

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.952 of 2019

Decided on: 19th September, 2026

Subhash Chander

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ **Yes**

For the petitioner: Ms. Shreya Chauhan, Advocate.

For the respondent: Mr. Anup Rattan, Advocate General
with Mr. Amandeep Sharma,
Additional Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has prayed
for the following substantive reliefs:-

“(i) That the respondents may be directed to promote the petitioner as Assistant Engineer with all consequential benefits from a suitable date in the year 2003 when he was considered for promotion to the post of Assistant Engineer.

(ii) That the notification dated 5.4.2006 to the extent impugned may be held to be illegal and the respondents may be directed to promote the petitioner as Assistant Engineer with effect from a suitable date in the year 2003 as prayed in para (i) above.

(iii) That the respondents may be directed to treat the adhoc service as regular service rendered by the

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

petitioner from 24.3.2005 till his regularization as Assistant Engineer vide notification dated 5.4.2006 with all consequential benefits.

(iv) That the order passed by the Secretary (Public Works) on 18.7.2011 may be quashed and set aside."

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was initially appointed as Junior Engineer (Civil) (in short "J.E.(C)") in the respondent-Department on 23.04.1977. As per the Himachal Pradesh Public Works Department, Assistant Engineer(Civil) Class-I (Gazetted), Recruitment and Promotion Rules, 2002 (in short "R&P Rules"), 30% of the posts are to be filled up by direct recruitment and 70% by promotion. The petitioner was appointed as J.E.(C) on the basis of Diploma in Engineering. As per Rule 11 of the R&P Rules, J.E.(C) having 7 years regular or regular combined with continuous *ad hoc* (rendered upto 31.03.1998) service in the grade and unqualified J.E.(C) with at least 15 years regular or regular combined with continuous *ad hoc* (rendered upto 31.03.1998) service in the grade has been provided 45% quota.

3. The petitioner belongs to Scheduled Caste (in

short "SC") category. The R&P Rules for the post of Assistant Engineer(Civil) were firstly amended vide Notification dated 20.02.2004. However, since the controversy in the present petition is only pertaining to the promotion of the petitioner to the post of Assistant Engineer(Civil) against the vacancy, which had fallen vacant in the year 2003, the subsequent R&P Rules are not of any relevance for adjudicating the controversy.

4. As per the final seniority list of J.E.(C), as it stood on 27.04.1994, as circulated vide letter dated 15.10.2001 (Annexure P-2), the petitioner was at Sr. No.620. As per the R&P Rules, the total number of posts of Assistant Engineer(Civil) as on 30.05.2002 were 309 and out of the aforesaid posts, 216 were to be filled up by promotion from amongst the J.E.(C) having 7 years regular or regular combined service with continuous *ad hoc* service appointed as diploma holders. The posts of Assistant Engineer(Civil) falling to the SC category were lying vacant. The petitioner made a representation on 19.12.2002 to the respondent to make his

promotion and when no action was taken by the respondent, the petitioner approached the Himachal Pradesh Administrative Tribunal (in short "the Tribunal") by way of O.A. No.1538 of 2003. After abolition of the Tribunal, the matter was transferred to this Court and which came to be registered as CWP(T) No.9444 of 2008, titled, ***Subhash Chander versus State of H.P. and another*** and this Court had disposed of the same on 17.12.2010 (Annexure P-4), directing the respondent to decide the representation dated 19.12.2002 and the subsequent representations made by the petitioner by passing a speaking order(s) within a period of two months from the date of production of a certified copy of the judgment.

