

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.5196 of 2019

a/w COPCT No.122 of 2019

Decided on: 07th July, 2026

1. CWPOA No.5196 of 2019

Tika Ram

...Petitioner

Versus

State of Himachal Pradesh and Ors.

...Respondents

2. COPCT No.122 of 2019

Tika Ram

...Petitioner

Versus

Raj Kishan Pruthi and Ors.

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?¹

For the petitioner(s):

Mr. Nishant Khidtta, Advocate, for the petitioner(s), in both the petitions.

For the respondents:

Mr. Hemant Kumar Verma, Deputy Advocate General, for the respondents-State in CWPOA No.5196 of 2019 and also for the respondents-contemnors in COPCT No.122 of 2019.

None for respondents No.4 and 10 in CWPOA No.5196 of 2019.

Respondents No.5 to 9 and 11 already ex-parte in CWPOA No.5196 of 2019.

Jiya Lal Bhardwaj, Judge (Oral)

This order shall dispose of two petitions being filed by the petitioner.

2. In CWPOA No.5196 of 2019, the petitioner has

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

prayed for the following substantive reliefs:-

“(i) That the respondents 1 to 3 may kindly be directed to consider the candidature of the applicant for promotion to the post of Central Head Teacher w.e.f. June 2012 and for promotion of Head Teacher w.e.f. August 2006 when the junior persons have been promoted with all consequential benefits.

(ii) That the respondents.No.3 may kindly be directed to send the candidature/ACR's of the applicant for being considered for the promotion to the post of Central Head Teacher as per the circular dated 16.6.2015.

(iii) That the respondents 1 to 3 may kindly be directed to correct the seniority list of JBT/HT teachers on the basis of the merit obtained in the selection process/JBT training result (Annexure A-11).”

3. The facts as emerge from the pleadings are that the petitioner after completing two years Junior Basic Teacher (for short “JBT”) Training Course was appointed as JBT during September, 1995, on regular basis and posted at Govt. Primary School, Karangi, Education Block, Sarhan. He belongs to Scheduled Caste (SC) Category. The petitioner had completed JBT Training Course during the Session 1992-93. However, regular appointments for the batch were made during November, 1994 to September, 1995. Initially the respondent-State had prepared the seniority list on the basis

of date of joining and not on the basis of merit obtained in the JBT examination. The final seniority list of JBTs was issued on 10.06.2002 (Annexure A-2), in which the petitioner was shown at Sr. No.1451, but he was not shown belonging to SC category. However, later on, as per the final seniority list issued during the year 2005, the petitioner was shown at Sr. No.1542. Thereafter, the petitioner regarding correction of his seniority position, made a representation on 26.05.2006 (Annexure A-4). In this representation, it was also mentioned that his name is not reflected in the list of JBTs for promotion to the post of Head Teacher. He thereafter made another representation dated 16.06.2006 (Annexure A-5) and stated that due to assigning wrong seniority, juniors to him have been promoted to the post of Head Teacher. The petitioner was promoted to the post of Head Teacher, vide order dated 07.09.2011. The petitioner again made a representation on 20.09.2013 before respondent No.3, stating that the discrepancy has been allowed to continue and junior persons have been promoted as Head Teachers.

4. It has further been averred that some of the JBT Teachers had approached this Court by way of **CWP No.8368 of 2014**, titled, ***Sudha and others vs. State of H.P. and Ors.*** and connected petitions, which came to be disposed of on 31.12.2014, noticing that it is beaten law of the land that the seniority list is to be drawn as per the merit obtained in the selection process and date of joining cannot determine the seniority and resultantly quashed the tentative seniority list issued vide office order dated 21.10.2014, in both the writ petitions and the respondents were directed to issue fresh seniority list, strictly as per the merit obtained, in terms of the selection process and make the promotions, strictly, as per the Rules, occupying the field.

