

CWP No. 455 of 2016 and other connected cases

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

**(1) CWP No. 455 of 2016 (O&M)
Date of decision : 14.11.2019**

Aman Singh

....Petitioner

Versus

Haryana Power Generation Corporation Limited and another

.....Respondents

(2) CWP No. 24844 of 2015

Sumer Singh Saini

....Petitioner

Versus

Haryana Power Generation Corporation Limited and another

.....Respondents

(3) CWP No. 4904 of 2016 (O&M)

Dinesh Pal

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(4) CWP No. 482 of 2016 (O&M)

Raj Kishan Saini

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

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(5) CWP No. 844 of 2016 (O&M)

Surinder Kumar Arora

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(6) CWP No. 866 of 2016 (O&M)

Raj Singh Nehra

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(7) CWP No. 874 of 2016 (O&M)

Satish Kumar Sharma

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(8) CWP No. 967 of 2016

Vijay Pal Tyagi

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

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(9) CWP No. 975 of 2016 (O&M)

P.K. Gandhi

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(10) CWP No. 977 of 2016 (O&M)

Ashok Kumar Gaur

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(11) CWP No. 978 of 2016 (O&M)

Rajinder Singh Rose

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(12) CWP No. 1000 of 2016 (O&M)

Kuljinder Singh

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

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(13) CWP No. 1184 of 2016 (O&M)

Kashmir Singh

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(14) CWP No. 1043 of 2016 (O&M)

Sh. A.V. Tiwari

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(15) CWP No. 1189 of 2016 (O&M)

Krishan Lal Sharma

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(16) CWP No. 1190 of 2016

Shamsher Singh Malik

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(17) CWP No. 1305 of 2016

Bimla Devi

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(18) CWP No. 22063 of 2016 (O&M)

M.S. Gupta

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(19) CWP No. 22064 of 2016 (O&M)

Anil Kumar Gupta

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(20) CWP No. 22065 of 2016 (O&M)

Om Parkash Gupta

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

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(21)

CWP No. 1219 of 2017

Joginder Singh

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

(22)

CWP No. 24898 of 2017

Ranjit Singh

....Petitioner

Versus

Haryana Power Generation Corporation Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. J.K. Goel, Advocate with
Mr. Shrey Goel, Advocate for the petitioner(s)
in all the writ petitions.

Mr. D.S. Nalwa, Advocate for the respondents
(in CWP Nos. 455 of 2016, 482 of 2016, 844 of 2016, 866 of
2016, 874 of 2016, 967 of 2016, 975 of 2016, 977 of 2016, 978
of 2016, 1000 of 2016, 1043 of 2016, 1184 of 2016, 1189 of
2016, 1190 of 2016, 1305 of 2016, 4904 of 2016 and CWP No.
1219 of 2017).

Mr. Deepak Sabherwal, Advocate for the respondents
(in CWP Nos. 22063 of 2016, 22064 of 2016 and 22065 of
2016).

Mr. Hitesh Pandit, Advocate for the respondents
(in CWP Nos. 24844 of 2015 and 24898 of 2017).

Harsimran Singh Sethi, J. (Oral)

1. By this common order, writ petitions, the details of which have

been given in the headings, are being disposed of as all the writ petitions involve the same question of law and involve similar facts. For the purpose of this order, the facts are being taken from CWP No. 455 of 2016.

2. The grievance, which is being raised by the petitioner(s) in these writ petitions is that though there was no reservation for promotions to Class I and Class II posts in the Government of Haryana but one Sh. Parminder Kumar, who was junior to the petitioner(s) and belonging to the Reserved Category, was wrongly granted promotions on the basis of reservation without there being any reservation Policy applicable to the post of Assistant Engineer, Assistant Executive Engineer and then Executive Engineer and petitioner(s) were superseded by him and prayer of the petitioner(s) is that as a junior employee has been promoted in preference to the petitioner(s) wrongly, they should also be granted the same benefit of promotion to the higher posts as extended to Sh. Parminder Kumar.

3. The brief facts as stated in CWP No. 455 of 2016 are as under:-

Petitioner was appointed as a Junior Engineer in the year 1980 in the Haryana State Electricity Board, which is now Haryana Power Generation Corporation Limited. Petitioner was promoted as Junior Engineer-I, thereafter as Assistant Engineer and Assistant Executive Engineer on 13.03.1989, 06.09.2007 and 07.10.2010 respectively. One Sh. Parminder Kumar, who belonged to the reserved category of schedule caste, was promoted as a Junior Engineer on 01.07.1988. He was further promoted as Assistant Engineer on 18.02.1994 and Assistant Executive Engineer on 19.04.2004 and thereafter as Executive Engineer on 10.12.2007. A chart showing the dates of promotion of petitioner and Sh.