5. In sequel to the directions given by this Court, the respondent passed an office order on 18.07.2011 (Annexure P-5) and rejected the claim made by the petitioner on the ground that when Departmental Promotion Committee (in short "DPC") was convened on 30.05.2003 for promotion of eligible J.Es to the post of Assistant Engineer(Civil) against the

vacancies available during the year 2002 and not of year 2003. During the year 2002, 12 posts were being held/manned by SC candidates and as such, out of 15 total posts meant for SC category, there was a short fall of 3 posts only. One post of Assistant Engineer(Civil) reserved for ST candidate was also given to SC category on account of non-availability of eligible candidate even in the extended zone. Thus, total 4 posts of Assistant Engineer(Civil) were filled in by way of promotion from amongst Diploma Holder JEs of SC category. The petitioner figured at Sr. No.6 of eligibility list of SC candidates, whereas only 4 posts were to be filled in from amongst the SC category and, therefore, he could not find place for promotion to the post of Assistant Engineer(Civil). The DPC was again convened on 24.03.2005, but name of the petitioner was not recommended on the ground that he appeared at Sr. No.6 of eligible SC JEs, whereas only 4 posts were to be filled up from SC category. However, subsequently DPC was held on 07.03.2006 and 09.03.2006 for the promotion of Assistant Engineer(Civil), for the vacancies which fell vacant during

2003, 2004 and 2005. The name of the petitioner was considered by the DPC and recommended for promotion to the post of Assistant Engineer(Civil), which fell vacant during 2003. As per the instructions of Department of Personnel, the petitioner has rightly been promoted as Assistant Engineer(Civil) w.e.f. 05.04.2006 on the recommendations of the Himachal Pradesh Public Service Commission and his claim to promote him retrospectively with all consequential benefits is not sustainable in view of the instructions of the Department of Personnel as contained in page 539-540 of the Hand Book on Personnel Matters, Vol. I and as such, rejected the claim of the petitioner.

6. The petitioner, during the pendency of his original application, which came to be registered as CWP(T) No.9444 of 2008 before this Court, was promoted to the post of Assistant Engineer(Civil), Class-I (Gazetted), purely on *ad hoc* basis, vide Notification dated 24.03.2005 (Annexure P-6), in the pay scale of Rs.7,880-13,500/- (with initial start of ₹8,000/-) with effect from taking over the charge as such in the public interest

along with other persons.

7. The petitioner feeling aggrieved by the rejection of his claim as per order dated 18.07.2011 (Annexure P-5) has approached this Court *inter alia* on the grounds that the respondent did not convene any DPC meeting from 1994 to 2006, though there are instructions issued by the Department of Personnel to the Government of Himachal Pradesh that the meeting of DPC must be convened every year during the first quarter of the financial year as far as possible for the existing and anticipated vacancies in the calendar year. There were no justifiable reasons as to why and under what circumstances, DPC meetings were not convened. Further, a perusal of the meetings of DPC held on 07.03.2006 and 09.03.2006 reveals that the petitioner came to be considered for promotion against the vacancies available in the year 2003, but he was given promotion w.e.f. 05.04.2006 and not from the suitable date in the year 2003. The petitioner has been given the promotion on account of inordinate delay in convening the DPC meeting. The petitioner had acquired the eligibility

criteria of 10 years' service as J.E. in the year 1987 and thus, depriving him of his legitimate right of promotion at an appropriate time, when the posts became available, is illegal and contrary to the constitutional mandate enshrined in Articles 14 and 16 of the Constitution of India. It is not even the case of the respondent that the petitioner was not eligible to be promoted to the post of Assistant Engineer(Civil) in 2003 and as such prayed for a direction to the respondent to promote him as Assistant Engineer(Civil) with all consequential benefits from the year 2003.

8. The respondent filed reply to the petition and in preliminary submissions averred that the case of the petitioner is neither genuine nor based upon facts. The petitioner has again filed a petition for his promotion to the post of Assistant Engineer(Civil) with all consequential benefits from a suitable date in the year 2003, when he was considered for promotion to the post of Assistant Engineer(Civil). The present petition is barred by the principles of *res judicata*, and the issue raised by him, stands

already decided by this Court and also complied with by the respondent-State. The claim of the petitioner for his promotion as Assistant Engineer(Civil) during the year 2003 is not maintainable on the score that the DPC on 30.05.2003 was convened for promotion of eligible J.Es to the post of Assistant Engineer(Civil) against the vacancies available during the year 2002 and not of the year 2003. It has also been averred that the promotion has to be made from the prospective effect and thus, prayed for dismissal of the petition.

