

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**Case No. : C. W. P. No. 1542 of 2011
and connected matters**

Reserved On : 06.10.2015

Pronounced On : 13.10.2015

Ravinder Mohan and others Petitioners

VS.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. D. S. Patwalia, Senior Advocate
with Mr. Bikramjit Singh Patwalia, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

* * *

DEEPAK SIBAL, J. :

These bunch of petitions, being **C. W. P. Nos. 1258, 1427, 1503, 1541, 1542, 1592, 1800, 1814, 1829, 1840, 2133, 2375, 2612 and 3071 of 2011**, have a common target, which is the order dated 11/12.01.2011, through which, seniority of the petitioners as Sub Divisional Engineers (SDEs) in the Department of Development and Panchayat,

Government of Haryana has been re-fixed. The petitioners further pray for the issuance of a direction to the official respondents to re-consider and re-frame the seniority list of SDEs in the Department in question, keeping in view the directions issued by this Court in Mast Ram and others vs. State of Haryana – 2001 (2) RSJ 244 and Zile Singh vs. State of Haryana – C. W. P. No. 17681 of 2004 – decided on 05.07.2005.

For the sake of convenience, facts are being extracted from C. W. P. No. 1542 of 2011 – Ravinder Mohan and others vs. State of Haryana and others.

Though the present battle for seniority between the degree-holders and the diploma-holders has a checkered history, only the relevant facts are being noticed, which are that prior to 01.06.1988, there were no service rules governing the service conditions of SDEs in the respondent Department. Through letter dated 01.06.1988, the Haryana Public Service Commission approved to fill up the posts of SDEs in the respondent Department, as per which, 67% of the posts were to be filled up by way of promotion and 33% by way of direct recruitment. The aforesaid quotas through instructions dated 16.08.1991, underwent the following changes :-

- | | | |
|-----|-------------------------------------|-----|
| “1. | <i>Direct appointment</i> | 50% |
| 2. | <i>Promotion from Junior</i> | 40% |
| | <i>Engineers having Diploma (C)</i> | |
| 3. | <i>By promotion from Junior</i> | 4% |

*Engineers having AMIE/
BE degree*

4. *Tracer/Draftsman/CHD 6%”*

At a later point of time, keeping in view the strength of Junior Engineers (JEs) in the Department, through another set of instructions dated 23.01.1996, the quotas were further amended as under :-

- “1. By direct recruitment 50%*
- 2. By promotion from Junior 32%*
Engineers having Diploma
qualification.
- 3. By promotion from Junior 12%*
Engineers having BE/AMIE
qualification.
- 4. By promotion from Tracer/ 6%*
Draftsman/Head Draftsman/
CHD.”

As stated earlier, the above referred quotas were fixed through instructions of the Government. However, Statutory Rules known as Haryana Development and Panchayat Department, Panchayati Raj Engineering (Group B) Service Rules, 1998 (hereinafter referred to as – the 1998 Rules), were notified on 16.02.1999 which continued to prescribe the same quotas, as prescribed through instructions dated 23.01.1996 as under :-

*“Rule 9 (1). Recruitment to the service
shall be made :*

(a) in the case of Sub Divisional Officers, Panchayati Raj, Civil, recruitment to the service shall be made.

(i) 50% by promotion as under :-

(a) 32% by promotion from amongst Junior Engineers (Diploma Holder) :

(b) 6% by promotion amongst the Circle Head Draftsman (Civil), Draftsman (Civil) and Tracer (Civil) (Diploma Holder) ;

(c) 12% by promotion from amongst the Junior Engineers (Degree Holder/A.M.I.E.) Draftsman Civil and or Tracers (Civil Degree Holder/A.M.I.E.).

(ii) 50% by direct recruitment; or

(iii) by transfer or deputation of any officer/official already in the service of any State Government or Government of India.”

