

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

**CWP No. 2088 of 2016
Date of decision: 03.03.2017**

Baljit Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Anil Malhotra, Advocate
for the petitioners.

Mr. Rupam Aggarwal, DAG., Punjab.

JAISHREE THAKUR, J.

1. The petitioners herein have filed a writ in the nature of certiorari for (i) quashing impugned order dated 19.05.2014 whereby promotion to petitioner No.1 has been denied w.e.f. 01.01.2007 with a prayer for consideration of petitioner No.1 for regular promotion to Sub-Divisional Engineer, and (ii) for quashing impugned order dated 10.10.2007 qua petitioner No.2 by which promotion of petitioner No.2 has been denied w.e.f. 01.01.2003 with a prayer for considering him for regular promotion as Sub-Divisional Engineer (hereinafter referred to as 'SDE') w.e.f. 01.01.2003.

2. Petitioners No.1 & 2 came to be appointed with the respondent department on 20.05.1986 and 06.07.1979, respectively as Junior Engineer in Diploma Holder category as members of Scheduled Caste. The next rank to which the petitioners were entitled to be promoted on regular basis is to the rank of Sub-Divisional Engineer. Before 2007 the promotions to the said rank were governed by the Statutory Rules called the Punjab Service of Engineers

Class-II Public Works Department (Public Health) Rules, 1967 (hereinafter referred to as '1967 Rules'). In terms of Rules 6 & 7 of 1967 Rules, petitioner No.1 was promoted as SDE by order dated 19.07.2001 on ad hoc basis and petitioner No.2 was promoted on the post of SDE as on 10.10.2007. As per rule 7(3) of 1967 Rules an employee needs only five years service in case he possesses A.M.I.E. qualification for promotion to the post of SDE. As per rule 6(1) of the 1967 Rules in a block of 40 vacancies, 4 posts are meant for 4th category mentioned in Rule 6(1) of the Rules for promotion from the members of Punjab Public Works Department, Public Health Sectional Officers Service and Draftsmen possessing qualifications prescribed in Appendix 'B' i.e. B.Sc. in Engineering or AMIE qualification. 16th, 24th, 32nd, and 40th vacancy fall to the quota of AMIEs. In the next block of 40 vacancies, the 56th, 64th, 72nd and 80th vacancy would again fall in the share of AMIE category and so on. The petitioner being a member of the Scheduled Caste community is governed by the instructions issued by the Punjab Government regarding reservation under Article 16(4) and Article 335 of the Constitution of India. The Government of Punjab by policy decision dated 17.11.2005 has implemented Article 16(4A) of the Constitution and Article 16(4B) of the Constitution provides that any unfilled reserved vacancies of a previous year would form a separate class to be filled in any succeeding year and shall not be considered together with determining reserved vacancies of the year in which they were being filled up for determining the ceiling of 50% reservation on total number of vacancies. Furthermore, on 05.10.2006, the Government of Punjab enacted Punjab Scheduled Castes and Backward Classes (Reservation and Services) Act, 2006. Under Section 4 of this Act, the percentage of reservation for filling up vacancies by promotion for members of SC in Group 'A' and 'B' posts shall be

14% and a running roster shall be maintained till percentage of reservation is achieved. Under Section 7 of this Act, the reserved vacancies cannot be de-reserved in case no eligible SC/BC candidate is available. The vacancy shall be carried forward and no limit of number of years restricting the carry forward period is prescribed. In the year 2001, when petitioner No.1 became eligible and qualified for promotion to the post of SDE ad hoc, he was entitled to be promoted against the fourth reserved roster point which fell at point number 304 in the roster of vacancies of SDE. The Departmental Committee was required to meet every year but met after a considerable length of time. Therefore, the petitioners herein claim that if the Screening Committee had met regularly they would have got their promotion much earlier.

