012 & 2016 will be reviewed as per the Rules applicable thereto.

The aforesaid stand of the official respondents is not objected by the petitioners rather both the sides are ad idem in resolving the entire dispute in the said manner.

In view of the consensus arrived at between the rival parties, this Court does not feel appropriate to examine the lis any further on merits. However, in order to bury the controversy, this Court issues the following directions to respondent No.2/Director Public Instructions (Secondary Education), Punjab being the competent Authority, for strict compliance:

- i) A Joint seniority list of all Masters/Mistresses appointed till date i.e 16.12.2016, shall be recasted strictly as per the decision of judgment in Neelam Rani's case (supra) on or before 30.9.2017.*
- ii) The Seniority list will be framed batch-wise and the appointments made from the first batch will be placed senior to the later one and the inter se seniority between same batchmates will be determined on the basis of inter se merit position of a candidate prepared during selection.*
- iii) That as no separate seniority list of Master/Mistresses based on their acquired qualifications in different streams for promotion as Lecturers would be*

maintained, therefore, the combined seniority list prepared as per the principles stated hereinabove shall be reviewed/updated every year in the month of August to mention the acquired qualification by the Masters/Mistresses, making them eligible for promotion to the post of Lecturers in the subject/stream concerned. A circular will be issued that the Masters/Mistresses, who have obtained/acquired/enhanced their qualification, which entitled them to be considered for promotion in respect of any other stream apart from the stream in which they are already working, they will have to mandatorily inform the Department within a period of one month of acquiring the said qualification to enable such addition against their name in the seniority list while updating the same every year in the month of August, failing which, the teacher concerned shall be solely responsible for denial of any right of promotion to the post of Lecturer in the subject concerned. The Directorate of Public Instructions shall also compile, periodically update and publish every year a list of eligible Masters and Mistresses for promotion as Lecturers in the stream concerned, on account of the acquisition of prescribed qualifications for promotion in the stream concerned. A separate list for each stream/subject shall be published;

iv) A public notice of at least one month in advance for inviting objections before finalizing the fresh Seniority list of Masters/Mistresses for promotion in respect of different streams, shall be published in three Newspapers (English, Hindi and Punjabi) of wider circulation in the state of Punjab.

v) That after fresh seniority list has been framed then promotions, which have been made to the posts of Lecturers in May 2008, May 2012 and July 2016 shall be reviewed. If any candidate is found beyond the seniority and quota shall be reverted and candidates, who are found entitled for any

promotion shall be accorded such promotion as Lecturer.

vi) Respondent No.2/DPI(SE), Punjab shall incorporate the material particulars of members of the service i.e Name, Father's Name, Designation, Date of Birth, District, Mode of recruitment, Date of appointment, Date of promotion, Date of joining, Present place of posting, Category, Merit number, Percentage of merit, Subject and Special remarks etc, as far as possible in the Seniority List or in any other manner, so as to have complete transparency;

Disposed of in the above terms.

A photo copy of this order be placed on all the connected cases”

6. A seniority list was issued on 12.12.2017, after the aforesaid order, which was, again, the subject matter of challenge in **CWP-3491-2018, titled as “Kanwaljit and others Vs. State of Punjab”, decided on 19.07.2018.** During its pendency, on 08.12.2018, the seniority list dated 12.12.2017 was withdrawn and the writ petition was disposed of as such. Thereafter, various tentative seniority lists were published on 23.08.2018, 05.11.2018 and 28.05.2019. The final seniority list has been issued on 19.06.2019 which is the subject matter of challenge in these writ petitions. At this stage, it would be appropriate to take note of the relevant Service Rules notified by the Punjab Government, in the exercise of the powers conferred upon it by proviso to Article 309 of the Constitution of India, which are extracted as under:-