As per the facts depicted above from 01.06.1988, a promotion quota of 67% for filling up posts of SDEs in the respondent Department was earmarked. Initially, within this promotion quota, no percentage of posts was allocated either to diploma-holders or degree-holders. However, through instructions dated 16.08.1991, the promotion quota was reduced from 67% to 50% and within this 50% promotion quota, 40% of the posts were earmarked to be filled up from diploma-holders, 4% from degree-holders and the remaining 6% of the posts were kept for Tracers/Draftsman etc. However, through instructions dated 23.01.1996, the 40% quota

earmarked for diploma-holders was reduced to 32% and the quota for degree-holders was enhanced from 4% to 12%. Status-quo with regard to the 6% posts earmarked for Tracers/Draftsman etc. was maintained.

On the promulgation of the 1998 Rules, the percentages of the promotion quotas, as prescribed in the instructions dated 23.01.1996, were maintained. It is the 1998 Rules, which govern the service conditions of the petitioners till date.

In the light of the above instructions and the 1998 Rules, a few relevant uncontroverted facts with regard to the parties to the lis may be noticed, which are that the petitioners, who are degree-holders, were appointed as JEs in the respondent Department between the years 1986-88 and earned promotions as SDEs between the years 1996-99. On the promulgation of the 1998 Rules, the respondent Department finalised the seniority list of SDEs. Aggrieved by the same, the diploma-holders knocked the doors of this Court through **C. W. P. No. 15928 of 1999 – Mast Ram and others vs. State of Haryana and others.** The grievance raised by them was considered and answered by a Division Bench of this Court through judgment reported as **2001 (2) RSJ 244**, the relevant portion of which is as under :-

“...The grievance of the petitioners is that the posts that fell vacant before 23.1.1996, in any case, could not go to other categories because the percentage

of the posts of Junior Engineers having BE/AMIE qualifications have been increased from 4% to 12%. The contention has been well taken. All decisions or rules, unless there is reason to held otherwise, would operate prospectively. If the vacancies in the cadre fall in the quota prescribed for the Junior Engineers having Diploma before January, 1996, necessarily they have to be made available to the concerned persons. The written statement does not indicate that this is being so done. Only the posts that would fall vacant after January, 1996 could be given when their percentage of promotion quota had been increased to certain percentage.

8. Similar question had arisen before this Court in the case of Smt. Kiran Paruthi and another v. State of Haryana and others, C.W.P. No. 7942 of 1998, decided on July 9, 1999, wherein a similar view point was expressed. It was held as under :-

"...The controversy herein is whether the non-graduate Supervisors, who have been for the first time given right of consideration for promotion as the Child Development and Project Officer to the extent of 10%

of the posts meant to be filled by promotion would get that much percentage of the entire cadre strength or out of the posts, which came into existence after the promulgation of the rules. According to us, there should not be any controversy on this point because the non-Graduate Supervisors got a right under the rules for consideration for promotion for the first time on June 6, 1997, and any post/vacancy occurring thereafter and meant for promotee quota would have to be filled in the ratio of 9:1 amongst Graduate Supervisors and non-graduate Supervisors. Accordingly, out of the 5 posts meant for the promotee quota, the same will have to be divided between graduate and non- graduate Supervisors in the ratio 9:1. In other words, at the most one post would go to a non-graduate Supervisor. What the official respondents have done is that on the basis of the entire cadre strength, they have given all these five posts to non-Graduate Supervisors. This has been objected

to by the petitioners in the present writ petition."

We are in full agreement with the aforesaid view point. It must, therefore, follow and we have no hesitation in holding that before January, 1996 the posts that fell vacant to the category of Diploma Holder, Junior Engineer must be given to them. Thereafter, if the posts fell vacant, the same be given as per the new Rules. The exercise in this regard should be done within four months."

A perusal of the above quoted judgment shows that this Court had held that all decisions taken through instructions and the Rules would operate prospectively and that the vacancies in the cadre, would be bifurcated within the prescribed percentages for diploma-holders, degree-holders and draftsman as per the respective instruction and the Rules.

