

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

- [1] Letters Patent Appeal No.681 of 2017 (O&M)
Date of Decision: May 23, 2017.
State of Punjab and anotherAppellants
versus
Sukhminder Singh and othersRespondents
- [[2] Letters Patent Appeal No.677 of 2017 (O&M)
State of Punjab and anotherAppellants
versus
Rachhpal Singh and othersRespondents
- [3] Letters Patent Appeal No.678 of 2017 (O&M)
State of Punjab and anotherAppellants
versus
Surjit Singh and othersRespondents
- [4] Letters Patent Appeal No.680 of 2017 (O&M)
State of Punjab and anotherAppellants
versus
Bhupinder Singh and othersRespondents
- [5] Letters Patent Appeal No.702 of 2017 (O&M)
State of Punjab and anotherAppellants
versus
Baljit Singh and othersRespondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE HARI PAL VERMA.**

Present: Mr.Rajesh Bhardwaj, Additional AG, Punjab, for the appellants.
Mr.R.K.Chopra, Senior Advocate with
Mr.Gaurav Sharma, Advocate, for the caveator-respondents
in LPA No.681 of 2017.
Mr.Sunny Singla, Advocate, for the caveator-respondents
in other LPAs.

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Surya Kant, J. (Oral)

Notice of motion.

Mr.R.K.Chopra, Senior Advocate with Mr.Gaurav Sharma,
Advocate, accepts notice on behalf of the respondent-writ-petitioners as
they are on caveat in LPA No.681 of 2017. Mr.Sunny Singla, Advocate,
accepts notice on behalf of the respondents in other connected cases who
are also on caveat.

[2] Heard learned counsel for the parties.

[3] This order shall dispose of Letters Patent Appeals No.677, 678, 680, 681 and 702 of 2017 as all the intra-court appeals have arisen out of a common order dated 10.11.2016 whereby learned Single Judge has directed the appellant-State to treat the respondents eligible for promotion to the posts of Principals in Education Department, Punjab, against 30% quota and consequently, re-consider them for such promotion.

[4] The facts are being extracted from LPA No.681 of 2017.

[5] The respondents joined the Education Department, Punjab as Masters/Mistresses on different dates and were subsequently promoted as Headmasters/Headmistresses in due course of time. Further promotion from the post of Headmaster/Headmistress is to the post of Principal which is governed under the provisions of the Punjab Education Service (School and Inspection) Group-A Rules, 2004 (for short, 'the 2004 Rules'). Rule 5 of 2004 Rules deals with the method of appointment, qualification and experience. It provides that "appointment to the post in the service shall be made in the manner as specified against the post in Appendix-B...."

[6] Appendix-B at Sr.No.3 deals with posts of District Education Officer, Principal, Assistant Director and Conversion Officer etc. At Sr.No.6, which pertains to promotion, it is provided that 30% of such posts shall be filled **"from amongst the Headmasters/Headmistresses working under the control of the Director, who have an experience of working as such for a minimum period of seven years...."**

[7] The case of the respondents before the learned Single Judge was that even before their promotion as Headmasters/Headmistresses on regular basis w.e.f. 07.10.2011, 08.10.2011, 04.04.2012 and 03.04.2012,

they were asked to officiate as Headmasters/Headmistresses for different durations, the details whereof were given in a tabulated form in para No.2 of the writ petition. They urged that under the 2004 Rules, they were required to have 7 years' experience as Headmasters/Headmistresses and for that purpose, experience gained by them while working on 'current duty charge' or on 'officiating basis' was as good as the experience earned on regular appointment.

[8] The authorities, on the other hand, were not considering the respondents eligible for promotion despite availability of vacancies in 30% promotional quota, presumably on the ground that they had not gained seven years' experience after they were promoted as Headmasters/Headmistresses on regular basis on different dates from 07.10.2011 onwards.

