

C.W.P No. 17396 of 2012 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. C.W.P No. 17396 of 2012 (O&M)

Sandeep Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

2. C.W.P No. 1870 of 2016

Jeet Singh and othersPetitioners

Versus

State of Punjab and anotherRespondents

3. C.W.P No. 8152 of 2016

Joga SinghPetitioner

Versus

State of Punjab and anotherRespondents

DATE OF DECISION: 10.1.2017

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate
for the petitioners in C.W.P. No. 17396 of 2012.

Mr. Girish Agnihotri, Senior Advocate with
Mr. Arvind Seth, Advocate
for respondents No. 3 to 5 in C.W.P. No. 17396 of 2012
and for the petitioners in C.W.P. Nos. 1870 and 8152 of 2016.

Mr. Rupam Aggarwal, DAG, Punjab.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of three Civil Writ

Petitions bearing Nos. 17396 of 2012, 1870 and 8152 of 2016 as common question of law and facts are involved in all the cases. For the sake of convenience, the facts are being extracted from C.W.P. No. 17396 of 2012.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the proceedings of Departmental Promotion Committee (hereinafter referred to as 'the DPC') held on 22.8.2012 for consideration for promotion to the posts of Sub Divisional Engineers, whereby, the candidatures of only Diploma Holders have been considered and the petitioners, who are, AMIE/Degree holders have been ignored. A further prayer has also been made for issuance of direction to the respondents to hold a review DPC for promotion to the posts of Sub Divisional Engineer by considering the candidatures of the petitioners in pursuance to the quota allotted by virtue of the Punjab Irrigation Department (Group 'A') Service Rules, 2004 (hereinafter referred to as 'the Rules, 2004'). A further prayer has also been made that the respondents be directed to determine the posts/vacancies in the cadre of Sub Divisional Engineers from the year 2000-2001 in view of law laid down by Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Arun Kumar Aggarwal and others** 2007 (10) SCC 402.

Briefly, the facts of the case as made out in the present petition are that the petitioners are aggrieved by the action of the respondents in not considering them for promotion to the posts of Sub Divisional Officers/Sub Divisional Engineers in pursuance of the Rules, 2004, as amended from time to time. Earlier, the petitioners were governed by the Rules known as Punjab Service of Engineers Class-II (Irrigation Branch) Rules, 1941

(hereinafter referred to as 'the Rules, 1941'). As per said Rules, the appointment to the post of Sub Divisional Engineers was to be made from amongst the employees, who were possessing Degree as prescribed in Appendix 'A' to the said Rules. Meaning thereby all the vacancies were to be filled up from amongst the AMIEs/degree holders. Subsequently, the Rules, 2004 came into existence and as per the said Rules, 40% posts of Sub Divisional Engineers were to be filled by way of promotion from amongst the in-service candidates, out of which 13% was prescribed for AMIE's/degree holders. The implementation of "the Rules, 2004" was on the vacancies, which existed w.e.f. 2000-2001 as laid down by Hon'ble the Apex Court in **Arun Kumar Aggarwal's case (supra)**. The said quota of 13% was increased to 15% by virtue of the amendment made in the Rules by the Punjab Irrigation Department (Group 'A') Service Ist Amendment Rules, 2011 as notified on 17.6.2011. With the repeal of "the Rules, 1941", all the vacancies/posts, which came into existence after the year 2000-2001 were to be filled by providing the quota as prescribed under the Rules. As per the case of the petitioners, till today approximately 62 posts were to fall to the quota of AMIE/degree holders. The petitioners are aggrieved by the action of the respondents as the respondent-Department by considering the cadre as a whole w.e.f. the year 1941, rejected the candidatures of the petitioners.

Learned senior counsel for the petitioners contends that the petitioners joined the respondent-Department on the post of Junior Engineers and during service, they acquired the higher qualification of AMIE. Under the Rules, 1941, there was no provision for promotion from amongst the diploma holders and for the first time, an avenue of promotion