The above quoted directions, given by the Division Bench should have laid the matter to rest, but that was not to be. Through an advertisement dated 01.10.2004, 152 posts of SDEs were sought to be filled up by way of direct recruitment. While calculating the posts to be filled up by way of direct recruitment, some of the promotees were found to be in excess of their quota and sought to be reverted. Aggrieved by such action, they approached this Court through a bunch of petitions, the lead case in them being **C. W. P. No. 17681 of 2004 – Zile Singh and others vs. State**

of Haryana and others. This bout of litigation was settled through another Division Bench judgment dated 05.07.2005, in which the following directions were given :-

“In view of the aforesaid factual position and as per the law laid down in Mast Ram's case (supra), learned counsel appearing for the various parties have agreed that the writ petitions be disposed of with the following directions :-

- (1) The State Government shall take a fresh decision determining the number of vacancies falling in the quota prescribed for each category of persons with reference to the time when the aforesaid vacancies occurred i.e. prior to the promulgation of the rules or thereafter keeping in view the relevant instructions or the rules, as the case may be;*
- (2) After determining the number of vacancies, the persons entitled to be considered for promotion in their own respective quota shall be considered for such promotion ;*
- (3) The State Government would be at liberty to make appointment by way of direct recruitment if there is any*

short fall in the quota meant for direct recruits ;

- (4)** *No reversion of any Sub Divisional Officer working by way of stop gap arrangement or on ad hoc basis shall be carried out by the State Government till the entire exercise of determination of vacancies is completed and for a period of one week thereafter.” (emphasis supplied)*

In purported compliance of the directions given by this Court in **Zile Singh's** case (*supra*), a fresh seniority list was framed by the respondents, which gave a cause to the third round of litigation between the parties through a bunch of petitions, the lead case amongst them being **C. W. P. No. 4115 of 2002 – Baljit Singh and others v. State of Haryana and others** – **decided on 27.04.2009**. In this matter, the Additional Advocate General, Haryana made a statement that the State will re-frame the seniority list after inviting objections from the effected officials and after following the principle of 'old vacancies old rules, new vacancies new rules'. The relevant portion of the order is reproduced below :-

“The controversy in this bunch of petitions relates to fixation of seniority of JE/SDO/X.EN in the Development and Panchayat Department. It is not disputed that the matter initially came to the Court in

CWP No.15928 of 1999 titled as Mast Ram and others v. State of Haryana and others decided on 7.3.2001 and a Division Bench of this Court held as follows:-

“We are in full agreement with the aforesaid view point, it must, therefore, follow and we have no hesitation in holding that before January, 1996 the posts that fell vacant to the category of Diploma Holder Junior Engineer must be given to them. Thereafter, if the posts fell vacant, the same be given as per the new Rules. The exercise in this regard should be done within four months”.

Subject to aforesaid, the writ petition is disposed of.”

It is stated that thereafter in another case bearing CWP No.17681 of 2004 Zile Singh V. State of Haryana and others this direction was reiterated. Today, learned Addl. Advocate General has stated that yet in another case in CWP No.17621 of 2007 titled as Sohan Singh v. State of Haryana decided on 16.12.2008 another Division Bench of this Court had directed the respondent to reframe the seniority list. Mr. H. S. Sra, Addl. A. G., Haryana has

fairly stated that State will now reframe the entire seniority list after inviting objections from all concerned officials and by following the principle of old vacancies old rules, new vacancies new rules.

Learned counsel for the petitioners have no objection to this course of action. The only caveat made by learned counsel for the petitioners is that the whole exercise should be completed within a reasonable time and all objections of all concerned persons should be considered. Mr. H. S. Sra, Addl. A. G., Haryana states that the whole exercise will be completed within six months from the date of receipt of a certified copy of this order.”

As per the statement made by learned Additional Advocate General, Haryana, the matter was re-considered, giving birth to a fresh seniority list and predictably another round of litigation, which is the present one.

The aforesaid history is checkered, but the issue raised before me is rather limited. My attention was drawn to the impugned order, on which the impugned seniority list is based, which is as under :-

“Before 16-08-1991, the cadre of the Sub Divisional Engineers (SDEs) in Panchayati Raj Engineering Wing had 41 sanctioned posts. Out of these, 67% were to

be filled up by promotion from amongst Junior Engineers (JEs) and the remaining 33% were to be filled up by direct recruitment. Accordingly, the quota of promoted SDEs and directly recruited SDEs stood at 27 and 14 respectively (Annexure-'A').