5. After the judgment passed by the Court on 31.12.2014, respondent No.2 had issued a circular/letter dated 16.06.2015, whereby all the Deputy Directors of Elementary Education in the Himachal Pradesh were directed to send the names of the teachers, so that they can be considered for promotion to various posts like Head Teacher,

Centre Head Teacher, Block Elementary Education Officer etc. After coming to know about the circular issued by respondent No.2, the petitioner made a detailed representation and requested the respondents to first remove the anomaly created by issuing the seniority list on the basis of the joining and make the basis of merit obtained in selection process and also comply with the directions issued by the Court along with copy of the judgment. The petitioner has also placed on record the result of JBT examination, in which he has been shown having scored more marks than the private respondents. It has also been averred in the petition that since the petitioner was having more marks and was having more merit than the private respondents, the action on the part of respondents No.1 to 3 to promote private respondents No.4 to 11 is totally illegal, arbitrary and against the rules and the law of the land. It has also been averred that the respondents have not corrected the seniority list and sent the ACRs of juniors persons for being considered for promotion to the post of Centre Head

Teacher, ignoring the claim of the petitioner and thus sought directions to promote him as Head Teacher w.e.f. August, 2006 and thereafter as Centre Head Teacher w.e.f. June, 2012 besides other reliefs.

6. The respondents-State filed reply to the petition and averred that as per the information received from the Deputy Director of Elementary Education, Nahan, District Sirmaur, the seniority list dated 16.03.2006 has already been prepared on the basis of norms and principles viz recommendations of H.P. Public Service Commission, order of appointment etc. The plea taken by the petitioner that the private respondents have been shown senior to him, is wrong and denied. The petitioner has been placed at Sr. No.114 in appointment order dated 04.09.1995 and respondents No.4 to 11, whom the petitioner claims to be junior to him are in fact above in the order of appointment based on merit. It has been averred that the result of JBT from the session 1992-93 has no relevance with the appointment, as the appointment has not been made on the basis of the JBT result for the

session 1992-93. In reply to para 6 (i) to (iv), it has been averred that the petitioner has challenged his seniority on the basis of seniority list dated 10.06.2002, which was finalized on the basis of date of joining as JBT, wherein the petitioner's seniority has been shown at Sr. No.1451. The above error came to the notice of respondent No.2, who directed respondent No.3 to prepare the seniority list on the basis of merit list. Thereafter, respondent No.3 invited objections to remove the anomalies in the final seniority list of 10.06.2002, finalized on the basis of date of joining as JBT. As a result, a tentative seniority list was withdrawn and circulated on 24.09.2005, which became final and circulated on 16.03.2006. The petitioner has been assigned the seniority No.1542, on the basis of merit list.

7. The private respondents No.4 & 10 filed reply to the petition and averred that the seniority list was issued in the year 2002. The representations to this effect, if any, were required to be sent within stipulated period, whereas the petitioner filed present original application after a lapse of 13

years, hence, he is not entitled to invoke the jurisdiction of this Tribunal. The petitioner is guilty of misleading the Court by misrepresenting the facts of the case. It has been admitted that the private respondents were promoted as per their merit and seniority from their joining.

8. The petitioner filed rejoinders to the replies and controverted the averments made in the replies.

9. This Court after noticing the facts in the reply of the respondent-State that it is not clear as to on the basis of which merit list, the tentative seniority list and consequently final seniority list dated 16.03.2006 have been prepared for the post of JBT, had passed an order on 03.07.2025 directed the respondents on 03.07.2025 to file a supplementary affidavit to clarify the factual aspects.

10. The respondents in compliance of the order filed the supplementary affidavit and mentioned that the interview for the appointment of the petitioner along with other candidates, including the private respondents, was conducted on 21.11.1994, in the erstwhile Office of District Primary

Education Officer, Sirmaur at Nahan. Thereafter, the merit list was drawn on the basis of interview pursuant to which respondents No.4, 6 and 8 were appointed on 15.12.1994, whereas the petitioner and remaining private respondents were appointed on 04.09.1995. It has also been averred that the final seniority list was finalized on the basis of merit obtained in terms of the selection process and circulated vide letter dated 16.03.2006 and accordingly the petitioner has been assigned the seniority No.1542 in the final seniority list. It has further been averred that as per the final seniority list dated 16.03.2006, placement from JBT to Head Teacher, promotion from Head Teacher to Centre Head Teacher and from Centre Head Teacher to Block Elementary Education Officer, has been carried out/conducted till date as it is. The record pertaining to the year 1994 and 1995 regarding the appointment etc. of the petitioner as well as of the private respondents has been stated to be weeded out as on 01.11.2017.

