

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

Date of decision: 15.02.2016

CWP No.2734 of 2016

Gurpreet Singh Chadha

....Petitioner

Vs.

Punjab State Power Corporation Ltd. & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. D.S.Patwalia, Senior Advocate, with
Mr. Gaurav Rana, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

The petition has been filed against circulation of a tentative seniority list of Assistant Engineers (Civil) and Assistant Executive Engineers (Civil) in Punjab State Power Corporation Limited (PSPCL) by assailing it as bad. A long pending dispute presented in CWP No.11726 of 1997 titled 'Jagjit Singh Gill & others Vs. Punjab State Power Corporation Limited' was resolved on 22nd November, 2012 by a Division Bench of this Court. The petitioner was a co-petitioner in that petition. The question for consideration was that by an office order, the separate quota meant for Assistant Engineers, who had obtained the AMIE degrees before appointment and those who had acquired the qualification while in service, was consolidated into a 14% quota without any distinction and could thus be legally achieved by an office order amending the rules. This new dispensation of clubbing was promulgated by an office order on 21st May, 1997. Vide this office order, the PSPCL amended Regulations 10(4) and 10(6); clubbed the same together; and also amended the 6th Proviso to Regulation 16. Such amendment was challenged by those

Assistant Engineers, who had acquired AMIE qualification while in service. The office order dated 21st May, 1997 was held to have been issued without jurisdiction in the presence of Section 79 of the Electricity Supply Act, 1948, which mandates that service rules of PSEB/PSPCL can be regulated and amended only by a notification published in the official gazette, which procedure was not resorted to and thus the amendment was stillborn and could have no effect on the rights of the petitioners. Though the date of the notification in the official gazette was not informed to the Court when it passed the order dated 22nd November, 2012, but in this petition, it has been disclosed as 2nd July, 2004, as asserted by the respondents in the report of the Committee, which report has become the foundation of the tentative seniority list. Be that as it may and without going into the meaning of the directions contained in para. 10 of the judgment, as to the due dates of entitlement to consideration for promotion [within quota], in the considered view of this Court the issue presented can be resolved at this stage by calling upon the PSPCL to examine as below [with reference to Annexure P-9 (relevant at page 91 with the paper-book)], where the discussion on the orders passed in the aforesaid writ petition has taken place.

Learned counsel for the petitioner submits that a decision has been taken by putting the cart before the horse inasmuch as the PSPCL appears to have taken a decision already that the petitioner namely Gurpreet Singh Chadha and one Mr. Janak Raj [co-petitioner in the earlier petition] though may have become eligible for consideration for promotion in AMIE quota in December, 1991 and May 1990 respectively, but were not promoted due to non-availability of post/vacancy, can thus only be entitled for consideration for promotion as Assistant Engineer after 2nd July, 2004 [when the new rules came into force] on availability of post/vacancy, whereas the petitioner claims rights

anterior to the new rules. Mr. Patwalia informs the Court that the petitioner has in the meantime been promoted as Assistant Engineer in the year 2006 and as Assistant Executive Engineer in the year 2011. He submits that if the reasoning adopted in the report prevails then the case of the petitioner is foreclosed and the seniority list will be finalized on the premises contained at page 91 of the paper-book.

Without going into the facts of the case or expressing any opinion on the rights of the petitioner, on all available pleas, at least this much appears to be certain that in the process of finalizing the seniority list the material consideration would be the dates of occurrence of vacancies pre & post 2004 within the separate quota [AMIE] but since the factual position is not forthcoming in the petition nor does it reflect in Annexure P-9 which is crucial to the determination and of the principle to be adopted in making the tentative list final, the post-vacancy position since December, 1991 (date with respect to the petitioner) till 2nd July, 2004 and thereafter will become the governing principle in finalizing the seniority list qua the petitioner and others.

Therefore, it is expected that before the seniority list is finalized, the vacancy position based upon the running roster of vacancies will be published by circulation among all those persons likely to be affected, including the petitioner, so that they can make effective representation pointing out their eligibility and rights of consideration from the perspective of the running vacancies and as they were filled from time to time. Consequently, the petitioner and others, who are likely to be affected, would have a valuable right to represent the Committee set up for the purpose of their points of view after they are supplied the date of occurrence of vacancies/posts in the Cadres concerned pre & post 2nd July, 2004 and accordingly their objections would need to be noticed, considered and dealt with before issuance of the final

seniority list. It is also expected that the Committee in PSPCL would implement the order dated 22nd November, 2012 in its correct perspective in relation to its binding ratio. It follows that if any time limits for receiving objections run out to accommodate the process of supply of vacancy position as above observed and effective hearing they will be extended accordingly.

However, nothing said in this order would influence the independent decision which the PSPCL may take and will be read in guidance of observing the principles of natural justice for arriving at a fair decision made in accordance with law.

With these observations and directions, this petition stands disposed of.

[RAJIV NARAIN RAINA]
JUDGE

15.02.2016
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