

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 06.04.2018****CWP No.23029 of 2017**

Shyam Sunder Singla

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. G.S.Bal, Senior Advocate, with
Mr. A.D.S.Bal, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Saurabh Mago, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

1. This is second round of litigation. In the first round, the petitioner approached this Court in CWP No.8273 of 2014 to straighten out the past promotions due to the petitioner from the date his junior was promoted as Assistant Engineer and Executive Engineer. The petitioner succeeded before this Court. The writ petition was allowed by this Court on 16.12.2016. The impugned order declining the request of the petitioner for ante-dated promotion from the date his junior was promoted was quashed and direction was issued the Municipal Corporation, Faridabad to forward the case of the petitioner to the State Government for seeking formal approval of Government for retrospective promotions of the petitioner notionally as Assistant Engineer and Executive Engineer from the date his junior, namely, Ramesh Bansal, the 4th respondent was promoted to the higher posts. The Court directed retrospective promotion, but consequential

benefits were made notional and actual payments from the date of filing of the petition i.e. 01.05.2014. It appears that incorrect statement was made in Para.9 of the orders in CWP No.8273 of 2014 that the 4th respondent had been promoted as a Superintendent Engineer. Mr. G.S.Bal, learned senior counsel submits that his client was not right in his instructions and the 4th respondent actually came to be promoted vide order dated 12.07.2017 to which I would advert later in this order. In such circumstances, this Court directed that in case such a thing had happened, then the case of the petitioner will be considered by the Municipal Corporation/State of Haryana as per rules and in parity with the 4th respondent.

2. The Municipal Corporation, Faridabad did not appeal against the order and implemented it by office order dated 20.02.2017 promoting the petitioner as Assistant Engineer w.e.f. 16.11.1994 notionally by creating a supernumerary post of Assistant Engineer w.e.f. 16.11.1994 to 18.06.1997. He was given further promotion as Executive Engineer w.e.f. 24.03.2008 to 30.04.2014 notionally i.e. the date on which his junior, namely, Sh. Ramesh Bansal was promoted as Executive Engineer. The promotion was made actual as directed w.e.f. 01.05.2014.

3. The petitioner is a person with disability. Had he not been disabled, he would have retired on 30.04.2017 on reaching the age of 58 years. The Government of Haryana has made special concession for disabled employees to serve till the age of 60 years, provided the degree of disability is 70% and above.

4. Rule 143 of the Haryana Civil Services (General) Rules, 2016 provides that the age of retirement on superannuation is 58 years for all groups of employees except persons with disabilities.

5. While the petitioner was nearing the age of 58 years and his case had not been processed by the Department, which brought him to this Court by way of the present petition. It was argued on 09.10.2017 in *katcha peshi* that the petitioner's case for extension on account of physical handicap is pending with the respondent – State and has been duly forwarded by the Municipal Corporation, Faridabad, but no final order was passed. Notice of motion was issued to the State for 14.11.2017 and the learned Law Officer accepted notice on behalf of the State. It was directed that the official respondents shall ensure that the outstanding arrears of salary is credited in the account of the petitioner for the months of May to October, 2017 before 31.10.2017. The compliance was made. The petitioner has continued to serve and a formal order has been passed. The right of the petitioner to serve till 60 years is guaranteed by Rule 143. The petition must succeed on the point.

6. The additional grievance is that the petitioner be also granted promotion as Superintendent Engineer at par with Ramesh Bansal, who was promoted w.e.f. 12.07.2017. Vide order dated 12.07.2017 (Annex P-8), S.K.Aggarwal and Ramesh Bansal, Executive Engineers have been promoted as Superintendent Engineers and posted in Municipal Corporations at Panipat and Faridabad respectively. It is past cavil that the petitioner is senior to Ramesh Bansal, who is admittedly junior in service.

7. Mr. Bal argues that the petitioner is in service and has not reached the age of superannuation and, therefore, he had a right of promotion from the date his junior Ramesh Bansal was promoted as Superintendent Engineer. He points out to a distinctive feature in the promotion order dated 12.07.2017, where it is recorded in Note-3 that the

promotions of the two officers, including Ramesh Bansal, may not be treated as precedent in future. When the State uses this methodology for promotions that its decision will not be treated as a precedent in future would normally mean that the order has been passed with uncertainty and by ignoring valuable rights bypassing claim of person/s who may be senior. It appears that the Department has wrongly treated the case of the petitioner as one of extension in service treating the age of superannuation as 58 years and, therefore were in denial mode. If this has been the thinking in passing impugned promotion order, then that thinking has to set right by reminding the Department and its officers/in-charge of promotions the import of Rule 143 of the 2016 Rules.

8. In order to make matters clear to those who passed the order, Rule 143 is reproduced below:

“143. (1) Except as otherwise provided in these rules, every Government employee shall retire from service on afternoon of the last day of the month in which he attains the age of retirement prescribed for him or for the post held by him in substantive or officiating capacity, as the case may be. However, a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the prescribed age. The age of retirement on superannuation is fifty eight years for all groups of employees except the following for whom the same is sixty years:-

- (i) Disabled employees having minimum degree of disability of 70% and above

xx xx xx” (...emphasis supplied)

9. Thus, it is crystal clear that the age of retirement on superannuation of disabled employees in Haryana is 60 years. Their service benefits and rights are protected and even the additional period of two years is countable towards qualifying service for pension.

10. In view of the above discussion, this petition is allowed. The respondents are directed to pass an order promoting the petitioner as Superintendent Engineer from the date his junior Ramesh Bansal was promoted to the higher post. This will be with full consequential benefits. Compliance of the order be made within six weeks from the date of receiving of certified copy of this order. The arrears of difference of salary be also calculated and paid to the petitioner within the same time frame failing which, the amount in default will carry interest at the rate of 7.5% per annum till realization.

06.04.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>