**THE PUNJAB STATE EDUCATION CLASS III (SCHOOL CADRE)
SERVICE RULES, 1978
(SRAVANA 25, 1900 SAKA)**

**PUNJAB GOVERNMENT
EDUCATION DEPARTMENT
NOTIFICATION
THE 11TH AUGUST 1978**

<p>1. XXX XXX XXX</p>	<p>XXX XXX XXX</p>
<p>2. In these rules, unless the context otherwise requires :-</p> <p>(a) XXX XXX XXX</p> <p>(b) XXX XXX XXX</p> <p>(c) 'direct appointment' means an appointment made otherwise than by promotion within the cadre of the Service or by transfer of an official already in the Service of the Government of India or of a State Government;</p> <p>(d) XXX XXX XXX</p> <p>(e) XXX XXX XXX</p> <p>(f) XXX XXX XXX</p> <p>(g) 'Service' means the Punjab State Education Class-III (School Cadre) Service.</p>	<p>Definitions</p>
<p>3. The Service shall have two branches, namely, Men Branch and Women Branch and shall comprise the posts shown in Appendix 'A' to these rules : Provided that nothing in these rules shall affect the inherent right of Government to add to or reduce the number of such posts or to create new posts with different designation and scales of pay whether permanently or temporarily.</p>	<p>Number and Character of posts</p>
<p>5. (1) No person shall be appointed to any post in the Service, unless he possesses necessary qualifications and experience as laid down in column 3 of the Appendix 'B' to these rules.</p> <p>(2) No person shall be recruited to any post in the Service by direct appointment unless he possesses knowledge of Punjabi language of matriculation or equivalent standard or passes the test of Punjabi language of Matriculation Standard to be held by the Commission, Board or such authority as may be specified by the Government in this behalf from time to time:</p> <p>Provided that the persons who are in service on the date of commencement of these rules shall be governed by such instructions regarding possession of qualifications in Punjabi as were applicable at the time of their appointment.</p>	<p>Qualification</p>

<p>9. (1) <i>Appointments to the posts in the service shall be made in the manner indicated against each post in Appendix 'B' to these rules.</i></p> <p>(2) <i>As soon as a vacancy occurs the appointing authority shall having regard to the percentage fixed in these rules for each method of recruitment determine the manner in which the same shall be filled.</i></p> <p>(3) <i>All promotions within the Service shall be made by Selection based on merit and taking into consideration seniority alone shall not give any right of promotion to any person:</i></p> <p><i>Provided that the promotion of teachers of the district cadre shall be made to the posts of masters or mistresses, as the case may be, by selection on the basis of merit and seniority to be determined with reference to the length of their service as teacher subject to the condition that if more than one person are promoted from one district cadre their interse seniority as master or mistress shall be fixed on the basis of their seniority as a teacher in that district cadre</i></p>	<p><i>Method of appointment</i></p>
<p>11. <i>The seniority in each cadre of the Service shall be determined on the basis of continuous length of service on a post in that cadre of the service: Provided that –</i></p> <p>(i) <i>in the case of members recruited by direct appointment the order of merit determined by the Commission, the Board or any other recruiting authority, as the case may be, shall not be Seniority of members of Service. disturbed.</i></p> <p>(ii) <i>in the case of two or more members appointed on the same date seniority shall be determined in the following manner :- (a) a member recruited by direct appointment shall be senior to a member recruited otherwise;</i></p> <p>(b) <i>a member appointed by promotion shall be senior to a member appointed by transfer;</i></p> <p>(c) <i>in the case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and</i></p> <p>(d) <i>in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by their length of service in those appointments; and if, the length of such service is also the same, an older member shall be senior to a younger member.</i></p> <p><i>Note – Seniority of members appointed on purely provisional basis, shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment.</i></p>	<p><i>Seniority of members of Service</i></p>

PUNJAB GOVT. GAZ. (EXTRA.), AUG 16, 1978
(SRAVANA 25, 1900 SAKA)

APPENDIX 'B' (See rule 5)				
Sr. No.	Designation of Posts	Minimum qualification and teaching experience	Method recruitment	
			Direct Appointment	Promotion
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
1.	XXXX XXXX	XXXX XXXX	XXX XXX	XXX XXX
2.	XXXX XXXX	XXXX XXXX	XXX XXX	XXX XXX
3.	(i) Master or Mistress or B.E.O (ii) Mathematics Master or Mistress (iii) Social Studies Masters or Mistresses (iv) Agriculture Master (v) Commerce Master (vi) Physical Training Master or Mistresses (DPE)	Degree of recognized University with B.T or B.Ed., B.Sc and S.S.T.C or B.T or B.Ed., Senior Basic Trained with any two of the four subjects in B.Sc. namely Physics, Chemistry, Botany and Zoology OR B.A. with Mathematics A course and Physics or Physics and Geography with S.S.T.C., B.T, B. Ed. Or Senior Basic Trained. B.A. (Math A & B Course) with S.S.T.C., B.T., B.Ed. or Senior Basic Trained OR B.A. with Physics and Mathematics A course with S.S.T.C., B.T., B.Ed. or Senior Basic Trained B.A with subject combination as approved by Government from time to time with S.S.T.C. B.T., B.Ed. or Senior Basic Trained. *(includes service of D.P.Ed. and B.P.Ed. as masters and Mistresses with at least three years actual teaching experience) B.Sc. (Agriculture) B.Com Graduate with training in advanced physical training Course Degree or Diploma	75%	25% from trained Graduates