11. The respondents had earlier not taken the stand

that the appointment was made on the basis of the interview conducted on 21.11.1994, whereas the learned counsel for the petitioner submitted that the selection was made on the basis of the merit of JBT. In the supplementary affidavit, the respondents had stated that the merit list was drawn on the basis of interview. Therefore, this Court on 25.05.2026 had directed the respondents to clarify this position too, while filing the supplementary affidavit.

12. Pursuant to the aforementioned directions, the respondents filed supplementary affidavit stating that the duration of the JBT Course/diploma was two years and the petitioner appeared in JBT Part-I examination, held in December, 1992 and in the JBT Part-II examination held in December, 1993. The result of JBT Part-II examination was declared in the year 1995. The interview for appointment of the petitioner along with the other candidates including the private respondents was conducted on 21.11.1994 in the erstwhile Office of District Primary Education Officer, District Sirmaur at Nahan and the merit list was drawn on the basis of

interview and thereafter the appointment was made on 15.12.1994 of respondent No.4, 6 and 8 and thereafter the appointment of petitioner as well as other private respondents was made on 04.09.1995. It has further been averred that the petitioner has been promoted as Centre Head Teacher vide order dated 30.12.2023 from the final seniority list dated 16.03.2006 and he has accepted the promotion and joined his duties at Govt. Centre Primary School, Guddi, Education Block Kaffota, District Sirmaur, HP. The petitioner has also submitted the option dated 17.01.2024 for granting the benefit of promotional increment.

13. I have heard the learned counsel for the parties and also perused the record carefully.

14. The respondents when earlier filed the reply to the writ petition have admitted that the seniority list dated 10.06.2002 was finalized on the basis of date of joining as JBT, in which the seniority position of the petitioner was shown as 1451. The above error came to the notice of respondent No.2, who had directed respondent No.3 to prepare the seniority

list on the basis of merit. Though, it has been pleaded that after inviting objections to remove the anomalies in the final seniority list on 10.06.2002, a tentative seniority list was withdrawn and circulated on 24.09.2005, which became final and circulated on 16.03.2006, but the petitioner has been assigned seniority at Sr. No.1542, which was assigned on the basis of merit list. Once the petitioner was placed at seniority No.1451 in the seniority list as on 10.06.2002, his position in the subsequent seniority list circulated on 16.03.2006, ought to have remained in the descending order and not shifted to the ascending order and therefore, the plea taken by the respondents that the final seniority list dated 16.03.2006 was prepared on the basis of the merit list, is totally wrong. It is relevant to mention at this juncture that certain JBTs, who had secured higher merit in the selection process but were assigned seniority on the basis of their dates of joining, had approached this Court by way of writ petition referred to above, which came to be disposed of on 31.12.2014, whereby the Court after quashing the tentative

seniority list issued vide office order dated 21.10.2014, had given the directions to the respondents to issue fresh seniority list strictly as per the merit obtained in terms of the selection process and to make the promotions strictly as per the Rules occupying the field. In this very judgment, the Court had given further directions to the respondents that while undertaking the exercise for promotion along with the cases of the writ petitioners as well as all other persons eligible for consideration shall also be considered. The relevant para of the judgment reads as under:

"5. The learned counsel for the private respondents stated at the Bar that they have no objections in case prayer in both the writ petitions is granted with the command to the respondents-State to frame seniority list, as per the merit list obtained in the selection process and entire exercise for grant of promotion, be made, in terms of merit list read with the Rules, occupying the field, within a time frame. Their statements are taken on record.

6. The learned Advocate General has vehemently argued that so many persons will be affected by this judgment and order, who are not before this Court and prayed that the seniority list qua those persons, who are ranking below in the merit list be quashed.

7. It is beaten law of the land that the seniority list is to be drawn as per the merit obtained in the

selection process and date of joining cannot determine the seniority.

