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

**CWP-17874-2019
Date of decision : 05.07.2019**

Giri Raj Sharma

... Petitioner(s)

Versus

State of Haryana and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aman Chaudhary, Advocate
for the petitioner.

AMIT RAWAL, J. (ORAL)

Learned counsel for the petitioner submits that the petitioner's grievance in the present writ petition is for promotion from the post of SDE to the Executive Engineer as per the drafts rules, he has already five years experience and degree qualification, though for the purpose of promotion, rules permit two option, one from existing feeder post and other from deputation. In support of his contentions, relies upon para 4 of judgment of Hon'ble Supreme Court rendered in **"Jai Ram Sharma V/s Jammu Development Authority" AIR 1997 Supreme Court 151** and ratio decidendi culled out by this Court in **"Union of India V/s Puranjit Singh and another" 2008 (3) SLR 832**. The petitioner, in this regard, had already submitted a representation dated 17.04.2018 (Annexure P-9) to the Managing Director, Haryana Tourism Corporation Ltd., Chandigarh, but no action has been taken so far thereon. Despite that, respondent

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No.2/Department is contemplating to call names for filling up the posts of Executive Engineer through deputation. One Sachin Bhati, who is holding current duty charge of Executive Engineer, is being sought to be deputed on deputation. It would be totally anomaly in the interpretation of the Rules as well as judgments, aforesaid.

He further pointed out the draft rules had already approved by Board of Directors, therefore, there is no question of any misinterpretation regarding nomenclature, draft or actual position. There are two posts of Executive Engineer.

Notice of motion.

On asking of the Court, Ms. Palika Monga, DAG, Haryana, who is present in Court, accepts notice on behalf of the respondents and submits that the writ petition is bereft of any order contemplating the filling up the vacant posts of Executive Engineer through deputation, thus, urges this Court for dismissal of the present writ petition.

I have heard learned counsel for parties and appraised the paper book.

It would be apt to reproduce para No.4 of **Jai Ram Sharma's case** (supra) and para No.3 of **Union of India's case** (supra), which read as under:-

Para No.4 of Jai Ram Sharma's case (supra)

Counter-affidavit has been filed by the respondent contending that appellant's seniority was considered with effect from the date when the vacancy had arisen after the retirement of the 5th respondent. The above action is obviously illegal and an arm twist to nepotism. When the appellant was a regular candidate as Office Superintendent, he was entitled to be

considered in preference to the deputationist, who is not a member of the service as on that date. He was wrongly denied of his legitimate right to be considered for appointment on the date when the 5th respondent was appointed. It is, therefore, directed that the appellant must be considered to have been regularly appointed with effect from the date on which the 5th respondent was promoted as P.R.O. and in terms of the order passed by this Court. His entitlement would be considered according to the rules within a period of three months from the date of the receipt of the order.

Para No.3 of Union of India's case (supra)

3. We have heard the learned Counsel for the Union Territory Administration at a considerable length and find that there is no error in the view taken By the Tribunal. It is well settled that when a senior most departmental employee is available then it would be wholly unwarranted to call another person on deputation unless there are any compelling reasons like the pendency of criminal or disciplinary proceedings. In the absence of any such facts, the non-consideration of the respondent No. 1 for promotion to the post of Chief Engineer after it became available on the dismissal of Shri. K.K. Jerath, respondent No. 1 was entitled to be considered notwithstanding the fact that he was on deputation with the Municipal Corporation, Chandigarh. In any case, the Tribunal has not granted the relief of arrears of pay but has confined the relief to notional refixation of pay and then release of retiral benefits on that basis. Therefore, we do not find any, room warranting interference of this Court in the well reasoned order of the Tribunal. The writ petition is misconceived and the same is accordingly dismissed."

In my view, the Department should have taken into consideration the representation of the petitioner to be logical end in order to prevent dichotomous approach and disgruntlement amongst eligible

candidates.

Without expressing any opinion on the merits of the case, I dispose of the present petition by directing respondent No.2 to decide the representation dated 17.04.2018 (Annexure P-9), in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of two months from the date of receipt of the certified copy of the order. In case the claim of the petitioner is accepted, the consequential benefits, if any, be granted to him, in accordance with law and if the claim of the petitioner is not to be accepted, then a well reasoned and speaking order be passed and conveyed to the petitioner forthwith.

Till then, process of filling up the aforementioned post through deputation shall be kept in abeyance.

05.07.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**