7. It may be noted here that the recruitment to the post of Masters has been governed/directed from two different sources. 75% of the posts are required to be filled by way of direct recruitment, whereas, 25% of the posts are required to be filled from trained graduates who are working as JBT Masters, Primary School Teachers etc. For promoted candidates, the date of promotion shall be the date from which their seniority shall be counted.

8. In substance, on reading of the order dated 19.06.2019, it is evident that the Director of Public Instruction (Secondary Education), Punjab, has treated all those Masters/Mistress who were recruited through recruitment notice published in the year 1994 as one batch and have deemed their appointment with effect from 02.12.1996, whereas, all those Masters and Mistresses who were recruited through the recruitment notice in the year 1996 are taken as another batch, who are deemed to have been appointed with effect from 01.01.1997. Thereafter, the seniority has been prepared after making a consolidated merit list of the candidates selected for various streams. The expression 'batch' has been interpreted to include all the persons appointed through a single recruitment notice. It has been concluded that selections made pursuant to recruitment notice in the year 1994 and 1996 constitute separate batches for the purpose of determination of seniority.

9. The petitioners have also highlighted that in CWP-27605-2019, petitioner No.1 who is at seniority No.11805 has been issued a show cause notice for reversion to the post of Master from Lecturer but the employees at seniority No.11862 to 17441 have been retained at the post of Lecturer. It has also been submitted that there is a difference in the number of promotions made in the year 2008, 2012 and 2016 and the number of promotions reviewed and now ordered as per the impugned seniority list. For an illustration, in the year 2012, the total promotions made to the post of Lecturer were 217 but in the year 2019, 170 promotions of Lecturer in the subject of Mathematics were reviewed.

10. It has also been asserted that the Masters have been granted seniority with effect from the date on which they were not even born in the

cadre. While highlighting this fact in *CWP-28434-2019, titled as "Harbhajan Singh and others Vs. State of Punjab and others"*, it has been stated that one Ms. Anju has been granted the benefit of promotion as Lecturer in the subject of Punjabi vide order dated 13.08.2018, whereas, her name is at seniority No.8439. This seniority number has been assigned to her considering the date of her appointment as Mistress on 09.11.1996, whereas, in fact, her initial date of appointment as JBT Teacher is 20.11.1996 and she was promoted to the post of Mistress in the year 2006. Similarly, one Sh. Ranbir Singh who is at seniority No.8313 had been promoted as Lecturer in Punjabi subject in the year 2012 and now, after review, he has been granted promotion in two subjects i.e. Commerce and Punjabi. He has been granted promotion as Lecturer in Commerce with effect from 16.05.2012, whereas, as Lecturer in Punjabi with effect from 03.07.2016. Similarly, Sh. Satpal Singh Kukkar, who is at seniority No.5878, was previously promoted as Lecturer in English on 16.05.2012. Pursuant to review, he has been shown to be promoted with effect from 30.05.2008, whereas, he completed his Masters in English in the year 2010. There is further reference to the case of one Ms. Anita Rani who is at seniority No.11. Though she already stands retired, however, the respondents have granted her actual promotion in the list of Lecturer in Economics. It has been pointed out that in the similar manner, various candidates whose names figure at seniority list No.1 to 3560, have been granted actual promotion instead of notional promotion, though, they have already retired long back.

11. The petitioners have also asserted that from seniority No.1 to 3560, there are several cases wherein the retired/deceased Masters have

been granted actual promotion instead of notional promotion and consequently, various Lecturers including the petitioners have been ordered to be reverted back.

12. It may be noted here that in CWP-27605-2019, titled as “Tejinder Pal Singh and others Vs. State of Punjab and others”, the State Government has filed a reply, whereas, in Harbhajan Singh's case (supra) no reply has been filed. In Tejinder Pal Singh's case (supra) while defending the seniority list, it has also been pointed out that in order to regulate the recruitment and general and common conditions of services of the persons appointed to Group A, Group B and Group C post in connection with the State of Punjab, the State Government has notified the Punjab Civil Services (General and Common Conditions of Services) Rules 1994 (hereinafter referred to as the '1994 Rules'). In view of the overriding effect given to 1994 Rules vide Rule 20, the seniority list has been prepared in accordance with the said rules. It is noted here that no specific reply to the assertions made in the various cases, as noticed above, has been filed.

13. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

14. Mr. Rajiv Atma Ram, learned Senior counsel while leading from the front, has submitted that the order passed in Sweety Badwal's case (supra) is liable to be ignored as the same is *per incuriam*. While elaborating, he submits that on the one hand, the Court has disposed of the writ petition on the basis of consent whereas, on the other hand, it has issued directions which are in the nature of the writ of mandamus without in fact, examining and interpreting the Service Rules, which have been framed in the exercise of sub-ordinate delegated legislation. He submits that once

the 1994 Rules have been notified in accordance with proviso to Article 309 of the Constitution of India, there was no occasion to give any direction in violation thereof. He further submits that there was no occasion or authority to prepare a batch-wise seniority list which is not envisaged in the rules. He further submits that the Government has erred in assigning respective deemed date of appointments for the recruitments made under the afore-said two recruitment notices.

15. Sh. D.S. Patwalia, learned Senior counsel, while adopting the arguments of Sh. Rajiv Atma Ram, contends that the 1978 Rules are required to be followed while preparing the seniority list. Further, Sh. Gurminder Singh, the learned Senior counsel representing the petitioners in one of the writ petitions has contended that the revised seniority list is not sustainable as the employees who have worked as Lecturers for nearly 8 to 12 years are sought to be reverted back to the post of Master without granting any opportunity of hearing to them. He submits that significant changes have been made in the tentative seniority list without granting corresponding opportunities to the parties to file counter objections.

16. The learned counsel representing the State of Punjab has filed a written note of his arguments. It has been submitted that the seniority list has been issued in consonance with the judgment of *Sweety Badwal, Charandas Sharma, Neelam Rani and Kanwaljit Singh's case (supra)*.

17. This Court has critically analyzed the arguments of the learned counsel representing the petitioners as well as the learned counsel representing the State of Punjab in the various writ petitions. At the outset, it must be noticed that the question of applicability of the 1994 Rules in view of the '*non obstante*' provision in Rule 20 is no longer *res integra* in

view of the judgment passed in CWP-12435-2015, titled as “Gurwinder Singh and another Vs. State of Punjab and others”, decided on 27.01.2023, wherein, it has been held as under:-

“19. While applying the interpretative tools, the Court is required to give meaning to each word used in the provision. On a plain and logical reading of Rule 20, it is evident that the State Government never intended to supersede the specific Rules which are peculiar to the situations arising in the individual Departments. Otherwise, the State Government could have stated that these Rules shall supersede the preexisting Rules applicable to the various Departments. It is evident that this was never the intention of the Government. It was for this reason that the Rule 1994 Rules were given an overriding effect only with respect to the situations which have been, explicitly, envisaged in the Rules, itself.

20. This aspect can be examined from yet another perspective. The Division Bench in Piara Singh’s case (supra) quashed the 2001 rules vide judgment dated 11th December, 2012. At that time, the 1994 Rules were in existence, however, the State of Punjab did not claim that on account of the 1994 Rules, there was a channel/criteria for promotion for the incumbents working as Steno Typists and Stenographers in the Department of Soil and Water Conservation. In 2001, the writ petitions were defended only on the basis of the 2001 Rules, which were quashed and held to be illegal in the said judgments. The entire basis of the judgment passed in Piara Singh’s case (supra) is to the effect that the officials working on the post of Steno Typists and Stenographers shall have the proper channels/avenues of promotion. If the argument of the learned counsel representing the petitioners is accepted, the judgment passed in Piara Singh’s case (supra) would be rendered ineffective.

21. In view of the foregoing discussion, the conclusion is inevitable. Consequently, it is declared that Rule 20 of the 1994 Rules has a limited over-riding effect on 1961 Rules with respect to regulating the recruitment and conditions of service for appointment to public service and posts held under the State. Secondly, in view of the judgment passed in Piara Singh’s case (supra) the 1961 Rules shall continue to operate till these are repealed or substituted in the future by the Legislature or the Government in the exercise of the powers of delegated legislation.”

18. Hence, the stand of the learned counsel representing the State of Punjab that Rule 20 of the 1994 Rules is applicable is without substance.

19. Now, the first issue which arises for consideration is “what would be the effect of the order passed in *Sweetly Badwal's case (supra)*?”

20. On a careful reading of the operative part of the order passed by the Court, it is evident that it mentions the fact of consensus arrived at between the parties. In other words, this order has been passed in accordance with the affidavit of Director Public Instructions (Senior Education), Punjab, dated 15.12.2016, on the foundation of which, the learned counsel representing the parties agreed to get the matter disposed of. However, the Court has issued certain directions while attempting to bury the real controversy involved. Apparently, the Court has neither analyzed the Service Rules nor considered the case on merits. Thus, it is evident that by obvious inadvertence or oversight, the order fails to notice the 1978 Rules, which on a plain reading makes it obligatory for the competent authority to prepare the seniority list of Masters and Mistresses on the basis of continuous length of service. Moreover, there is no provision for preparing a batch-wise seniority list. Additionally, in *Neelam Rani's case (supra)*, the Division bench did not examine the case in context of determining the *inter se* seniority between the promotees and the direct recruits. In fact, the *inter se* seniority was not in issue in the said case. The Division Bench, after analyzing the Rules, found that in respect of posts, which are held to be reserved for men, women cannot be excluded from competition. In that context, the Court read down Rule 3 and the Appendix A and held that the posts, other than the posts reserved for female candidates, are required to be filled up on the basis of merit without any

classification on the basis of sex. Thus, the judgment in *Neelam Rani's case (supra)* does not decide the manner in which the *inter se* seniority is to be determined and hence, has no precedence in this context. Consequently, the judgment in *Neelam Rani's case (supra)* is of no help in the present case. It is well settled that a decision is only a precedent for what it actually decides. What is the essence of a decision or what logically follows therefrom constitutes the *ratio decidendi* which is binding in nature. The observations/suggestions, other than the essential/substantial findings, are only in the nature of *obiter dictum* and do not bind the courts. In *Municipal Corporation of Delhi Vs. Gurnam Kaur, 1989 (1) SCC 101*, a Bench of three Judges held that when a direction or order is made on the basis of consent of the parties, the Court does not adjudicate upon the rights of the parties. Consequently, it does not lay down any principle which may be quotable as law to be followed. The relevant discussion is in Para 9, which is extracted as under:-

“We find it rather difficult to sustain the judgment of the High Court. The learned Judges failed to appreciate that this Court in Jamna Das' case made a direction with the consent of parties and with the reservation that it should not be treated as a precedent. It expressed no opinion on the question whether there was any statutory obligation cast on the Municipal Corporation to provide alternative site to a person making illegal encroachment on a public place like any public street etc. contrary to Section 320 of the Act, as a condition precedent to the exercise of its powers under Section 322 of the Act for the removal of such encroachment on any public street, footpath or pavement. That apart, the High Court could not have made the impugned direction contrary to the provisions contained in Sections 320 and 322 of the Act. Section 320(1) in terms creates a statutory bar against illegal encroachment on any portion of a public street. It provides that "No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street

etc". Having regard to this express provision, the High Court failed to see that the respondent Gurnam Kaur had no legally enforceable right to the grant of a writ or direction in the nature of mandamus. The High Court could not obviously issue any such direction which would be tantamount to a breach of the law. Furthermore the High Court could not also make the impugned direction in view of the provision contained in Section 322(a) of the Act, which expressly confers power on the Commissioner to cause the removal of any structure which constitutes an encroachment on a public place like a street which is meant for the use of the pedestrians."

21. This matter can be examined from yet another perspective. The present is a case where rules have been framed under proviso to Article 309 of the Constitution of India which are in the nature of statutory law. On the other hand, the afore-said is a mere consent order passed by the Court without analyzing the law and Rules. In such circumstances, the statutory law is required to be given primacy. Reliance, in this regard, can be placed on the observations made in para 23 of the judgment in *State of Haryana and others Vs. Vijay Singh and others, 2012 (8) SCC 633*, which reads as under:-

23. Before concluding, we consider it proper to notice the judgments on which reliance has been placed by learned counsel for the respondents. This consideration needs to be prefaced with an observation that the cases in which recruitment and conditions of service including seniority are regulated by the law enacted by Parliament or the State Legislature or the Rules framed under Article 309 of the Constitution, the general proposition laid down in any judgment cannot be applied de hors the relevant statutory provisions and dispute relating to seniority has to be resolved keeping in view such provisions.

