

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

**C.M. No.7648 of 2014 in/and
C.W.P. No.3674 of 2012
Date of Decision : 09.03.2015**

Vinod Kumar Datta

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Anurag Goyal, Advocate
for the petitioner.

Mr. Ashok Singh Chaudhary, Addl.A.G., Haryana.

Mr. Naresh Prabhakar, Advocate
for the respondents No.2 and 3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

C.M. No.7648 of 2014

For the reasons recorded, the application is allowed subject to all just exceptions. Replication to the written statement filed by respondents No.2 and 3 along with Annexures P-19 to P-26 are taken on record.

C.W.P. No.3674 of 2012

By this petition the petitioner has challenged the action of the

respondents in not considering his case for promotion before filling up the post of General Manager in the Haryana Roadways Engineering Corporation, Gurgaon by deputation.

The petitioner served in the Mechanical Transport Branch of the Indian Air Force from 24.05.1978 to 21.05.1993 and got certificate of Mechanical Transport Fitter on 13.09.1982 and the same was recognized as Diploma in Mechanical Engineering. By notification No.F18-19/75/T-2 dated 26.05.1977 the Ministry of Education and Social Welfare (Deptt. Of Education Technical), New Delhi directed as follows:-

“On the recommendation of the Board of Assessment for Educational Qualifications and recommendations of Defence Director (Tech.), the Government of India have decided to recognize a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate fields is recognized as equivalent to Degree in Engineering. It is considered valid for the purposes of selection to Gazetted posts and services under the Central Government or State Government.”

It is the contention of the learned counsel for the petitioner that in view of this notification he would be deemed to be a degree-holder and in this connection the Indian Air Force has issued him the certificate of equivalence (Annexure P-20). After his discharge from the Air Force the petitioner joined the respondent No.3-Corporation as a Foreman and, in a due course of time promoted as Works Manager. The claim of the petitioner is that now he is qualified for being considered for promotion to the post of General Manager but the respondents are insisting that the post be filled up

on deputation from the Transport Department.

In para No.8 of the written statement it has been mentioned that one of the mode for filling up the post of General Manager is by promotion from Works Manager, Works Manager (Quality Control) and Store Purchase Officer. The issue is whether it is incumbent upon the respondents to consider the claim of the petitioner and to take recourse to the deputation only if the petitioner is found unfit. In this connection, the petitioner had earlier filed a writ petition bearing CWP No.19921 of 2009 which was disposed of by this Court on 18.03.2011 with the following direction:-

“Faced with this situation, counsel for the respondents says that the Corporation has decided to take a person on deputation. This, has been done without considering the claim of the petitioner. That may not be legally proper. Let the claim of the petitioner for promotion be considered and appropriate decision taken in accordance with law. The respondents will intimate to the petitioner whether his case has been considered under the Draft Rules or under the Rules, which are applicable for Transport Department. The petitioner would be at liberty to challenge the decision if any communicated to him and if it is adverse to his interest.”

Learned counsel for the respondents has argued that thereafter the order dated 23.11.2011 (Annexure P-11) was passed wherein it was mentioned that there is no provision for promotion to the post of General Manager for the reason that the Board of Directors has decided that the post of General Manager can be filled up only by deputation.

Learned counsel for the petitioner has argued that the observation that there is no provision for promotion is patently false in view

of para No.8 of the written statement filed by the respondents No.2 and 3. As regards the resolution of Board of Directors, it is his contention that this resolution cannot be passed by the Board of Directors in view of the exposition of law laid down by a Division Bench of this Court in the matter of *Union of India and othes vs. Puranjit Singh and another*, reported as **2008(2)RSJ 196**.

In these circumstances, these two contentions of learned counsel for the respondents have to be rejected out of hand.

The next contention of learned counsel for the respondents is that the respondents had written to the All India Council For Technical Education who by letter dated 05.09.2011 (Annexure R-1) had informed that a diploma with 10 years experience cannot be equated with a degree. However, this clarification by the All India Council For Technical Education would have no application in the present case because the petitioner is an Ex-serviceman and equivalence of a diploma with 10 years experience to a degree is a special provision made for Ex-serviceman by the Government. In this connection also there is a catena of judgments such as *Narendra Singh Yadav vs. State of Haryana*, passed in *CWP No.5203 of 2010*, decided on 23.01.2012; *HVPNL vs. Sant Kumar and others*, passed in *LPA No.1493 of 2011* decided on 27.09.2011 against which SLP Nos.2875-2877/2012 was also dismissed by the Hon'ble Supreme Court by judgment and order dated 12.03.2012. In the aforesaid LPA, a Division Bench of this Court held as follows:-

“5. On the other hand, while supporting the order of the learned Single Judge, it has been contended by the learned

counsel for the petitioner-respondents, that after joining the armed forces, they acquired the Diploma in Engineering in the appropriate discipline and after acquiring the diploma they had more than 10 years of technical experience in the appropriate field. As such, their diplomas are to be recognized equivalent to degree making them eligible for being promoted as Assistant Engineer against their prescribed quota.

6. For better appreciation of the matter, the Memo is reproduced below:-

*“No. F16-19/75/T-2 Ministry of Education & Social Welfare,
(Department of Education Technical) New Delhi-110001*

Dated: 26 May, 1977

Sub: Recognition of Technical Professional qualification.

On the recommendation of the Board of Assessment for Education Qualifications and recommendation of Defence Director (Tech.), the Government of India have decided to recognize a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate fields is recognized as equivalent to degree in Engineering. It is considered valid for the purpose of selection to Gazette posts and services under the Central Government or State Government.”

7. A perusal of the Memo shows that Diploma in Engineering in the appropriate discipline is to be recognized equivalent to degree in LPA No. 1493 of 2011 and connected appeals 5 Engineering, provided that after acquiring the diploma the concerned candidate is required to acquire 10 years of technical experience in the appropriate field. It has nowhere been provided that the 'Diploma in Engineering' should have been possessed by the candidate at the time of entry into the service. The same could have been acquired even during the service. It is evident from the communication received from the armed authorities that all the petitioner-respondents have been awarded diploma in different disciplines. Thereafter they have

also acquired 10 years technical experience in the appropriate field. The communication so received was not challenged by the appellants either before the learned Single Judge or in these appeal. Therefore, the learned Single Judge rightly observed that the diplomas so acquired by the petitioner-respondents were to be recognized as equivalent to degree in Engineering, making them eligible for promotion to the post of Assistant Engineer.”

In view of this binding precedent even the third argument raised by learned counsel for the respondents is rejected. In these circumstances, the petition is allowed and the impugned orders are set aside. The respondents are directed to consider the case of the petitioner for promotion after accepting his eligibility. Seeing the long struggle and multiple litigation which the petitioner has had to endure for this promotion, it is directed that necessary consideration be made as per law within a period of one month from the date of receipt of a certified copy of this order.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 09, 2015

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**(AJAY TEWARI)
JUDGE**