

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6174 of 2016 (O&M)

Date of Decision: 06.04.2017

Charanjit Singh & Ors.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

Present: Mr. Manish Dadwal, Advocate for the appellants

Mr. Rajesh Bhardwaj, Addl. AG Punjab

SURYA KANT, J. (Oral)

(1) The petitioners are diploma-holder Junior Engineers. They have laid challenge to the notification dated 10.06.2011 (P1) whereby the Punjab Water Supply and Sanitation (Engineering Wing) Group A Services Rules, 2011 have been amended and separate quota for promotion to the posts of Sub Divisional Engineer has been provided in the following manner:-

- “(i) 33% from amongst the Junior Engineers having Diploma in Engineering with 10 years’ working experience;
- (ii) 15% from amongst Junior Engineers having Degree in Engineering with 3 years’ working experience; and
- (iii) 2% from amongst the Circle Head Draftsmen and/or Divisional Head Draftsmen having Degree in Engineering in civil or mechanical or a degree of AMIE from the recognized University with 2 years’ working experience.”

(2) The grievance of the petitioners is that no separate quota for Juniors Engineers possessing Degree in Engineering (15% in the instant case) ought to have been provided for promotion to the posts of Sub Divisional Engineer. They allege that all the Junior Engineers irrespective of their qualifications, constitute one homogenous class no further classification based upon their academic/professional qualifications is permissible. It is thus claimed that the impugned Rule to the extent of carving out a separate quota for the Degree-holder Junior Engineers is totally arbitrary and cannot stand to the test of 'equality' within the meaning of Article 14 & 16(1) of the Constitution.

(3) Learned Addl. AG, on the other hand, maintains that with a view to encourage better qualified persons in public employment, the State Government is well within its right to give incentive to the Degree-holders as it would enhance the quality of techno-professional duties assigned to Sub Divisional Engineers. He urges that Degree-holders J.Es. are distinct and altogether separate from Diploma-holder J.Es., hence the latter cannot seek parity with the former.

(4) In this backdrop the question which falls for consideration is whether prescription of higher qualification with consequential quota in promotion does any violence to the concept of Equality enshrined in Articles 14 or 16(1) of the Constitution?

(5) The petitioners rely upon the decision of Hon'ble Supreme Court in **Dilip Kumar Garg & Anr. vs. State of U.P. & Ors. (2009) 4 SCC 753.** That was a case where Rule 5 (ii) of the UP Public Works Department Group-B Civil Engineering Service Rules, 2004 was amended whereby the requirement of passing the Departmental

examination in Engineering for diploma holders for their promotion as Assistant Engineers was done away with and they were placed at par with Degree-Holder in Engineering. Their Lordships have ruled that merely because the rule making authority had treated the Diploma holders at par with the Degree-holders for the purpose of promotion from the post of Junior Engineer to that of Assistant Engineers could not be termed as unconstitutional or illegal action.

(6) That is not the point involved herein. In the present case, the rule making authority has decided to make 15% promotion from amongst those Junior Engineers who are having Degree in Engineering. Similarly, 2% posts have been earmarked for Circle Head Draftsmen and/or Divisional Head Draftsmen who too have the qualification of Degree in Engineering or AMIE. The legality of the Rule thus has to be tested on the premise whether prescription of higher qualification for the purpose of promotion offends Articles 14 & 16 of the Constitution?

(7) Such a question, in our considered view, is no longer *res integra* and has been authoritatively answered against the petitioners in a catena of decisions, including, (i) **State of Jammu & Kashmir vs. Triloki Nath Khosa & Ors. AIR 1974 SC 1**; (ii) **Mohammad Shujat Ali & Ors. vs. Union of India & Ors. AIR 1974 SC 1631**; (iii) **P. Murugesan & Ors. vs. State of Tamil Nadu & Ors., (1993) 2 SCC 340**. In the last cited decision (P.Murugesan's case), the rule making authority had, in identical circumstances, prescribed the ratio of 3:2 between 'graduates' and 'diploma holders' in the matter of promotion as also the longer qualifying experience in service for diploma holders. The Apex Court held as follows:-

“14. This decision clearly supports the appellant's contention and goes to sustain the validity of the impugned amendment. If the diploma holders can be barred altogether from promotion, it is difficult to appreciate how and why is the rule-making authority precluded from restricting the promotion. The rule-making authority may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances that while it is not necessary to bar the diploma holders from promotion altogether, their chances of promotion should be restricted. On principle, there is no basis for the contention that only two options are open to a rule-making authority - either bar the diploma holders altogether or allow them unrestricted promotion on par with the graduates.”

(emphasis applied)

(8) We need not to burden this order by citing the subsequent decisions on this very point in issue.

(9) Degree in Engineering is undoubtedly a higher qualification than Diploma in Engineering. The State Government in its endeavour to infuse better talent even in the matter of promotions to technical services has earmarked a separate promotional quota for Degree-holders. Nothing precluded the State Government to altogether debar the diploma holders from further promotion as S.D.E. and such a decision would have got the seal of approval in the light of the decisions cited above. The Rule

Making Authority nevertheless has not completely deprived the diploma holders J.Es. from promotion, rather major share, out of promotional quota, has still been kept for them only. The principles culled out in **P.Murugesan** (supra) thus apply with full force in the case in hand.

(10) Further, Diploma is surely an inferior qualification than Degree. A Diploma-holder therefore cannot claim parity with a Degree holder. Nor a writ court can command to bring them at par, for it shall amount to a direction to treat two unequals as equals.

(11) Still further, the contention of the petitioners at best is that with the carving out of a separate quota for Degree-holders, the chances of promotion for Diploma holders have been reduced and adversely affected. Such a plea, in our considered view, has no legal force, for the chance of promotion is not a condition of service.

(12) For the reasons afore-stated, we do not find any merit in this writ petition which is accordingly dismissed.

(Surya Kant)
Judge

06.04.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No