

CWP-16219-2013 (O&M)

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

CWP-16219-2013 (O&M)
Date of Decision: March 12, 2019

Kanwal Singh

... Petitioner

vs.

Bhakra Beas Management Board and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Raman Sharma, Advocate
for the petitioner.

Mr. Naveen Chopra, Advocate
for respondent-BBMB.

ARUN MONGA, J

The petitioner at the relevant time was working as Superintendent Grade-II and has filed the present writ petition against the respondent-BBMB for issuance of a writ in the nature of *mandamus* directing them to consider him for promotion to the post of Superintendent Grade-1 w.e.f. the date of availability of vacancy in accordance with Bhakra Beas Management Board, Rules, 1974, as applicable at the relevant time.

2. The main grouse of the petitioner is that he was not considered for promotion on the ground that BBMB had not framed relevant rules for Class-1 and Class-II cadre.

3. The short controversy arising out of conjoint reading of the writ petition and the written statement filed by the respondents, is as to whether the BBMB could have ignored its own recruited employees for the purpose of promotion instead of giving preference to them, given promotion to the

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employees, of another organization viz Punjab State Electricity Board, at the relevant time.

4. Learned counsel for the petitioner contends that the issue arising in the present writ petition is no more res-integra as the same has been considered and decided vide judgment/order dated 11.02.2010 rendered by this Court in CWP-770-1996 and which was upheld by a Division Bench judgment rendered in LPA-1415-2001. The relevant portion of the order in CWP-770-1996 is reproduced herein below:

*“I have given thoughtful consideration to the submissions made on behalf of counsel for the parties. In view of the law declared by the Hon'ble Supreme Court in **Jai Ram Sharma's case (supra)** and in the case of **Bharat Krishan Sahni (supra)**, no joint seniority could be made by the respondent Board of the State Govt. employees working in BBMB on deputation or on transfer and the BBMB regular employees. It is also settled law that deputationists cannot be considered in preference to regular employees for promotion. Therefore, the Punjab Govt. memo dated 23.4.1992 relied upon by the counsel for the respondent Board would be of no help. Apparently, the petitioner has been discriminated inasmuch as the first available post ought to have been filled by eligible available regular employee of the Board and then the remaining posts could be filled up from State Govt. employees working in BBMB because preference in promotion was required to be given to BBMB regular employee and not to the State Govt. employees. The petitioner is thus entitled for promotion on preference over deputationists/transferees from State Governments against first available post on his having become eligible for promotion on 27.7.1995.”*

5. Having perused the judgment(Supra) and having gone through the rival pleadings of the case, I am of the opinion that on the analogous principles

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as enunciated in the judgment above, the petitioner ought to have been considered for the promotion to the post of Superintendent Grade-1 from Grade-II as he was otherwise eligible for the same.

6. I am also in agreement with the contention of learned counsel for the petitioner that under Rule 6 of the BBMB Rules 1974, as per Schedule-I, BBMB, had adopted all the Punjab State Electricity Board Rules and regulation in their entirety for the employees working in their establishment.

7. That being the position, it was expected of the respondents-BBMB to give fair opportunity to the employees recruited by it for its establishment, particularly, if they were eligible for being considered for promotion as per applicable Rules at the relevant time.

8. In view of my above discussion and the reasoning contained therein, the present writ petition is disposed of with a direction to the respondents-BBMB to consider the case of the petitioner in accordance with the relevant Rules and Regulations applicable to the petitioner at the time, he was eligible for being considered for promotion.

9. Let needful be done within a period of 03 months from the date of receipt of certified copy of this order. In case, the petitioner is found entitled for being promoted, consequential benefits thereof will be disbursed to him, preferably, within a period of 06 months thereafter.

March 12, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No