

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8273 of 2014

Date of Decision: 16.12.2016

Shyam Sunder Singla

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. G.S. Bal, Sr. Advocate,  
with Ms. Manju Sharma, Advocate,  
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Deepender Ahlawat, Advocate,  
for respondent No.2.

Ms. Gitanjali Chhabra, Advocate,  
with Mr. Raman B.Garg, Advocate,  
for respondent No.3.

Mr. Anil Shukla, Advocate,  
for respondents No.4 to 6.

**RAJIV NARAIN RAINA, J.(Oral)**

1. Mr. Bal, learned Senior counsel appearing for the petitioner gives up his claim as far as respondents No.5 & 6 are concerned for the reason that his client is due to retire on April 30, 2017 and his client has no active *lis* with them. His claim is based on service benefits given to the 4<sup>th</sup> respondent. Both the petitioner and 4<sup>th</sup> respondent were recruited to Municipal service as Junior Engineers on ad hoc basis. However, the petitioner was appointed earlier to the 4<sup>th</sup> respondent. They were recruited in 1981 and 1982 respectively. The ad hoc service of the 4<sup>th</sup> respondent was regularized and he was promoted as Assistant Engineer on November 16,

1994 stealing a march over the petitioner. The petitioner, whose ad hoc service was similar to that of the 4<sup>th</sup> respondent, was not regularized.

2. Feeling aggrieved, the petitioner filed a civil suit in the District Court at Faridabad which was decreed on March 03, 1997. The State carried First Appeal which was dismissed on November 10, 1997 and Regular Second Appeal filed by the respondent corporation was declined by this Court vide order passed on March 26, 1998. The decree attained finality. The period of service from 1981 onward had to be treated as regular service by virtue of decree of the civil court. During the pendency of the litigation, the petitioner was promoted as an Assistant Engineer on June 19, 1997.

3. The Municipal Corporation, Faridabad embroiled the petitioner in departmental proceedings serving upon him four separate charge sheets which remained pending enquiry and were ultimately filed, the last of them on November 25, 2008. The petitioner was found innocent of the alleged misconduct in each of the four cases. The obstacles in the way of the petitioner stood removed. In the meanwhile, the 4<sup>th</sup> respondent was promoted to the higher post of Executive Engineer on March 24, 2008. The rules of service were amended in 2009 enhancing qualification for promotion from Diploma to Graduate degrees in Engineering. Both the petitioner and the 4<sup>th</sup> respondent are Diploma holders. With the coming into force of the rules, the petitioner had been rendered ineligible and this was used by the Municipal Corporation, Faridabad as reason to dismiss his representation for retrospective promotions from the date when the 4<sup>th</sup> respondent was promoted to the post of Assistant Engineer in 1994 and thereafter as Executive Engineer in 2008, before the rules were amended. It

is another matter that subsequently 4<sup>th</sup> respondent has been further promoted as Superintending Engineer and continues to serve the Municipality in that capacity.

4. It is the contention of Mr. Bal that in view of the decree of the civil court, which is binding on the Municipality, even though the 4<sup>th</sup> respondent was not made a party to the decree it still was the bounden duty of the Municipal Corporation to treat the petitioner and 4<sup>th</sup> respondent identically from the inception of service as ad hoc Junior Engineers. It is his further contention that parity should be granted to the petitioner from the date when the 4<sup>th</sup> respondent was regularized and promoted as an Assistant Engineer and then Executive Engineer prior to the amendment of the rules and for this benefit the new rules have no place and, therefore, the impugned order rejecting the case of the petitioner for promotion as Assistant Engineer from the back date and Executive Engineer has been wrongly declined for the improper reason that new rules have come into play making the petitioner ineligible for lack of educational qualifications prescribed in the amended rules. In bringing about parity of treatment and removing unequal treatment and bringing on a par equals, the petitioner has a fundamental right under Articles 14 & 16 of the Constitution of India for equal treatment and accordingly right to promotion from the date when his junior, the 4<sup>th</sup> respondent was promoted as Assistant Engineer and Executive Engineer in the year 1994 and 2008.

