

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No.510 of 2012 (O&M)

Date of Decision: **July 27, 2015**

Ram Murti and another ...Appellants
Versus
The Punjab State Electricity Board and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Avtar Singh Khaira, Advocate for the appellants.

Ms.Radhika Suri, Sr.Advocate assisted by
Ms.Rajni Paul, Advocate for respondents No.1 and 2.

HARINDER SINGH SIDHU, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 29.11.2011 passed by the Learned Single Judge whereby, the CWP No.4627 of 1987, filed by the appellant challenging the Seniority List of SAS Accountants, was dismissed.

The appellants Ram Murti and Dev Raj Sharma joined the respondent Board as Divisional Accountants on 10.6.1974 and 2.3.1973, respectively. The next promotion from the post of Divisional Accountant is to the post of SAS Accountant followed by promotion to the post of Accounts Officer.

By order dated 17.2.1966 (Annexure P-2), it was decided that 10% posts of SAS Accountants may be filled from amongst the Divisional Accountants having not less than 8 years experience.

Thereafter, the said quota was increased to 25% by Office Order dated 12.9.1973 (Annexure P-3). The Divisional Accountants for the purpose of promotion to the posts of SAS Accountants were divided in two classes, namely (i) those who have passed the SAS Part-II examination and (ii) those who had passed SAS Part-I examination. The persons who had passed SAS Part-I examination were required to have 8 years experience as Divisional Accountants, whereas, those who had passed SAS Part-II examination were required to have 5 years experience as Divisional Accountants for promotion to the post of SAS Accountants.

The appellants are those Divisional Accountants, who could not pass SAS Part-II examination and accordingly, were required to render minimum 8 years of service in the feeder cadre i.e. Divisional Accountants, for further promotion to the post of SAS Accountants.

The grievance of the appellants was that they have been discriminated as against their counterparts, who have passed SAS Part-II examination and have been made eligible for further promotion on completion of 5 years only, whereas, the appellants, who have not passed the said test are eligible for promotion on completion of 8 years of service.

The respondent – Board in its written statement has specifically stated that an official who gets promotion as Divisional Accountant on passing SAS Part-I Examination is not eligible for

promotion as SAS Accountant until and unless he fulfills the twin essential conditions of passing SAS Part-II Examination and possessing 5 years satisfactory service. The Divisional Accountants like the appellants, despite having not passed the SAS Part-II examination are given promotion after 8 years of service and this concession was given on specific demand from such employees to provide avenue of promotion to them.

While dismissing the writ petition, the Learned Single Judge referred to a number of decisions of the Hon'ble Supreme Court holding that for the purposes of promotion to the next higher post there could be a bifurcation/ quota in the feeder cadre based on the qualification. Ld. Single Judge observed as under:-

5. *If the case were to be examined from the point of view of whether the persons in the same cadre could be discriminated for promotion on the basis of qualification then the law which was originally prevalent and expressed through the judgment in **Punjab State Electricity Board Versus Ravinder Kumar Sharma-1986(4) SCC 617**, has undergone a change. This decision was expressly overruled in **P. Murugesan Versus State of Tamil Nadu-1993 (2) SCC 340**. In the latter judgment, the Hon'ble Supreme Court was considering the effect of the amended rules in the Electricity Board that provided for a particular ratio between degree holders and diploma holders in the matter of promotion from a lower post to the post of AEE. The Court held that there had been a distinction brought between diploma holders and graduate engineers right through and making therefore a particular quota with the slant in favour of the graduate engineers could not be found to violate Article 14 or 16 of the Constitution. The Court held that a Rule making authority was competent to impose a complete bar as well as partial restriction on a category of promotees on the basis of educational qualification only. This decision was applied in a still later judgment in*

*K.R.Lakshman Versus Karnataka Electricity Board-2001(1) SCC 442. The Hon'ble Supreme Court was upholding a bifurcation of two categories in the feeder cadre post that was made to be dependent on the educational qualification. A provision in the service regulation fixing a certain percentage of post of Junior Engineers from the feeder cadre comprising of two categories, namely, technically qualified direct recruits and technically unqualified promotees, was found to be justified. The bifurcation of the promotees quota in the post of Junior Engineer in the ratio of 1:1 between two types of persons in the feeder cadre was found to be valid. In the Accounts Department itself with the Rajasthan Electricity Board, a similar issue of what is being dealt with, was considered by the Hon'ble Supreme Court in **Rajasthan SEB Accountants Association Versus Rajasthan SEB-1997(3) SCC 103**. The Court held that it was permissible to prescribe longer qualifying service for those not possessing the qualifications. In the light of the law laid down above, it was perfectly possible for allowing for promotion to the post of Accounts Officers from amongst SAS Accountants, who had the requisite years of experience and also the qualification of having passed Part-II examination. The petitioners cannot complain of any discrimination in the feeder cadre itself. If there was such a discrimination on the basis of educational qualification, it was not arbitrary and hence would not be bad in law."*

Ld. Counsel for the appellants has not been able to point

out as to how the above determination of the Ld. Single Judge, which is based on decisions of the Hon'ble Supreme Court is unsustainable.

Accordingly, there is no merit in the appeal and the same is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 27, 2015

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