was provided to the diploma holders and their quota was also fixed out of degree holders. Thereafter Rules, 2004 came into existence, which were further amended vide notification dated 17.6.2011, wherein a quota for AMIE/degree holders in the cadre of Sub Divisional Engineers was increased from 13% to 15%. Learned senior counsel also contends that the action of the respondents in not considering the cases of the petitioners for promotion to the posts of Sub Divisional Engineer is totally illegal, arbitrary and contrary to ratio of judgment of Hon'ble the Apex Court in **Arun Kumar Aggarwal's case (supra)**, as it has already been clarified that the Rules, 2004 were to take effect on the vacancies occurred after the year 2000-2001. Meaning thereby the Rules, 2004 were prospective in nature and accordingly all the vacancies, which came into existence after coming into force the Rules, 2004 are to be filled up by the quota prescribed under the said Rules. It is also the argument of learned senior counsel for the petitioners that as per the Rules, 2004, a particular percentage has been fixed for filling up the promotional post and as such the Rules, 2004 have to be applied not only to the posts but to the vacancies as well. At the end, learned senior counsel submits that the posts are to be filled up as per their quota i.e. 13/15 % and the vacancies have to go to the cadre of AIME/degree holders and accordingly the petitioners are entitled for 13/15% of the quota for the posts w.e.f. the enforcement of the Rules, 2004.

Learned counsel for respondent-State submits that the petitioners have not approached this Court with clean hands as they have not narrated the correct picture before this Court. The quota of AMIE has already been filled up on the basis of recommendation of DPC held on 8.6.2012 in view of the order passed by this Court on 7.7.2011 in L.P.A. No.

1598 of 2010 titled as **Surinder Singh Kaler Vs. State of Punjab**. The petitioners have filed the present petition for quashing of the proceedings of the DPC held on 22.8.2012 by considering their case for promotion to the posts of Sub Divisional Officers. The case of the petitioners could not be considered in the said meeting as no post of AMIE category was available under the Rules, 2004 and as such the present petition is not maintainable. Learned counsel further submits that posts of both the categories i.e. diploma holders and AMIE/Degree holders have already been filled up as 33 Junior Engineers from AMIE quota have already been promoted as Sub Divisional Officers vide order dated 6.9.2012 in view of judgment dated 7.7.2011 passed by LPA Bench in **Surinder Singh's case (supra)**.

Learned senior counsel for respondents No.3 to 5 has also opposed the submissions made by learned senior counsel for the petitioners. He submits that the stand of the respondent-State is clear from the written communication filed in C.O.C.P. No. 612 of 1998, wherein, it has been mentioned that the matter was examined and it was found that there were 687 posts of Sub Divisional Officers out of which 14% posts were meant to be filled up from amongst the AMIE/degree holders and, therefore, 96 posts were meant for AMIE holders and they were occupying 115 posts only. The contempt proceedings were dropped and in the year 1999, there was no vacancy, which was to be given to AMIE holders. Learned senior counsel further submits that C.W.P. No. 11644 of 1999 was filed by AMIE holders, wherein, an affidavit was filed by the respondent-State to the extent that a conscious decision had been taken by the respondent-State for filling up all the existing vacancies on regular basis. In total 86 persons were given promotions, 139 AMIE/degree holders were working in the Department and

their quota was 96 and as such they were in excess of their quota. Learned senior counsel also submits that the petitioners have no right to claim the posts prior to the Rules, 2004 as specific directions were issued by Hon'ble the Apex Court in **Arun Kumar Aggarwal's case (supra)** to fill up the vacant posts as per Rules, 2004.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

The grievance of the petitioners in the present petition is that the respondents are not considering them for promotion to the post of Sub Divisional Officers/Engineers in pursuance of the Rules, 2004. Earlier the petitioners were governed by the Rules, 1941 and as per said rules, the promotions to the post of Sub Divisional Engineers were to be made from amongst the employees who were possessing AMIE Degree meaning thereby that the vacancies were to be filled up from amongst the AMIEs/degree holders. Thereafter the Rules, 2004 came into existence and as per the said Rules, 40% posts of Sub Divisional Engineers were to be filled up from amongst the in-service candidates, out of which, 13% was prescribed for AMIE's/degree holders. The Rules, 2004 were to be applicable for the posts, which existed w.e.f. 2000-2001 as laid down by Hon'ble the Apex Court in **Arun Kumar Aggarwal's (supra)**. The said quota of 13% was increased to 15% by virtue of the amendment made in the Rules by the Punjab Irrigation Department (Group 'A') Service Ist Amendment Rules, 2011 as notified on 17.6.2011. The posts/vacancies, which came into existence after the year 2000-2001 were to be filled up by providing the quota as prescribed under said Rules. The claim of the petitioners was rejected by the respondents on the ground that since 1941

degree holders were already in excess of their quota i.e. more than 13%, therefore, their claim could not be considered against said post. However, by considering the ratio of decision of Hon'ble the Apex Court in **Arun Kumar Aggarwal's (supra)** as well as Rules, 2004, which was to be made applicable prospectively and not retrospectively. The respondent-Department has calculated the quota on the basis of posts available w.e.f. the year 1941 and not on the basis of vacancies which came into existence after 2000-2001. In the DPC held on 22.8.2012, only the diploma holders were considered and the case of the petitioners was rejected and they have approached this Court by way of filing the present petition.