[9] In this view of the controversy, the question which fell for consideration before the learned Single Judge was whether the respondents were entitled to be treated eligible for promotion as Principals under Rule-5 read with Appendix-B of 2004 Rules?

[10] Learned Single Judge has answered the question in affirmative on the strength of various decisions rendered by this Court including by a Coordinate Bench in CWP No.12679 of 2010 (Chandigarh Administration versus Vipin Gupta and another) decided on 25.10.2010. Consequently, the appellant-State has been directed to re-consider the claim of respondents for promotion as Principals within 30% quota.

[11] Feeling aggrieved, the State of Punjab has preferred these intra-court appeals.

[12] It is urged by the learned Additional Advocate General, Punjab,

that some of the seniors to the respondents, whose details are given in para-9 of the grounds of appeal, did not apparently get the advantage to officiate as Headmasters/Headmistresses on 'current duty charge' basis or otherwise, hence the respondents cannot be permitted to march-over their seniors merely because they have gained experience due to unforeseen circumstances.

[13] On the other hand, Mr.R.K.Chopra, learned senior counsel maintains that private-respondents do not want to march-over their seniors inasmuch as their seniors have either retired and/or are eligible alongwith them for promotion and such seniors can also be promoted against the available vacancies.

[14] Having pondered over the submissions, we are of the considered view that the learned Single Judge is right in concluding that the experience gained by the respondents while working on current duty charge basis or on officiating basis is as good as the experience as they would have earned after regular promotion as Headmasters/Headmistresses. Had the Rules required the respondents to complete 7 years 'service' as Headmasters/Headmistresses, the things would have been different, for the respondents became members of the service only on their regular promotion and in such a case, the appellants would have been right in contending that the respondents were ineligible till the completion of 7 years' regular 'service' as Headmasters/Headmistresses. But the Rules require 7 years 'experience' only. The experience even if earned in a capacity which does not clothe an incumbent with a right to hold the post, would amount to valid experience for the purpose of gaining eligibility. We thus hold that the respondents, by virtue of current duty charge or by performing as acting

Principals and Drawing and Disbursing Officers, have earned the desired experience. The findings returned by the learned Single Judge to this effect are accordingly upheld.

[15] Having held so, we find some merit in the appellants' contention that the respondents cannot supersede their seniors in the cadre of Headmasters. But that is not the relief sought by the respondents either before the learned Single Judge or in these appeals. The respondents were concededly promoted on regular basis on or after 07.10.2011. Their seniors, if still in service, must have been promoted as Headmasters/Headmistresses before 07.10.2011. In that event, such seniors have completed 7 years' service/experience even if they had not officiated or worked on current duty charge basis as Headmasters/ Headmistresses. Thus, such seniors too are eligible for promotion as Principals. That being the state of affairs, there is no legal impediment against promoting the seniors as well as the respondents within their 30% quota strictly in accordance with seniority and merit or any other valid criteria as per Rules. Consequently, the appeals are disposed of with a direction to the appellants that let the needful be done at the earliest but not later than three months from the date of receiving a certified copy of this order.

[SURYA KANT]
JUDGE

May 23, 2017
mohinder

[HARI PAL VERMA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

CM Nos.1428 & 1429 of 2017 in
LPA No.681 of 2017

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State of Punjab and another vs. Sukhminder Singh and others

Present : Mr.Rajesh Bhardwaj, Additional AG, Punjab,
for the applicant-appellants.
Mr.R.K.Chopra, Senior Advocate with
Mr.Gaurav Sharma, Advocate,
for the caveator-respondents.

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CM No.1428 of 2017

Having heard learned counsel for the parties and for the reasons mentioned in the application, the same is allowed subject to all just exceptions and 144 days' delay in filing the appeal is condoned.

CM stands disposed of.

CM No.1429 of 2017

In view of the order of even date passed in the main appeal, the instant application has become infructuous.

Dismissed as infructuous.

(SURYA KANT)
JUDGE

May 23, 2017
mohinder

(HARI PAL VERMA)
JUDGE