3. Per contra, learned counsel for the respondents submits that petitioner No.1, who had qualified AMIE qualification in the year 2000 became eligible for promotion w.e.f. 01.01.2001. The promotion of the petitioners is governed by the Rules of 1967 and as per orders issued by the government by letter dated 25.04.2007 one vacancy of SDE for AMIE Scheduled Caste category became available in 1984. Since no suitable candidate was available it was given to Bikramjit Singh of Backward class category in the year 1988. As per the Government instructions, this vacancy is to be carried forward but it cannot be carried forward beyond a period of three years. Therefore, in view of the settled position that vacancies are not to be carried forward beyond a period of three years, the petitioners would not become eligible for promotion and they will be considered on the availability of posts.

4. I have heard learned counsel for the parties and have perused the record of the case.

5. The question regarding promotion against a post meant for scheduled castes category came up for hearing in **Civil Writ Petition No. 8853 of 2007** titled **Praveen Kumar Versus State Of Punjab**. Grievance therein was that the petitioner had been denied promotion to the post of sub divisional engineer when the post had become vacant. One post meant for scheduled caste became available in the year 1984 but instead of keeping the same reserved for a candidate of that category it was offered to Bikramjeet Singh belonging to the backward class as there was no person eligible from the scheduled castes category as on 01.01.1984. A single bench of this court held that the post which was given to Bikramjeet Singh in 1984 had to be carried forward to subsequent years until vacancy was filled up by the eligible scheduled caste candidate by relying upon paragraph 3 of the instructions dated 19.11.1974. The writ petition was allowed by giving a direction to consider the case of the petitioner Parveen Kumar against the post which became available in the year 1990 reserved for scheduled caste candidate. This matter was challenged before the LPA Bench by the State of Punjab but the same was dismissed. Subsequent thereto other writ petitions were filed seeking the benefit of being promoted to the post of SDE from the date when the seat became vacant and other seniors had been appointed.

6. A similar issue came up before this Court in **Amarjit vs. State of Punjab and others (CWP No. 19483 of 2005)** decided on 10.01.2012, Amarjit being the senior most who had been promoted on the post of SDE in the year 1990 against a post of reserved category for Scheduled Caste candidate. He had cleared his AMIE qualification on 01.01.1986 and, therefore, claimed to be considered when the post became available in the year 1986. The petitioner therein was aggrieved that the post that had been made available was offered to

a candidate belonging to the general category and claimed promotion against the post which should have been carried forward. The writ petition was allowed with a direction to consider the case of the petitioner against the post which became available on 1.1.1986 for Scheduled Caste candidate. The petitioners herein too are aggrieved against the non-grant of promotion from the date when the seat became vacant.

7. The contention that if Parveen Kumar and Amarjit have been given promotion from the date when the posts became available, as a necessary consequence they too are entitled to be considered for promotion on the same basis has merit, since it has been held in ***Parveen Kumar's*** case (supra) that a vacancy that occurs in the Scheduled caste category has to be carried forward in case a suitable candidate is not available and cannot be filled in by a person of the backward class category or the general category. An argument has been raised that the judgment rendered in ***Indra Sawhney vs. Union of India, AIR 1993 SC 477*** would be applicable that reservation is not to be carried forward beyond a period of three years is not sustainable in the instant case as the matter has already been dealt with by a Co-ordinate Bench of this Court and affirmed by Hon'ble LPA Bench.

8. The petitioners herein belonging to the Schedule Caste Category, subject to their eligibility, would be entitled to be considered for promotion against carry-forward roster point reserved for SC Category in the quota prescribed for source 4, i.e., AMIE Category under the Punjab Service of Engineers[Class-II], Public Works Department [Public Health] Rules, 1967 as also to grant consequential reliefs like further promotion as Executive Engineer from the due date in the light of the decision of this Court in ***Parveen Kumar's*** case and ***Amarjit's Singh*** Case (supra). Let the needful be done as early as

possible but not later than 31.5.2017.

9. Resultantly impugned orders are set aside and writ petition stands allowed accordingly.

03.03.2017
Satyawar

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.