The interpretation of Rules, 2004 was made by Hon'ble the Apex Court in **Arun Kumar Aggarwal's case (supra)**, wherein, it was specifically held that the vacancies, which existed from the year 2000-2001 were to be filled up under the provisions of Rules, 2004. As per amendment vide notification dated 17.6.2011, the quota of AMIE/degree holders in the cadre of Sub Divisional Engineers was increased from 13% to 15%. The respondent-Department had filled up the posts of Sub Divisional Engineers from diploma holders of the year 2000-2001. The degree holders, who were appointed by virtue of Rules, 1941 are already more than their prescribed quota of 13% to 15%. Hon'ble the Apex Court in **Arun Kumar Aggarwal's (supra)** has also given a specific finding that the Rules, 2004 were to take effect on the vacancies, which arose after the year 2000-2001, meaning thereby all the vacancies which came into existence after coming into force the Rules, 2004 would have to be filled up by the quota prescribed under the said Rules. Accordingly, in view of ratio of judgment of Hon'ble the Apex Court in **Arun Kumar Aggarwal's (supra)**, the petitioners are entitled for

13 to 15% of the posts w.e.f. the enforcement of the Rules, 2004

Same issue was raised in LPA No. 1598 of 2010, which was dismissed. C.W.P. Nos. 16606 of 2012 and 17666 of 2012 were disposed of by this Court vide order dated 22.2.2013 with a direction that the Government will fill up the posts as per the Rules, 2004. The review application was filed in LPA No. 1598 of 2010 and the interim order passed on 23.8.2012 was modified to the extent that the promotions, if any, shall be subject to final decision of the appeal. It is a settled principle of law that Rules are to be in conformity with the provisions. Once the provisions stand in the statute book, the respondents cannot escape from complying with them in the appropriate manner and without defeating the object of the rules. The competent authority is expected to act in accordance with law and not to defeat the law. In case the law is defeated in an unjustified manner, the same is not sustainable in the eyes of law and is liable to be quashed.

Undisputedly the ratio in **Arun Kumar Aggarwal's (supra)** relates to vacancies prior to the year 2000-2001. It was held by Hon'ble the Apex Court that the Government had taken a conscious decision not to make any promotion because of new Rules. The principle of "old vacancy old Rule" was also discussed by Hon'ble the Apex Court in the case of **Deepak Aggarwal and another Vs. State of Uttar Pradesh and others** 2011 (6) Supreme Court Cases 725. The LPA Bench observed that the writ petitions filed by diploma holders seeking directions to the Government to act in accordance with directions given by the Supreme Court in **Arun Kumar Aggarwal's case (supra)** and the Government would fill up the posts as per Rules, 2004.

In view of facts as mentioned above, the controversy in the case at hand is squarely covered by the decision of Hon'ble the Apex Court in **Arun Kumar Aggarwal's case (supra)**. The DPC held on 22.8.2012 was for consideration of promotion to the post of Sub Divisional Engineer only of diploma holders, whereas, the petitioners are AMIE/degree holders and were not considered. The petitioners are entitled to be considered against said posts in view of their quota as provided under the Rules, 2004 in case they are otherwise eligible.

Accordingly, the petitions are allowed and the respondents are directed to reconsider the case of the petitioners against their quota as provided under the Rules, 2004 against the posts/vacancies which have occurred w.e.f. 2000-2001 in view of law laid down by Hon'ble the Apex Court in case of **Arun Kumar Aggarwal's case (supra)**. The necessary exercise is to be done within a period of four months from the date of receipt of copy of the order. In case the petitioners are found to be entitled to the benefits of promotion in accordance with the Rules, 2004, the same be granted to them within a period of two months thereafter. However, in case the petitioners are still aggrieved, they are at liberty to avail the appropriate remedy.

10.1.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes