

203-A

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

LPA No.1474 of 2012 (O&M)

Date of Decision: 20.09.2016

Housing Board, Haryana

..... Appellant

Versus

Vijay Kumar and others

..... Respondents

**CORAM: HONBLE MR. JUSTICE SURYA KANT
HONBLE MR. JUSTICE SUDIP AHLUWALIA**

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|--|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |
| 4. To be referred to the Reporters or not? | Yes/No |
| 5. Whether the judgment should be reported in the Digest? | Yes/No |

Present: Mr. Durgesh Aggarwal, Advocate,
for the appellant.

Mr. D.S. Patwalia, Sr. Advocate with
Mr. Kanan Malik, Advocate
for respondent No.1.

Mr. Puneet Bali, Sr. Advocate with
Mr. Paramveer Singh, Advocate,
for respondent No.3.

Mr. Anurag Goyal, Advocate,
for respondent No.4.

SURYA KANT J. (ORAL)

(1) The Housing Board, Haryana, has filed this Letters Patent Appeal against the order dated 25.05.2011 whereby learned Single Judge has directed the appellant-Board to consider the first respondent for promotion to the post of Assistant Engineer against the posts which were occupied by respondent Nos.3 and 4.

(2) The controversy pertains to the determination of promotion quota for the 'Degree-holder Junior Engineers' and 'Diploma holder Junior

Engineers'. The first respondent qualified AMIE examination in the year 1989 and thus falls in the category of degree-holders. The private respondents, on the other hand, were diploma holders. Both of them have since retired on attaining the age of superannuation.

(3) Learned Single Judge has held that respondent Nos. 3 and 4, namely, diploma holders were occupying the vacancies meant for the degree holders, hence a direction was issued that the first respondent be granted promotion against the posts occupied by them.

(4) The appellant-Board unfortunately remained unrepresented before the learned Single Judge due to which it is possible that some of the relevant facts could not be brought on record for a just conclusion.

(5) Be that as it may, the fact situation has substantially changed after the order was passed by learned Single Judge. Respondent Nos.3 and 4 have admittedly retired from service on attaining the age of superannuation and thus there is no apprehension of any resultant reversion. Similarly, respondent No.1 has also been meanwhile promoted as Assistant Engineer but not from the date he had claimed. It goes without saying that the first respondent is entitled to be considered for promotion against the vacancy which fell to the quota of 'degree-holders' and which became available after he completed his AMIE Degree in 1989. The only exercise thus required to be undertaken by the Board is to determine as to when such vacancy became available as per the roster system which was in vogue in the year 1989 or in terms of the amended Rules brought into force thereafter. Needless to say that once the Roster Point is identified, the year of availability of such vacancy would also be known and consequently the first respondent would be entitled to promotion from the date that vacancy became available.

(6) The above-stated exercise can well be undertaken by the authorities in the appellant-Board. We thus dispose of this appeal by modifying the order of the learned Single Judge, with a direction to the Chief Administrator of appellant-Board to undertake the above-explained exercise and determine the date of vacancy which became available in the quota of degree-holders against which the first respondent was entitled to be considered and promoted. Let such an exercise be completed within a period of four months from the date of certified copy of this order. The first respondent may be heard in person before taking such decision. He shall be given seniority and other notional benefits from the date he is found eligible and entitled to.

(7) Disposed of.

(SURYA KANT)
JUDGE

20.09.2016

Bhumika

(SUDIP AHLUWALIA)
JUDGE