22. Moreover, the order passed in *Sweety Badwal's case (supra)* suffers from contradiction. On the one hand, the order has been passed with the consent, whereas, on the other hand, the directions have been issued which are in the nature of the writ of mandamus. Probably, the Bench was

not apprised of the material facts that the result of the selection was declared subject wise and there was no joint merit list of the teachers selected pursuant to the recruitment notice in the year 1994 as well as in the year 1996 and the teachers were issued appointment letters from time to time as and when they joined.

23. This Bench now proceeds to examine the impugned order. It is evident that the Director Public Instruction (Senior Education) has assigned common deemed dates of appointment of direct recruit masters under recruitment notice issued in the year 1994 and 1996, respectively, though, in fact, they have been appointed on different dates *dehors* the provisions in the Rules. On a careful reading of the order, it is evident that all the candidates recruited pursuant to the 1994 recruitment notice have been deemed to have been appointed w.e.f 02.12.1986, whereas, the appointments made pursuant to recruitment notice in the year 1996 have been given deemed appointment w.e.f 01.01.1997. Thus, the impugned order is in clear violation of the Rules.

24. Moreover, the order also suffers from obvious errors. It is evident from a careful reading of the Rule 11 that the seniority is required to be counted on the basis of continuous length of service on a post in that cadre of the service subject to certain provisos. The first proviso provides that the order of merit determined by the Commission or the Board or any other Recruiting Agency shall not be disturbed. However, this proviso is applicable only with respect to *inter se* seniority of the members who have been recruited by direct appointment by same selection process and a single merit list has been issued for the various subjects/streams. In this case, from the reading of the order as well as the reply and the previous stand taken by

the State Government in various affidavits, it is evident that the merit list of each stream/subject was prepared separately and there was no joint merit list. As already noticed, though there was a joint recruitment notice for recruiting Masters in various streams, however, the results were declared separately while preparing separate merit lists. It is not the stand of official respondents that a common select list, determining *inter se* seniority of masters of the various subjects/streams, was prepared. There is no clarity as to why the Director has prepared a joint seniority list. Moreover, in order to give effect to the proviso, the substantive part of the rule has been ignored which is not rational or warranted. The substantive Rule provides for determining the seniority in each cadre of service on the basis of continuous length of service on a post in that cadre. The proviso can be applied only when the recruitment is by the same selection process and a joint merit list has been prepared which in the present case, was not prepared by the select committee.

25. As already noticed, no reply has been filed to counter or justify the illustrations highlighted by the petitioners in their respective writ petitions. Thus, it is safe to conclude that the impugned order has been passed *dehors* the statutory rules.

26. This Court is conscious of the fact that repeated efforts to prepare the seniority list have been made. However, that by itself cannot be a ground to permit the seniority list, made in violation/infringement of the rules, to operate.

27. There is yet another aspect of the matter which requires deliberation. The seniority list is of more than 50,000 Masters. All have not been impleaded as parties. However, in various writ petitions, private

respondents have been impleaded. In CWP-28434-2019, respondents No.3 to 67 are private respondents who are affected by the impugned seniority list. The officials of the State of Punjab, who have prepared the seniority list, are also made a party. On 03.02.2023, the private respondents, in various writ petitions, have been duly represented by various learned counsels including two Senior Advocates. In such circumstances, a proper hearing has been provided to the affected employees by impleading a few of them as respondents and the same is sufficient compliance of the principles of natural justice. Reliance in this regard can be placed on the recent judgment passed by the Supreme Court in **Ajay Kumar Shukla and others Vs. Arvind Rai and others, 2021 SCC (Online) SC 1195**, which, in turn, relies upon **Mukul Kumar Tyagi Vs. State of Uttar Pradesh (2020) 4 SCC 86**. The relevant discussion is in paragraph 75, wherein the Supreme Court while elaborating upon the non-impleadment of all the selected candidates, has observed as under:-

“75. The present is a case where the writ petitioners had not raised any challenge to a particular qualification of any individual candidate rather their challenge was that without scrutiny large number of candidates, who were claiming qualification equivalent to CCC certificate have been included without there being any scrutiny and without they fulfil the qualification. The case of the writ petitioners was that the computer certificate issued by the private organisations and unregistered societies, who neither were recognised by the State Government or Central Government or by any statutory body could not issue any certificate. We may further notice that Division Bench also noticed the above argument of non-impleadment of all the selected candidates in the writ petition but Division Bench has not based its judgment on the above argument. When the inclusion in the select list of large number of candidates is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases necessity of impleadment of each and every person cannot be insisted. Furthermore,

when select list contained names of 2211 candidates, it becomes unnecessary to implead every candidate in view of the nature of the challenge, which was levelled in the writ petition. Moreover, few selected candidates were also impleaded in the writ petitions in representative capacity.”

