

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Civil Writ Petition No.4050 of 2019 (O&M)
Date of Decision: September 06, 2019.

Parvesh Kaushish and anotherPetitioners
versus
State of Haryana and othersRespondents

[2] Civil Writ Petition No.17758 of 2019 (O&M)

Vivek BeniwalPetitioner
versus
State of Haryana and othersRespondents

[3] Civil Writ Petition No.19409 of 2019

Sohan SinghPetitioner
versus
State of Haryana and othersRespondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL.

Present: Mr.Rajesh Arora, Advocate, for the petitioners
(In CWP No.4050 of 2019).
Mr.Sajjan Singh, Advocate, for the petitioner.
(In CWP No.19409 of 2019)

Mr.Kiran Pal Singh, AAG, Haryana.

Mr.Shailendra Jain, Senior Advocate with
Mr.Inder Pal Goyat, Advocate and
Ms.Anupama Agigala, Advocate, for respondent No.5.

Mr.B.S.Rana, Senior Advocate with
Ms.Divya Bajaj, Advocate, for the applicant.

Mr.Sanjay Kaushal, Senior Advocate with
Mr.Kuldeep Sheoran, Advocate, for the applicant
in CM No.9602 of 2019 and
for the petitioner in CWP No.17758 of 2019.

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Amit Rawal, J. (Oral)

CM No.3370 of 2019.

For the reasons mentioned in the application, the same is

allowed subject to all just exceptions and the applicant-Sunil Lamba is

CWP No.4050 of 2019 and connected cases

[2]

ordered to be impleaded as added respondent No.5.

Amended memo of parties is taken on record.

CM stands disposed of.

CM No.9602 of 2019.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions and the applicant-Vivek Beniwal is ordered to be impleaded as added respondent.

Registry is directed to carry out necessary correction in the memo of parties.

CM stands disposed of.

CM No.10234 of 2019.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions and the applicant-Deepak Rana is ordered to be impleaded as added respondent No.4(A).

Amended memo of parties is taken on record.

CM stands disposed of.

CM No.9455 of 2019 and 11977 of 2019 in CWP No.4050 of 2019

Applications are allowed, as prayed for.

CM No.12652 of 2019 in CWP No.4050 of 2019

For the reasons mentioned in the application, the same is allowed and the replication is taken on record.

CM stands disposed of.

Main Cases

This order of mine shall dispose of three writ petitions bearing CWP Nos.4050 of 2019, 17758 of 2019 and 19409 of 2019 and three applications moved by Sunil Lamba. Vivek Beniwal and Deepak Rana.

CWP No.17758 of 2019 filed by Vivek Beniwal challenging the order of reversion dated 27.06.2019 owing to the orders passed in CWP No.4050 of 2019 filed by Parvesh Kaushish and CWP No.19409 of 2019 by Sohan Singh. The petitioners in CWP No.4050 of 2019 are aggrieved of not promoting them as Assistant Engineers (Civil), whereas applicant-Vivek Beniwal, was, promoted during the pendency of the writ petition which promotion was withdrawn owing to the contempt notice served in CWP No.4050 of 2019. In these circumstances, the applicant Vivek Beniwal sought his impleadment.

The brief facts are that at the time of initial recruitment of Junior Engineers, the required qualification was three years diploma from any recognized University and for Building Inspectors, three years diploma from any recognized University. Petitioner No.1 Parvesh Kaushish at the time of recruitment was the holder of diploma in Mechanical Engineering and during service acquired the degree in Mechanical Engineering. Petitioner No.2 Jai Dev Sharma is the holder of degree in Civil Engineering. Learned counsel for petitioner No.1 states that petitioner No.1 before joining the respondent Corporation, was working as Junior Engineer (Civil) in Central Government Department and thus he has 22 years' experience in his credit. The cause of action arose to the petitioners when three orders (Annexure P-5 Colly.) were passed promoting four Building Inspectors, namely, Tilak Raj, Vinod Kumar, Rajesh Kumar and Anil Malik as Assistant Engineers. Vinod Kumar is degree holder and is at Sr.No.59 in merit list, whereas Tilak Raj at Sr.No.70. Rajesh Kumar is at Sr.No.3 and Anil Malik is at Sr.No.21 in the merit list. In this regard, petitioner No.2 made a representation dated 11.10.2018 (Annexure P-6) of not taking into

consideration his case for promotion particularly when he acquired the required qualification.