5. Mr. Bal points out that when the petitioner was promoted as an Assistant Engineer in 1997, a post was created. He points out that besides this, the State Government had approved creation of post in Municipal

Corporation, Faridabad to accommodate the petitioner as an Executive Engineer with effect from the date when the 4<sup>th</sup> respondent was promoted in 2008 and this decision is in his favour and has only to be given effect to by the employer municipality but it was delayed to bring the petitioner under the shadow of the amendment by the impugned order for the fallacious reason that new rules have come into force. It is well settled in law that old vacancies would be filled in accordance with the old rules as in abiding view of the Supreme Court in Y.V. Rangaiah and others v. J. Sreenivasa Rao and others, AIR 1983 SC 852. In this case, the principle would apply with greater force since a junior have been promoted and the petitioner has an independent right, in addition thereto, based on equal treatment. In case relief is granted to the petitioner, the 4<sup>th</sup> respondent cannot claim that any will be prejudice caused to him. Moreover, the 3<sup>rd</sup> and 4<sup>th</sup> respondents have given in writing dated June 15, 2012 to the respondent corporation that they would have no objection if the petitioner is given deemed promotion w.e.f. November 16, 1994 as Assistant Engineer and would further have no objection if the petitioner is given deemed promotion w.e.f. July 21, 2008 as Executive Engineer.

6. I agree with Mr. Bal's line of thinking that the amended rules which came into force after the 4<sup>th</sup> respondent was promoted as an Executive Engineer in 2008 would not come in the way of the petitioner to be placed on a par with the 4<sup>th</sup> respondent in the matter of promotion, when Diploma holders were promoted to higher ranks. The Municipal Corporation, Faridabad fell in grave error in passing the impugned order denying a right which was due on the principal that a senior has a right to

promotion from the date the junior was promoted. The civil court decree is testimony to the accrued, vested and crystallized right.

7. It is Mr. Shukla's argument that the petitioner did not challenge his promotion as Assistant Engineer in 1997 or seek his retrospective promotion from the date when the 4<sup>th</sup> respondent was promoted as Assistant Engineer and to counter this, Mr. Bal submits that firstly, the petitioner was in litigation in the civil suit and he was facing departmental proceedings against him which had ultimately culminated in his favour in 2008. In my view it would not be a material circumstance to deny the writ even when the impugned order does not cite that reason to deny the claim and depends only on the factum of the amendment enhancing the qualification to graduate degree holders. Besides, the 4<sup>th</sup> respondent has no locus standi to raise the argument having benefitted by regularization of his services prior to the petitioner and does not deserve to be seen scoring brownie points on that account. Articles 14 & 16 shield the rights of the petitioner stolidly, which rights are not impartible when pressed by the petitioner.

8. In view of the above discussion and for reasons recorded, I find sufficient merit in this petition for acceptance. The petition is allowed. The impugned order is quashed. A mandamus is issued to the Municipal Corporation, Faridabad to forward the case of the petitioner to the State Government within seven days for seeking formal approval of Government for retrospective promotions of the petitioner notionally as Assistant Engineer and Executive Engineer from the date his junior the 4<sup>th</sup> respondent was promoted. The Government is directed to process the case within a fortnight and remit it to the Municipal Corporation, Faridabad for issuing

orders of promotion with retrospective effect. The petitioner would take consequential benefits of the two promotions notionally but actually from the date of filing of this petition which bears the stamp “May 01, 2014”.

9. Mr. Bal, on instructions, states that the 4<sup>th</sup> respondent meanwhile has been promoted as a Superintending Engineer. If that is so, then the case of the petitioner will be considered by the respondent Corporation/State of Haryana as per rules and in parity with the 4<sup>th</sup> respondent.

10. This order will be operated from the date of receipt of certified copy of the order received either from the Court or from the petitioner, whichever is earlier.

(RAJIV NARAIN RAINA)  
JUDGE

16.12.2016

manju

*Whether speaking/reasoned* Yes

*Whether reportable* Yes