

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.2061 of 2016 (O&M)

Date of Decision: 11.05.2017

Municipal Corporation, Chandigarh & Anr.

... Appellant

VS.

Subhash Chaudhary & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Mr. Ajay Sharma, Advocate for the appellant

SURYA KANT, J. (Oral)

(1) The Municipal Corporation, Chandigarh and its Chief Engineer have preferred this Letters Patent Appeal against the order dated 11.02.2016 whereby learned Single Judge held respondent No.1 eligible for promotion to the post of Executive Engineer and has directed the appellants to promote him with all consequential benefits.

(2) The short question which falls for consideration is whether the first respondent was eligible and entitled to be considered for promotion to the post of Executive Engineer at the relevant time?

(3) The first respondent joined the Public Health Wing of Engineering Department of Chandigarh Administration as a Junior Engineer on 08.03.1977. When the Municipal Corporation was constituted, he opted and joined the Corporation w.e.f. 23.12.1996. He was given additional charge of the post of Sub Divisional Engineer on 10.06.1998 and was later on promoted as such on regular basis w.e.f. 04.02.2005.

(4) The first respondent would have retired on attaining the age of 58 years on 31.03.2013, however, in view of adoption of conditions of service as applicable in the State of Punjab, the first respondent was also

granted extension initially for one year and thereafter for another year. He thus retired from service on 31.03.2015.

(5) It is also not in dispute that a post of Executive Engineer (Public Health) had fallen vacant well before the retirement of the first respondent. The appointment to the said post is governed by Municipal Corporation Chandigarh Services Regulations, 2012. It appears that under these Regulations, a Degree-holder Sub Divisional Engineer with six years' regular service and otherwise with seven years' of regular service was eligible for promotion to the post of Executive Engineer. There was, however, some anomaly in the Rules and after a clarificatory amendment, the eligibility condition was modified to the extent that a SDE having eight years of 'experience' of working in the cadre was made eligible for promotion as Executive Engineer.

(6) Though the first respondent fulfilled the above-stated eligibility condition but meanwhile he had attained the age of 58 years and while he was working on extension, the promotion was denied presumably on the ground that he was not entitled to promotion while on extension.

(7) Learned Single Judge has turned down the said objection after taking notice of the fact that extension for second year was granted to UT Chandigarh employees as per the Govt. of Punjab policy dated 20.09.2013 which expressly lays down that *"if a promotion post is available, the concerned employee will be eligible for consideration for promotion against that post and on promotion his/her pay shall be fixed under the relevant rules"*. It has thus been held that under the policy of extension, the promotion was admissible to an employee.

(8) We have heard learned counsel for the appellants at a considerable length but do not find any merit in this appeal.

(9) It is contended that the 2012 Regulations have been amended only on 08.04.2016 whereby a SDE with eight years of working experience has become eligible for promotion to the post of Executive Engineer and the said amendment being prospective, the first respondent is not entitled to its benefit. We are, however, not impressed by the contention, for even under the unamended Regulations (relevant extracts P2), the first respondent was eligible for promotion. The fact of the matter is that he was denied promotion only for the reason that he had attained the normal age of superannuation and was in service due to grant of extension. The question whether or not an employee while on extension is entitled to be considered for promotion, has been squarely answered in his favour by the Punjab Govt. Policy Circular dated 20.09.2013 duly adopted by the Chandigarh Administration.

(10) Dismissed.

(Surya Kant)
Judge

11.05.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

..