As per the Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998, for promotion to the post of Assistant Engineer, the required qualification is Bachelor Degree in Civil Engineering from any recognized University with seven years experience as Junior Engineer (Civil) or Building Inspector. The relevant extract of Appendix-B (Rule-7) of the Rules (ibid) reads as under:-

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| “11. Assistant Engineer (Civil) | For promotion:-
(i) Bachelor Degree in Civil Engineering from any recognized University or its equivalent;
(ii) Seven years experience as Junior Engineer (Civil) or Building Inspector.

OR
(i) Diploma in Civil Engineering from an Institution recognized by the State Government;
(ii) Twelve Years' experience as Junior Engineer (Civil) or Building Inspector or Circle Head Draftsman.” |
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Petitioner No.2 is the holder of diploma with seven years experience and the period of service rendered in the Central Government Department is required to be counted and therefore, he is required to be promoted to the post of Assistant Engineer (Civil). No doubt, during the pendency of the writ petition, the promotion orders of Sunil Lamba and Deepak Rana have been withdrawn. Attention of this Court is drawn to paragraph 13 of Misc. Application No.10086 of 2019 whereby the applicant sought indulgence of this Court for issuance of directions to promote him Assistant Engineer in order to prevent the contempt of interim order dated 14.02.2019 and existence of 51 posts of Assistant Engineer (Civil) has not

been denied.

Mr.Sanjay Kaushal, Senior Advocate has adopted the arguments raised by Mr.B.S.Rana, Senior Advocate.

Mr.Sajjan Singh, Advocate, appearing for the petitioner in CWP No.19409 of 2019 states that his client's case was required to be considered for promotion as his case is at par with Vivek Beniwal, Vinod Kumar and Tilak Raj.

Learned Assistant Advocate General, Haryana, denied the averments made in para No.13 of the application and states that necessary action shall be taken by passing speaking order and giving opportunity of hearing to the parties.

I have heard learned counsel for the parties and perused the paper book. It would be in the fitness of things to reproduce para No.13 of the application (CM No.10086 of 2019), educational qualifications as well as 1998 Rules (ibid).

“13. That it is further submitted that 51 posts of Assistant Engineer (civil) are lying vacant with the respondent department and on account of the ongoing projects like C.M. Announcements, PMAY, AMRUT, D-plan, MP-LAD Schemes etc. the department is in dire need of interest of the respondent department that promotion to the post of Assistant Engineer (civil)/Municipal Engineer are effected as soon as possible.”

On co-joint readings of the Rules (ibid), reproduced above, it shows that the eligibility for promotion to the post of Assistant Engineer is Bachelor Degree in Civil Engineering from any recognized University or its equivalent and seven years' experience as Junior Engineer (Civil) or

Building Inspector OR Diploma in Civil Engineering from an Institution

recognized by the State Government and twelve years' experience as Junior Engineer (Civil) or Building Inspector or Circle Head Draftsman. The post of Junior Engineer (Civil) and Building Inspector is at par and not different posts. Since the petitioner worked as Building Inspector, the question which has been raised, is, "whether the person holding diploma in Civil Engineering and working as Building Inspector can be considered for promotion as Assistant Engineer".

It has been undertaken by the State Government that grievance of all the petitioners can be redressed. There are 51 posts of Assistant Engineers lying vacant. No doubt, the State Government has expressed little hurry in passing promotion orders of Tilak Raj, Vivek Beniwal and Deepak Rana but during the pendency of the writ petition, the same were withdrawn. Thus it is directed that the State Government shall consider the qualifications of the petitioners as well as applicants as per Rules (ibid) for undertaking an exercise of promotion to the post of Assistant Engineer (Civil). In view of the findings above, Mr.Rajesh Arora, Advocate submitted that he does not press the claim for that qualification for considering service of petitioner No.2 rendered in Central Government Department. But the service can always be considered in case any provision in the rules. It would be open to the State Government to consider the Rules extracted above regarding rendering of service in any State Government and Government of India.

The writ petitions are disposed of with a direction to the State Government that this exercise of promoting the petitioners and applicants as Assistant Engineers (Civil) be undertaken within a period of 2 months from the date of receiving a certified copy of this order, by passing speaking

order and giving opportunity of hearing to the parties. In case needful is not done within the stipulated period, there shall be a cost of Rs.50,000/- on the State Government. In case the petitioners and applicants are found eligible, necessary orders of promotion be passed with all the consequential benefits, if permissible in law. The question noticed above is left open to be considered by the State.

September 06, 2019

mohinder

(AMIT RAWAL)

JUDGE

Whether speaking/reasoned

Whether Reportable

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Yes/No

Yes/No