

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

CWP No.16476 of 2011 (O&M)

Date of Decision: 25.02.2019

Dinesh Kumar Arya and another

... Petitioners

Versus

Haryana Power Generation Corporation Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rajesh Arora, Advocate,
for the petitioners.

Ms. Anupama Sharma, Advocate,
for respondents No.1 to 3.

ARUN MONGA, J.(ORAL)

The short controversy in the present writ petition is grant of pecuniary benefits to the petitioners with effect from the date they were given the deemed promotion i.e. 26.05.1993 in pursuance to the promotion order dated 17.10.2007 (Annexure P-2).

2. For the purpose of disposing of the present writ petition, the factual background is not relevant and in any case the facts in the present case are not disputed.

3. Irrefragable, position in the present case is that petitioners are similarly situated with their other colleagues who were promoted vide same promotion order dated 17.10.2007 and were granted the deemed date of promotion w.e.f. 26.05.1993.

4. The positive case pleaded along with the relevant

orders viz 26.09.2008 (Annexure P-3) followed by order dated 29.09.2008 (Annexure P-4) is that indeed the similarly situated employees have been given the pecuniary benefits with effect from the date they were given the deemed date of promotion i.e. 26.05.1993, whereas the petitioners have been discriminated without any reasonable cause.

5. I have gone through the pleadings and having heard the rival contentions of the learned counsel for the respective parties, I am of the view that the action of the respondents in denying the petitioners the pecuniary benefits with effect from the deemed date of promotion is per se discriminatory, to say the least.

6. Such an action on the part of the welfare State is deprecable and does not stand the judicial scrutiny and, therefore, cannot be sustained. The discrimination indulged by the respondents has been justified that the share quota posts of A.E. (Civil) against 12.5 % share quota became available on 10.09.2007 and, accordingly, the petitioners were promoted vide order dated 17.10.2007 on their turn on availability of their share quota. Even though concededly, they were granted deemed date of promotion w.e.f. 26.05.1993. However, the non grant of pecuniary benefits to the petitioners from the back date is sought to be justified on the ground of non-availability of share quota posts. Even the said stand of the respondents is not tenable in view of the promotion order dated 17.10.2007 whereby a total of 9 J.E. (Civil) (including petitioners) were promoted as A.E.

7. Learned counsel for the petitioners further points out that all the 9 J.Es. have similar qualifications and the said fact is not disputed by the respondents. He further contends that while the other 7 J.Es including the ones Junior to the petitioners have been granted the pecuniary benefits with effect from the deemed date of promotion vide orders dated 26.09.2008 (Annexure P-3) and dated 29.09.2008 (Annexure P-4), but the petitioners have not been granted the same. The passing of orders dated 26.09.2008 (Annexure P-3) and 29.09.2008 (Annexure P-4) qua the other similarly situated employees is not controverted by the respondents.

8. The stand taken by the respondents in their reply with regard to non-availability of 12.5% share quota is, therefore, not sustainable being violative of Articles 14 and 16 of Constitution of India.

9. The present petition is, accordingly, allowed and the respondents are directed to grant the pecuniary benefits along with consequential benefits as given to the other similarly situated persons vide promotion order dated 17.10.2007 to the petitioners with effect from the deemed date of promotion along with interest @ 6% per annum.

10. Petition is allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

25.02.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No