

(108) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1122 of 2017 (O&M)
in CWP No.16874 of 2012
Date of decision: 19.01.2018

State of Haryana and others.

.... Appellants

Versus

Somvir Singh.

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Ravi Dutt Sharma, DAG, Haryana.

B.S. WALIA, J.,

[1] Prayer in the writ petition was for grant of Second Assured Career Progression (ACP) pay scale under the Haryana Civil Services (Assured Career Progression) Rules, 2008 (hereinafter referred to as – ‘the Rules’), as also for designating the petitioner as Additional Sub Divisional Engineer (hereinafter referred to as – ‘ASDE’) under Schedule I Part I of the aforesaid Rules.

[2] The first prayer was given up by the writ petitioner as relief in respect thereto was granted by the appellants-respondents during the pendency of the writ petition.

[3] The second prayer, namely for grant of designation of ASDE, was allowed by the learned writ Court in the light of Rules as well as Schedule I to the Rules by holding that admittedly the writ petitioner had put

in 18 years of satisfactory service as Junior Engineer in the Department of Town and Country Planning, Government of Haryana and in view thereof in accordance with Clause 10 of Part I of Schedule I to the Rules, the writ petitioner was entitled to be designated as ASDE. While holding so, the learned writ Court rejected the plea that there was no post of ASDE under the Service Rules, therefore, further promotion of the petitioner to the post of Planning Assistant could not be considered. The learned writ court rejected the aforementioned stand of the appellants-respondents by observing that the writ petitioner was only seeking designation to the post of ASDE and that even after being designated as ASDE, he would continue to substantively hold the post of Junior Engineer and the only benefit which the writ petitioner would derive would be of consideration of his claim for promotion under the applicable Service Rules for the post of Planning Assistant and that designation of the writ petitioner as ASDE would neither involve any financial benefits nor would entail grant of any promotional status. The learned Writ Court took the abovementioned view on the reasoning that acceptance of the plea of the State would render the quoted Rules which had been framed under Article 309 of the Constitution of India, nugatory.

[4] In the aforementioned background, the learned Writ Court directed the appellants-respondents to designate the writ petitioner as ASDE without grant of any financial benefits or promotional status in order to enable him to claim promotion to the next higher post of Planning Assistant to be considered as per applicable Service Rules on the substantive post held by him as Junior Engineer.

[5] The sole ground on which challenge has been raised to the directions issued by the learned Writ Court is that there is no sanctioned post

of ASDE in the Department of Town and Country Planning and that in the absence of a sanctioned post, the petitioner cannot be designated as ASDE or Additional Town Planner on completion of 18 years of service although the writ petitioner has completed 18 years of service and the pay scales of Junior Engineers of the Department of Town and Country Planning were at par with the pay scales of Junior Engineer of the other three wings of the PWD, however, their duties and responsibilities could not be equated. Therefore, no case of parity of designation or re-designation of Junior Engineer as Sub Divisional Engineer or equivalent post of Additional Assistant Town Planner could be ordered.

[6] Stand is also that as per the Haryana Town and Country Planning Department Technical (Group-C) Service Rules, 1996, 30% of Junior Engineers working in the Department having 10 years' experience are entitled for promotion to the post of Planning Assistant and thereafter as per Haryana Service of Town Planner (State Service Group-A) amended Rules, 2009, a Planning Assistant with 5 years experience in the Department is to be considered for promotion to the post of Assistant Town Planner. In the aforementioned background, stand in paragraph No.4 of the grounds of appeal is that the writ petitioner who was working as Junior Engineer could not be placed on the re-designated post of ASDE or equivalent post of Assistant Town Planner.

[7] We have considered the submissions made and are of the view that admittedly the writ petitioner was granted PB-2 ₹9300 - 34,800 + ₹5200 GP with effect from 01.01.2006 on account of completion of 18 years regular satisfactory service vide order 05.01.2013 (Annexure R-1) issued by the Director General, Town and Country Planning, Haryana Chandigarh in accordance with the Rules. Part I of Schedule I to the Rules categorically

provides that Junior Engineer in the three wings of PWD, Panchayati Raj and Town and Country Planning Department are entitled to the pay scale of ₹9300 - 34800, PB-2 5200 (on completion of 18 years regular satisfactory services) with changed designation of ASDE.

[8] Claim of the writ petitioner is based on the Rules and the Schedule as also on his fulfilling the conditions stipulated therein for grant of the benefit claimed. In the circumstances, learned State counsel has not been able to urge any ground warranting interference by this Court with the order passed by the learned writ Court holding that denial of the designation claimed as per the Rules applicable would tantamount to rendering the Rules framed under Article 309 of the Constitution of India nugatory. Besides, as has been held by the learned Writ Court, the writ petitioner would only be entitled to the grant of designation of ASDE without any financial benefits in respect thereto, solely to entitle his claim for promotion to the next higher post to be considered in accordance with the Rules applicable.

[9] Along with challenge to judgment dated 08.02.2016 in this intra-court appeal, application has also been moved praying for condonation of 426 days' delay in late filing of the appeal.

[10] A perusal of the application reveals that copy of the impugned judgment dated 08.02.2016 was received by the appellants on 08.04.2016 while the office of the Advocate General, Haryana, vide letter dated 18.04.2016 advised the case to be fit for filing of LPA. However, for reasons best known to the appellants, LPA was filed only on 22.05.2017. Explanation given that on receipt of advice, correspondence was going on with the office of Advocate General, Haryana for filing of appeal, thereby delay occasioned, in our view does not constitute sufficient cause for condonation of 426 days' delay in late filing of the appeal. Accordingly, for

the reasons as mentioned above, no case is made out for condonation of delay of 426 days in late filing of the appeal.

Accordingly, application for condonation of delay is dismissed and resultantly, the appeal for the reasons as recorded above is also dismissed. No costs.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

19.01.2018
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Note:

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| 1. Whether the order is reasoned/speaking | : | Yes/No. |
| 2. Whether the order is reportable | : | Yes/No. |