9. The petitioner filed rejoinder to the reply and controverted the averments made therein.

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

11. It is not in dispute that the petitioner was appointed as J.E.(C) on 23.04.1977. It is also not in dispute that the petitioner was promoted against the vacancy of the year 2003. The plea taken by the respondent while rejecting

the claim of the petitioner, vide order dated 18.07.2011 (Annexure P-5), for promotion to the post of Assistant Engineer(Civil) from the year 2003 after the direction given by this Court, is that during the year 2002, 12 posts were being held/manned by SC candidates and there was shortfall of 3 posts only. One post of Assistant Engineer(Civil) reserved for ST candidate was also given to the SC category. The petitioner figured at Sr. No.6 of the eligibility list of SC candidates, whereas only 4 posts were to be filled in from amongst the SC category, and, therefore, he could not find place for promotion to the post of Assistant Engineer(Civil). Again, when the DPC was convened on 24.03.2005, the petitioner could not be recommended on the ground that he appeared at Sr. No.6 of eligible SC J.Es, whereas only 4 posts were to be filled up from the SC category. This stand taken by the respondent is totally contrary to the proceedings of the DPC, which have taken place on 07.03.2006 and 09.03.2006, when claim of the petitioner had been considered for promotion to the post of Assistant Engineer(Civil) against the vacancy for

the year 2003. Once the vacancy for the year 2003 was available and further the DPC was convened on 30.05.2003, the claim of the petitioner ought to have been considered for promotion to the post of Assistant Engineer(Civil), especially, when he was fulfilling the requisite criteria, as laid down in the R&P Rules and was senior most.

12. Learned counsel for the petitioner has placed reliance upon the judgments of the Hon'ble Supreme Court in ***P.N. Premachandran vs. State of Kerala and others***, (2004) 1 SCC 245, ***Union of India and another vs. Hemraj Singh Chauhan and others***, (2010) 4 SCC 290 and a judgment passed by coordinate Bench of this Court in CWP-T No.3747 of 2008, titled, ***Madan Lal Kaushal vs. State of Himachal Pradesh*** and contended that an employee is having a fundamental right of consideration for promotion under Article 16 of the Constitution of India. She further contended that once the vacant post of Assistant Engineer(Civil) in the category of SC was available in the year 2003, which is evident from a

perusal of the order itself, whereby the claim of the petitioner has been rejected and also as per the perusal of the proceedings of the DPC (Annexure P-9), the action on the part of the respondent in not promoting him from the year 2003 is illegal, arbitrary and unconstitutional.

13. On the other hand, learned Advocate General has placed reliance upon the judgment passed in CWP No.5746 of 2024, titled, ***Nek Singh Dogra vs. State of H.P. and others***, to contend that since no *mala fides* have been alleged by the petitioner against the action of the respondent, no illegality has been committed by the respondent while passing the impugned order, whereby the claim of the petitioner has been rejected for promotion to the post of Assistant Engineer(Civil) from the year 2003. He further placed reliance upon the instructions whereunder the promotion has to be given prospectively.

14. Before dealing with the aforementioned judgments cited at the Bar, it is apt to take note of the fact

that the State Government had issued the instructions way back on 16.11.1994 to convene the DPC. As per these instructions, which now form part of the Handbook on Personnel Matters, the meeting of the DPC should be convened at regular annual intervals to draw up a panel, which could be utilized on making promotions against the vacancies occurring during the course of a year. The DPC should be convened every year during the first quarter of the financial year as far as possible for the existing and anticipated vacancies in the calendar year. Even in a case, where the annual DPC is held after the first quarter of the financial year due to certain unavoidable reasons, the existing and anticipated vacancies should be counted for the period from 1st January to 31st December. It should be ensured by each Department that this time schedule for holding the DPC is strictly adhered to. The relevant instructions dated 16.11.1994 are reproduced as under:

