

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.22530 of 2018

Date of Decision:-10.09.2018

Malkiat Singh & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Amarjit Singh, Advocate for the Petitioners.

JASWANT SINGH, J.

Five Petitioners who are working on the posts of Tubewell Drivers (hereinafter referred to as 'TWD') have approached this Court, seeking quashing of the process of promotion of seven Tubewell Drivers (possessing Diploma in Civil Engineering) as Junior Engineers (Civil), on the ground that the petitioners, who are senior to said TWD employees cannot be promoted as they possess Diploma in Electrical Engineering and till now no posts are vacant to be filled up for in their promotional cadre of JE (Electrical).

Learned Counsel for the petitioners has argued that the post of TWD is governed by the Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975, whereby Rule 4 provides for the qualifications required for direct recruitment and Appendix 'B' governs the

promotional channel. As per the counsel, the channel for promotion to the post of Junior Engineer (Civil), Junior Engineer (Electrical) and Junior Engineer (Mechanical) is 10% quota for the class-III employees (TWD), who have a diploma in Civil Engineering, Electrical Engineering and Mechanical Engineering respectively. It is however, submitted that as per Rule 11 of the Rules, 1975, a Joint seniority list of all the TWD employees is prepared, irrespective of their qualifications i.e. Diploma in Civil, Electrical or Mechanical. It is urged that contrary to Rule 11, respondent no.1-Secretary to Local Government, vide order dated 08.09.2014 bifurcated the posts of JE (Civil), Mechanical and Electrical. Consequently, an anomaly has been created whereby the employees, who are junior to petitioners are being considered for promotion to the post of Junior Engineer (Civil), whereas the petitioners are still stagnating, as they are, as of now, not being considered for the next promotion as Junior Engineer (Electrical) due to non availability of posts in Electrical branch/wing. It is further argued that unreasonable distinction has been made for channel of promotion amongst the TWD employees, as for next promotion to J.E. Civil, the experience required is two years, whereas for J.E. (Electrical), an experience of 5 years is required. Thus, prayer has been made for quashing the process of promotion initiated for the post of J.E. (Civil), by allowing the instant writ petition.

After having scrutinized the arguments raised by the Learned Counsel for petitioner and perusing the paper book, this Court is of the opinion that instant writ petition is without any merit and therefore deserves to be dismissed.

It is seen that the Rules in question were framed in the year

1975, with slight modifications being made in the said Rules from time to time. However, the essential requirements for next promotion to the post of JE of different Wings from the feeder cadre post of TWD have remained same. It is settled position of law that the employer is well within its right to frame the criteria for filling up the posts from the feeder cadre. The Courts have very limited jurisdiction to look into the matter as far as qualifications, experience etc. are mentioned in Statutory Rules. The Rules are always framed after taking advice from the experts in the field and thereafter are put into force. The Courts, cannot over-step its jurisdiction by traversing into the domain for legislature/employer. The requirement of having less experience for one post and more experience for the other, seems to be based more upon the nature of work and duties that are to be discharged by the employee/s. May be, for a TWD having diploma in Civil, not much experience is required for the next channel of promotion because he has to deal with construction material etc. However, for TWD having electrical diploma, may be more technical experience is required in view of the nature of duties a JE (Electrical) has to discharge. These are only presumptions and not conclusions. However, to decide upon the qualifications required for a particular posts are not for the writ court to decide. It can only adjudicate at the touchstone of violations of any of the Fundamental Right of petitioners or arbitrariness on part of official respondents. However, present case does not depict such a situation.

As far as the argument of preparation of joint seniority list is concerned and alleged deviation made by respondent no.1-Secretary vide its order dated 08.09.2014 (P-3) is concerned, it is being noticed, only to be rejected. It is seen that the department has been preparing joint seniority of

all TWD and respondent no.1 has only bifurcated the number of posts that fall within each category of JE's i.e. Civil, Mechanical or Electrical. Further, joint seniority list is prepared for the purpose of determining the *inter se* seniority amongst the same cadre and maintaining equality. There cannot be any possible heart burn to any of the employees for the next promotional posts, as they all are very well aware about the nature of duties they are performing and what is their channel of promotion. It is not the case that the respondents are not filling up the posts in the promotional cadre of petitioners intentionally and are only filling up in the cadre of JE (Civil). It only happens that the posts are vacant in the cadre of JE (Civil), which are being filled up. In any case, no employee has a vested right of being promoted to the next post and has only a right of consideration. It is also settled position of law that jurisdiction of writ court cannot be invoked for directing an employer to fill up any post. That is always the prerogative of the employer, subject to the obvious principles of natural justice, arbitrariness etc. Consequently, preparation of joint seniority, cannot, in any case be considered to be arbitrary as same is for the convenience of the department.

Resultantly, finding no merit in the instant writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

September 10, 2018
Vinay

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