28. At this stage, one of the learned counsel representing the respondents has suggested that this Court should direct the respondents to prepare a stream wise seniority list in accordance with the subsequent Rules adopted in the year 2018 vide notification dated 21.05.2018. This Court has considered the submissions, however, it is not considered appropriate to issue any such direction in the present case particularly when the 2018 Rules are prospective in their operation and the correctness of the seniority list issued in the year 2019 is being examined with respect to posts advertised in the year 1994 and 1996. Thus, the determination of seniority by implementing the 2018 Rules is not the matter in issue in the present case. However, it is left to the competent authority to take effective steps for resolving the dispute with regard to the *inter se* seniority.

29. Consequently, all the writ petitions are allowed.

30. The State Government is directed to prepare a fresh seniority list in accordance with the 1978 Rules within a period of 6 months from the date of receipt of a certified copy of this judgment after giving all the affected candidates an opportunity of hearing and filing objections. Moreover, since this batch of writ petitions has been decided without giving hearing to all the affected masters, they shall have liberty to file applications for recall.

31. All the pending miscellaneous applications, if any, are also

disposed of.

15th February, 2023

**(ANIL KSHETARPAL)
JUDGE**

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

Sr. No.	Case No.	Petitioner	Respondent
1.	CWP-28434-2019	HARBHAJAN SINGH AND OTHERS	STATE OF PUNJAB AND ANR
2.	CWP-5651-2015	SANJEEV KAUR	STATE OF PUNJAB AND ANR
3.	CWP-7512-2015	KARNAIL SINGH	STATE OF PUNJAB AND ANR
4.	CWP-9796-2015	GURMAIL SINGH AND ORS	STATE OF PUNJAB AND ANR
5.	CWP-11112-2015	DEVINDER SINGH AND ORS	STATE OF PUNJAB AND ANR
6.	CWP-11893-2015	GURBAKSHISH SINGH AND ORS.	STATE OF PUNJAB AND ANR
7.	CWP-11090-2015	AMARJIT SINGH AND ORS	STATE OF PUNJAB AND ANR
8.	CWP-5611-2015	RAJ KAUR	STATE OF PUNJAB AND ANR
9.	CWP-16962-2015	RAKESH KUMAR & ANR.	STATE OF PUNJAB & ORS.
10.	CWP-11312-2017	SURINDER SINGH	STATE OF PUNJAB & ORS.
11.	CWP-4372-2017	DAVINDER SINGH AND OTHERS	STATE OF PUNJAB AND ANR
12.	CWP-17292-2018	DEEP CHAND AND ORS	STATE OF PUNJAB & ORS.
13.	CWP-8797-2022	BALDEV RAJ AND ANR	STATE OF PUNJAB AND ANR
14.	CWP-4064-2022	JASBIR SINGH SANDHU AND OTHERS	STATE OF PUNJAB AND ANR
15.	CWP-27859-2019	AMRIK SINGH AND ORS	STATE OF PUNJAB AND ANR
16.	CWP-3780-2022	VARINDRA PARVEEN AND OTHERS	STATE OF PUNJAB AND ANR
17.	CWP-8939-2016	KIRPAL SINGH AND ANR	STATE OF PUNJAB & ORS.
18.	CWP-7768-2017	HARMINDER KAUR	STATE OF PUNJAB & ORS.