On 16-08-1991, the respective quotas were changed. A special provision was made for degree holder JEs and the promotion channel was also opened for the draftsmen of the Department. The new/changed quota with effect from 16-08-1991 was 50% for direct recruits, 40% for promotion from diploma holder JEs, 4% for promotion from degree holder JEs and 6% for promotion from the draftsmen. Between 16-08-1991 and 23-01-1996, total 69 new posts of SDEs were created. As per judgment in the Mast Ram's case (CWP No. 15928 of 1999), all rules regarding quota have a prospective effect. Accordingly, 69 posts created after 16-08-1991 are to be distributed in the ratio of 50:40:4:6 amongst the direct recruits, promotees from diploma holder JEs, degree holder JEs and draftsmen, respectively. Furthermore, inspection of record reveals that 22 diploma holder SDEs vacated the posts of SDEs

between 16-08-1991 to 23-01-1996 due to retirement etc. Applying the principles laid down in Mast Ram's case, these 22 vacancies would go to the SDEs promoted from amongst the diploma holder JEs. The placement of SDEs against the 69 newly created posts and 22 vacancies which were available during 16-08-1991 to 22-01-1996 due to promotion, retirement, death etc. of diploma holder SDEs is available at Annexure-B."

While referring to the above quoted portion of the impugned order, it was submitted that the 22 vacancies, which were being manned by diploma-holders and had been vacated by them between 16.08.1991 and 23.01.1996 due to their retirement etc., have not been bifurcated as per the prescribed quotas in the instructions dated 16.08.1991 and that the entire lot of 22 vacancies have been allocated to diploma-holders only. It is submitted that this action is not only violative of the settled principles of law, but also is in direct conflict with the directions of this Court in **Mast Ram's** case (*supra*) and **Zile Singh's** case (*supra*).

The other issue pressed before me was with regard to the cadre strength of SDEs with the respondent Department. Learned senior counsel appearing on behalf of the petitioners stated that there were contradictions in the stand taken by the respondents with regard to the cadre strength of SDEs in the respondent Department as in the impugned order, the same was

projected as 121, whereas at one place in the written statement, the figure quoted is 110.

In view of directions given in **Mast Ram's** case (*supra*) and **Zile Singh's** case (*supra*), the 22 vacancies, which came into existence after the bifurcation of quotas, were required to be filled up as per the quotas prescribed under the then applicable instructions/Rule, irrespective of the fact that the posts, prior to the introduction of quotas, were being manned by diploma-holders. The 22 vacancies, which came into existence after the prescription of quotas having not been allocated, and filled up as per the prescribed quotas and have been allocated to diploma-holders only for the reason that these posts were being manned by diploma-holders prior to the allocation the quotas. This action is found to be in contravention with the settled proposition of law and in particular, the directions given by two Division Benches of this Court in **Mast Ram's** case (*supra*), as also in **Zile Singh's** case (*supra*).

So far as the issue with regard to the cadre strength is concerned, learned counsel appearing on behalf of the State fairly concedes that the cadre strength is 121 and not 110, which lays the issue to rest.

In view of the above, the impugned order and the resultant seniority list (Annexure P-6) is set aside. Consequently, the respondent-State would now reframe the seniority of Sub Divisional Engineers (SDEs) in the Department of Development and Panchayat, Government of Haryana,

after bifurcation of vacancies in accordance with the prescribed quotas in the respective instructions till the time each of them were applicable and then as per the 1998 Rules. In particular, the 22 vacancies which arose between 16.08.1991 and 23.01.1996 would be bifurcated and allotted as per the prescribed quotas in the instructions dated 16.08.1991.

All the writ petitions being C. W. P. Nos. 1258, 1427, 1503, 1541, 1542, 1592, 1800, 1814, 1829, 1840, 2133, 2375, 2612 and 3071 of 2011 stand allowed in the above terms.

The State Government shall complete the entire exercise within four months from the date of receipt of a certified copy of this order.

**(DEEPAK SIBAL)
JUDGE**

Pronounced On : 13.10.2015
monika