8. The apex Court in case **The Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others** reported in **AIR 1990 SC 1607**, held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. It is apt to reproduce para 44-A of the said judgment herein:

"44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

9. The apex Court in **Chairman, Puri Gramya Bank and another vs. Ananda Chandra Das and others** reported in **(1994) 6 SCC 301**, held that seniority among direct recruits has to be determined on the basis of ranking secured in the selection, subject to reservation and roster rules, and not on the basis of the dates of joining duty. It is apt to reproduce relevant portion of para 2 of the judgment herein:

"2..... The respondent and others were selected by direct recruitment as managers of Rural Bank. His rank was No. 9 in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is

dead. The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the Selection Board? On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board had prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died."

10. The same principles of law have been laid down by the apex Court in case titled **Bimlesh Tanwar vs. State of Haryana and others** reported in **AIR 2003 SC 2000**. It is profitable to reproduce para 49 of the said judgment herein:

"49. In this case also, although there does not exist any statutory rule but the practice of determining inter se seniority on the basis of the merit list has been evolved on interpretation of the Rules. A select list is prepared keeping in view the respective merit of the candidates. Not only appointments are

required to be made on the basis of such merit list, seniority is also to be determined on that basis as it is expected that the candidates should be joining their respective posts almost at the same time. Yet again in Chairman, Puri Gramya Bank & Anr. vs. Ananda Chandra Das & Ors. [1994(6) SCC 301] this court held:

"It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis."

11. *The above principles of law have been followed by the apex Court in case titled **Suresh Chandra Jha versus State of Bihar and others reported in (2007) 1 SCC 405.***

12. *Accordingly, the writ petitions are allowed. The Tentative Seniority List issued vide office order No.EDN-SLN-Elem.(E.III) Sty—1/ 2014-15925-32 and office order No. EDN-H (2) 7/2014-Pro-JBT-NM dated 21.10.2014, in both the writ petitions, so far it relate to private respondents and the persons who are ranking below in the merit list, is quashed and respondents are directed to issue fresh seniority list, strictly as per the merit*

obtained, in terms of the selection process and make the promotions, strictly, as per the Rules, occupying the field.

13. It goes without saying that promotions of the persons, who are ranking above in the merit, to the writ petitioners, be kept in tact and the cases of only those persons, who are ranking below in the merit list, be considered, afresh while making exercise for promotions alongwith the writ petitioners and other persons eligible for consideration. The entire exercise be done within two months from today.

14. Having said so, both the writ petitions are disposed of, as indicated hereinabove, alongwith pending applications, if any."

15. Once this Court had given the directions to issue fresh seniority list strictly as per the merit obtained, the respondents ought to have re-drawn the fresh seniority list strictly as per the merit obtained by the persons in the examination conducted for awarding the JBT Course. However, the respondents did not comply with the said directions.

16. The respondents have now taken a u-turn that the selection has been made on the basis of the interview conducted on 21.11.1994 in the erstwhile Office of District Primary Education Officer, District Sirmaur at Nahan and the

merit list was drawn on the basis of the interview and thereafter the appointment has been made on 15.12.1994 of respondents No.4, 6 and 8 and thereafter the appointment of the petitioner as well as other private respondents was made on 04.09.1995.

17. A further plea has been taken in the reply that the JBT Part-I examination was held in December, 1992 and JBT Part-II examination was held in December, 1993. The result of JBT Part-II was declared in the year 1995. In case, the result of JBT Part-II was declared in the year 1995, then where was the question of conducting the interviews on 21.11.1994. Not only this, once the petitioner had approached this Court in the year 2015, to assign him the seniority on the basis of merit drawn in the examination of JBT conducted, where was the question to weed out the record as on 01.11.2017. This shows that the respondent-State with a view to cause injustice to the petitioner have taken lame excuses, firstly, stating that the interviews were conducted on 21.11.1994. If the interviews had been conducted, the respondent-State ought to have

retained the record pertaining to the interviews.

18. As already noticed above, once the result of JBT Part-II had not been declared as on 21.11.1994, there could have been no question of conducting the interviews because it is only with respect to those candidates, who had qualified the JBT Part-II examination were eligible to be considered for the appointment to the post of JBT. Thus, the plea now taken by the respondent-State that the selection was made on the basis of interviews cannot be countenanced and the said plea is also contrary to the earlier reply filed by the respondents, wherein they had categorically admitted that the seniority list had initially been prepared on the basis of joining of the candidates.