19.	CWP-6850-2017	RAJINDER SINGH	STATE OF PUNJAB & ORS.
20.	CWP-4419-2017	HARMANDEEP SINGH	STATE OF PUNJAB AND ANR
21.	CWP-3634-2017	HARBANS LAL	STATE OF PUNJAB AND ANR
22.	CWP-28927-2019	ATTAR SINGH AND OTHERS	STATE OF PUNJAB AND ANR
23.	CWP-27549-2019	HARGURBIR SINGH AND ORS	STATE OF PUNJAB AND ANR
24.	CWP-27605-2019	TEJINDER PAL SINGH AND OTHERS	STATE OF PUNJAB & ORS.
25.	CWP-27757-2019	KULWINDER SINGH AND OTHERS	STATE OF PUNJAB AND ANR
26.	CWP-27868-2019	BALDISH LAL AND ORS	STATE OF PUNJAB AND ANR
27.	CWP-30000-2019	AJAY KUMAR AND ORS	STATE OF PUNJAB AND ANR
28.	CWP-28675-2019	SAMINA	STATE OF PUNJAB AND ANR
29.	CWP-28864-2019	GURSHARAN KAUR AND ORS	STATE OF PUNJAB AND ANR
30.	CWP-28632-2019	RITU MEHTA AND OTHERS	STATE OF PUNJAB AND ANR
31.	CWP-4485-2020	SUBHASH SINGH AND ANR	STATE OF PUNJAB & ORS.
32.	CWP-29771-2019	ARUN KUMAR AND ORS	STATE OF PUNJAB AND ANR
33.	CWP-35531-2019	SALINDER SINGH AND ANOTHER	STATE OF PUNJAB & ORS.
34.	CWP-34570-2019	RAJESH KUMAR AND OTHERS	STATE OF PUNJAB & ANR.
35.	CWP-27938-2019	JASWINDER KAUR AND OTHERS	STATE OF PUNJAB AND ANR
36.	CWP-27607-2019	MUNISH MOUDGIL AND OTHERS	STATE OF PUNJAB AND ANR
37.	CWP-27830-2019	GURCHARAN SINGH AND OTHERS	STATE OF PUNJAB AND ANR
38.	CWP-28447-2019	DALJIT SINGH AND OTHERS	STATE OF PUNJAB AND ANR
39.	CWP-28466-2019	SEEMA CHOPRA	STATE OF PUNJAB & ORS.
40.	CWP-29190-2019	RAJBINDER SINGH AND ANOTHER	STATE OF PUNJAB AND ANR
41.	CWP-29656-2019	RAVINDER KAUR AND ORS	STATE OF PUNJAB AND ANR
42.	CWP-28738-2019	MALA SOOD AND OTHERS	STATE OF PUNJAB AND ANR
43.	CWP-28577-2019	CHARANJIT SINGH AND OTHERS	STATE OF PUNJAB & ORS.
44.	CWP-28616-2019	AMARJIT SINGH	STATE OF PUNJAB

		AND OTHERS	AND ANR
45.	CWP-28972-2019	TEJINDER KAUR AND ORS	STATE OF PUNJAB & ORS.
46.	CWP-8916-2022	BALJIT KAUR	STATE OF PUNJAB & ORS.
47.	CWP-22272-2022	RAKESH SINGH	STATE OF PUNJAB & ORS.
48.	CWP-16988-2022	SUKHDEV KUMAR AND ORS.	STATE OF PUNJAB AND ANR
49.	CWP-24311-2022	KIRANJOT KAUR AND OTHERS	STATE OF PUNJAB & ORS.
50.	CWP-21963-2014	AMANDEEP KAUR	STATE OF PUNJAB & ORS.
51.	CWP-26119-2017	RAM LAL AND ANR	STATE OF PUNJAB & ORS.
52.	CWP-36924-2019	SONIA KWATRA	STATE OF PUNJAB & ORS.
53.	CWP-12195-2021	RAJINDER SINGH	STATE OF PUNJAB & ORS.
54.	CWP-10511-2021	SAMINDER JIT KAUR AND ANR	STATE OF PUNJAB & ORS.
55.	CWP-21965-2020	GURNAM SINGH	STATE OF PUNJAB AND ANR
56.	CWP-10416-2021	KARAMJEET KAUR AND OTHERS	STATE OF PUNJAB & ORS.
57.	CWP-21019-2020	DEVINDER SINGH	STATE OF PUNJAB & ORS.
58.	CWP-10579-2021	ROHIT GARG AND OTHERS	STATE OF PUNJAB & ORS.
59.	CWP-10377-2021	RAMINDER SINGH	STATE OF PUNJAB AND ANR
60.	CWP-9179-2014	RAKESH KUMAR	STATE OF PUNJAB AND ANR
61.	CWP-26826-2019	NARESH KUMAR AND OTHERS	STATE OF PUNJAB AND ANR

15th February, 2023

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**(ANIL KSHETARPAL)
JUDGE**