"I am directed to refer to this Department letter of even number dated 6.9.1984 (copy enclosed) addressed

to all the Secretaries and Heads of Departments etc., and to say that the meetings of the DPC should be convened at regular annual intervals to draw panels which could be utilised on making promotions against the vacancies occurring during the course of a year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like ACRs, Vigilance Clearance/Integrity Certificates/Seniority lists etc., for placing before the DPC. The DPCs should be convened every year during the first quarter of the financial year as far as possible for the existing and anticipated vacancies in the calendar year. Even in case where the annual DPC is held after the first quarter of financial year due to certain unavoidable reasons the existing and anticipated vacancies should be counted for the period from 1st January to 31st December. It should be ensured by each Department that this time schedule for holding the DPCs is adhered to meticulously and annual DPCs are held regularly. This time schedule for holding DPC should be monitored by the each Department by making one of their officer responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of annual DPC meeting need not be delayed or postponed on the ground that R&P Rules for post are being reviewed/amended. A vacancy shall be filled in accordance with the R&P Rules inforce on the Date of vacancy unless rules made subsequently have been expressly given retrospective effect. Since amendments to R&P Rules normally have only prospective applications the existing vacancies should be filled as per the R&P Rules in force.

2. Very often, action for holding DPC is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dis-satisfaction among those who are eligible for promotion. It may be ensured

that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.

3. To ensure that action is initiated in time for convening meetings of the DPCs falling within the purview of H.P. Public Service Commission, all necessary DPC papers should be sent to the Public Service Commission by the end of January every year so that time schedule for holding meetings of the DPCs in respect of each Department could be determined by the Commission keeping in view the existing vacancies and the vacancies likely to occur in the Department during the year.

4. The above instructions may kindly be adhered to strictly."

15. A perusal of the aforementioned instructions clearly reveals that the DPC was to be convened during the first quarter of the financial year as far as possible. In the present case, even as per the rejection order passed by the respondent on 18.07.2011, the DPC was convened on 30.05.2003 and once the posts of Assistant Engineer(Civil). falling to the category of SC of diploma holder, to which category the petitioner belongs were available, his candidature ought to have been considered for promotion to the post of Assistant Engineer(Civil) and not considering his

candidature and only convening the DPC for the vacancies of 2002, is without any logic.

16. It is not disputed by the respondent that the petitioner before his promotion, was firstly promoted as Assistant Engineer(Civil) on *ad hoc* basis, as per Notification dated 24.03.2005 (Annexure P-6), who had approached the Tribunal earlier in the year 2003 by way of O.A. No.1538 of 2003, which came to be transferred to this Court and this Court had given specific directions on 17.11.2010 (Annexure P-4) to the respondent to decide his representation dated 19.12.2002, which was not decided and thus, the action on the part of the respondent to deny promotion to the petitioner for the vacancy of 2003, is illegal, arbitrary and discriminatory.

17. As per the judgment passed by the Hon'ble Supreme Court in ***P.N. Premachandran's*** case (supra), it has been held that in case the DPC does not hold a sitting due to an administrative lapse on the part of the employer for no

fault of the employee, the employee who is eligible is entitled for promotion with retrospective effect. The relevant paragraph of the judgment reads as under:

"7. It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect."

18. Similarly, in **Hemraj Singh Chauhan's** case (supra), it has been held that the constitutional obligation is cast upon the employer to perform its role and the right of eligible employees to be considered for promotion is virtually a part of their fundamental right, guaranteed under Article 16 of the

Constitution of India. The relevant paragraphs of the judgment read as under:

“35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

37. In Govt. Branch Press v. D.B. Belliappa a three-Judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomised under Articles 14 and 16 is “fairness founded on reason” (see SCC p. 486, para 24).