19. Since it is settled by now in a catena of judgments of the Hon'ble Surpeme Court that the seniority has to be assigned only on the basis of merit drawn by the Selection Committee and not on the basis of joining, the action on the part of the respondents to ignore the petitioner and assign him wrong seniority is totally illegal, arbitrary and unjust.

20. Though the private respondents have filed reply and taken the objection that the original application is barred by limitation, but keeping in view the plea taken by the learned Advocate General, who had vehemently argued that so many persons will be affected by this judgment and order, who are not before this Court and prayed that the seniority list qua those persons, who are ranking below in the merit list, be not quashed, this Court had still given the directions that the cases of only those persons, who are ranking below in the merit list be considered afresh while making exercise for promotion along with the writ petitioners and other persons eligible for consideration.

21. Once this Court, had given specific directions while allowing the writ petition on 31.12.2014, the respondent-State were under obligation to re-draw the final seniority list and only thereafter to make further promotions. However, in case of the petitioner, his claim has not been considered and now the plea which has been taken by the respondent-State that the merit was drawn on the basis of

the interview conducted in the erstwhile Office of District Primary Education Officer, District Sirmaur at Nahan, is totally contrary to earlier stand. Once the result of JBT Part-II was declared in the year 1995, how can one believe that appointments were made on the basis of interviews held on 21.11.1994.

22. The private respondents while filing the reply have conceded that they have been assigned seniority on the basis of joining. Once this Court had clearly held that the seniority list is to be drawn as per the merit obtained in the selection process and date of joining cannot determine the seniority, the illegality which was committed by the respondent-State, cannot be allowed to be perpetuated.

23. No doubt, this Court would have taken note of the fact that the petitioner has come late for laying challenge to the seniority position, but keeping in view the fact that this Court while allowing the writ petition on 31.12.2014 had given categorical directions to the respondents to issue fresh seniority list, strictly as per the merit obtained, the

respondent-State cannot now deny the benefits to the petitioner on the plea that he did not lay challenge to the seniority list earlier.

24. Learned Deputy Advocate General has vehemently argued that once the petitioner had accepted the promotion as Centre Head Teacher, vide order dated 30.12.2023, from the final seniority list dated 16.03.2006 and joined his duties, he cannot be permitted to challenge the same. The said contention cannot be accepted for the simple reason that the petitioner had filed the petition in the year 2015 and the promotion made was in the year 2023.

25. Not only this, the petitioner had also filed a Contempt Petition No.122 of 2019 against the official respondents of respondents No.1 to 3 in the writ petition for willful disobedience of the order dated 09.07.2015, passed by the erstwhile Tribunal whereby the learned Tribunal after taking cue from the directions issued by this Court in the judgment dated 31.12.2014, had directed the respondent-State to consider the candidature of the petitioner for

promotion to the post of Centre Head Teacher. It was further directed that upon conclusion of the process, the concerned authority shall seek further orders from the Court in respect of the petitioner. Since the order of promotion was passed during the pendency of the petition before this Court, the respondents cannot take any benefit from the fact that the petitioner had accepted the promotion and joined the post by contending that the petition filed by him has become infructuous.

26. Consequently, the present petition i.e. CWPOA No.5196 of 2019 is allowed and the respondents are directed to re-draw the seniority list of the JBTs on the basis of merit obtained in the selection process/JBT training result and thereafter make promotion of the petitioner to the post of Head Teacher w.e.f. August, 2006, when juniors to him were promoted and thereafter to the post of Centre Head Teacher with all consequential benefits. In case, the consequential steps are not taken to promote the petitioner within a period of three months from today to the post of Head Teacher and

thereafter to the higher posts and further the arrears are not paid to him after his promotion, the respondent-State shall pay interest on the arrears @ 6% per annum after expiry of three months.

27. In view of the order passed in CWPOA No.5196 of 2019, learned counsel for the petitioner does not wish to press the Contempt Petition (T) No.122 of 2019.

28. The petitions are accordingly disposed of. No order as to costs. Pending application(s), if any, shall also stand disposed of.

07th July, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**