38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion have been defeated by the acts of the Government and if not of the Central Government, certainly the unreasonable inaction on the part of the Government of State of Uttar Pradesh stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.”

19. A coordinate Bench of this Court in CWP(T) No. 3747 of 2008 after considering the judgment passed in

Hemraj Singh Chauhan's case (supra), had held that since the vacancies were available in the year 1987, the case of the petitioner in that case was required to be considered from that year and not from 1995. The relevant paragraphs of the judgment read as under:

"3. In view of the definitive law laid down by their Lordships of the Hon'ble Supreme Court, the petitioner has right to be considered for promotion in accordance with law. Since the vacancies were available in the year 1987, the case of the petitioner was required to be considered from this year and not from 1995. In view of this, the instructions relied upon by the respondents, i.e. Annexure R-1 are also not applicable in the instant case. Their Lordships of the Hon'ble Supreme Court have also held in the judgment cited hereinabove that the employee cannot be permitted to suffer if the delay is attributable to the employer.

4. Accordingly, the petition is allowed. Respondents are directed to consider the case of the petitioner for promotion to the post of Assistant Engineer with effect from 1987 with all the consequential benefits. Needful be done within a period of ten weeks from the date of production of certified copy of this judgment by the petitioner. No costs."

20. From the above pronouncements of the Hon'ble Supreme Court and coordinate Bench of this Court, it is crystal clear that in case there is no fault on the part of an employee and further if there is any delay on the part of the

employer to convene the DPC, he cannot be penalized for the same and once the vacancy was available and the employee was eligible, he deserves to be promoted from the due date.

21. The judgment cited by the learned Advocate General, passed by the coordinate Bench of this Court in ***Nek Singh Dogra's*** case (supra), is not attracted to the facts of the present case, for the reason, that the learned Single Judge had come to the conclusion that the respondent had demonstrated the reasons for not convening the meeting of DPC for promotion to the post of Superintendent Grade-I before superannuation of the petitioner and there were no *mala fides* alleged against the action of the respondent. In the present case, the respondent has not assigned any reasons in not considering the petitioner for the vacancy of the year 2003, though DPC was convened on 30.05.2003, but it considered only the vacancies till the year 2002. Further, the petitioner had raised the issue for his promotion in the year 2002, when he had made a representation dated 19.12.2002,

which came to be directed to be decided by the respondent, when his petition was disposed of on 17.12.2010. While rejecting the claim of the petitioner, though it has been noticed in the earlier part of the order that he was at Sr. No.6 of the eligibility list of SC candidates and only 4 posts were available for the year 2002 and also in the year 2005, which is factually incorrect in view of the fact that the petitioner was subsequently promoted to the post of Assistant Engineer(Civil) for the vacancy, which had occurred in the year 2003. Once the petitioner has been considered for the vacancy of the year 2003, he is entitled to promotion from the year 2003, as Assistant Engineer(Civil) and not from the year 2006.

22. Learned Advocate General has vehemently argued that as per the instructions, which find mention in the rejection order as well as in the reply filed by the respondent, the petitioner cannot be granted the retrospective promotion. However, that contention cannot be accepted in view of the

judgments mentioned above, wherein the employees, who have been denied the promotion have been granted the retrospective promotion and further, the instructions clearly mention that the DPC has to be convened in the first quarter of the year.

23. Consequently, the present petition is allowed and the impugned order dated 18.07.2011 (Annexure P-5) passed by the respondent is quashed and set aside with a direction to the respondent to promote the petitioner to the post of Assistant Engineer(Civil) from the year 2003 against the vacancy pertaining to the year 2003, with all consequential benefits, such as seniority, annual increments, promotion and other service benefits. The respondent is further directed to pay the arrears to the petitioner within six months from today and in case the same are not paid he shall be paid interest thereon @6% per annum from today till actual payment to him.

24. The petition is accordingly disposed of. No order

as to costs. Pending application(s), if any, shall also stand disposed of.

19th September, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**