Parminder Kumar is as under:-

<i>Sr. No.</i>	<i>Name of Petitioner with Designation & Seniority No.</i>	<i>Date of Joining</i>	<i>Name of Juniors official in Reserve Category With seniority no.</i>	<i>Date of Joining</i>
1	Sh. Aman Singh (156)		Parminder Kumar (SC)	
	D.O.J. as J.E.	27.05.1980	(215)	
	Promoted as J.E. - I	13.03.1989	D.O.J. as Fitter W/c	06.11.1979
	Promoted as A.E.	05.09.2007	Promoted as J.E.(W/C)	13.08.1982
	Promoted as A.E.E.	07.10.2010	Promoted as J.E. (Regular)	18.05.1984
			Promoted as J.E.-I	01.07.1988
			Promoted as A.E.	18.02.1994
			Promoted as XEN	10.12.2007

4. Learned counsel for the petitioner(s) argues that as there was no reservation in favour of the Scheduled Caste candidates is available in the State of Haryana for promotion to the Class I and Class II posts and the posts of Assistant Executive, Assistant Executive Engineer are Class-II posts, whereas Executive Engineers is a Class-I post, therefore, grant of promotions to Class-I and Class-II posts to Sh. Parminder Kumar, by granting benefit of reservation, was contrary to the law and, therefore, the said promotional benefits, which have been extended to Sh. Parminder Kumar, is contrary to law. Learned counsel for the petitioners further argues that all the benefits of promotions, as extended to Sh. Parminder Kumar, be extended to the petitioner(s) as well, as petitioners are senior to said Sh. Parminder Kumar.

5. Learned counsel for the petitioner(s) further argues that promotions of Sh. Parminder Kumar on the basis of reservation were bad in law and in support of the arguments, he places reliance upon the judgment dated 14.11.2014 passed by a Co-ordinate Bench of this Court in CWP No.

25512 of 2012 titled as *Rajbir Singh Vs. State of Haryana and others*

(Annexure P-15).

6. In the alternative, learned counsel for the petitioner(s) states that if the promotions of Sh. Parminder Kumar are to be treated as valid promotions then the petitioner(s) are also entitled for the same benefit of promotions keeping in view the judgment of Hon'ble Supreme Court of India in *Ajit Singh and others Vs. State of Punjab and others, JT 1999(7) S.C. 153* that whenever a Senior General Category Candidate catches his junior reserved category candidate in the higher cadre, who has got promotion in preference to him/her, General Category Candidate again become senior to the said junior reserved category candidate and is entitled for the seniority and step up of his/her pay equivalent to the said reserved category junior.

7. Learned counsel for the respondents states that as far as the claim of the petitioner(s) with regard to the promotions, which have been granted to Sh. Parminder Kumar on the basis of reservation is concerned, the issue has been revisited by the respondents. Learned counsel for the respondents states that on re-consideration, it was found that as there was no benefit of reservation available in Class I and Class II posts in the State of Haryana. Learned counsel for the respondents further states that the benefit of promotions to Class-I and Class-II posts by giving benefit of reservation, was wrongly granted to Sh. Parminder Kumar. Learned counsel for the respondents states that keeping in view the fact that the promotions granted to Sh. Parminder Kumar were wrongly granted, the same were withdrawn by the respondents by passing a speaking order dated 24.10.2017 (Annexure P-11). By the order dated 24.10.2017 (Annexure P-11), the dates of

promotion of Sh. Parminder Kumar as an Assistant Engineer has been changed and the promotions to the post of Assistant Executive Engineer and Executive Engineer have been withdrawn as Sh. Parminder Kumar died while in service on 26.02.2012 and upto the date of his death, said Sh. Parminder Kumar was not eligible for the grant of promotions to the said posts of Assistant Executive Engineer and Executive Engineer, which are Class-I posts.

8. Petitioner(s) are challenging even the order dated 24.10.2017 (Annexure P-11) by amending the writ petitions on the ground that though, the date of promotion as Assistant Engineer has been changed in case of Sh. Parminder Kumar and the revised date of promotion of Sh. Parminder Kumar as Assistant Engineer is after the date of promotions of petitioner(s) to the said post and his further promotions as Assistant Executive Engineer and Executive Engineer have been withdrawn but the financial benefits, which were extended to Sh. Parminder Kumar, while working on the promoted posts, have not been withdrawn, therefore, as the financial benefits have not been withdrawn from Sh. Parminder Kumar, petitioner(s), who are senior to said Sh. Parminder Kumar, are also entitled for the said financial benefits. Further contention has been raised on behalf of the petitioner(s) that order dated 24.10.2017 (Annexure P-11) withdrawing the benefit from Sh. Parminder Kumar has been passed with the biased mind, so as to not to extend the benefits, which were extended to Sh. Parminder Kumar, to the petitioner(s), who have been agitating their rights since long.

9. Learned counsel for the respondents state that no separate reply needs to be filed in all the cases and the reply already filed in CWP No. 455

of 2016 will be sufficient for deciding all the writ petitions, which have been bunched together for the decision.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. In the present writ petitions, the only question, which arises for consideration of this Court, is whether a benefit, which has been wrongly extended to an employee on the basis of reservation can be withdrawn or not and the mistake committed by the State can be rectified by the State upon reconsideration of the issue.

12. In the present writ petitions, the claim of the petitioner(s) that the promotions of Sh. Parminder Kumar, which have been extended to him to the post of Assistant Engineer, Assistant Executive Engineer and Executive Engineer, on the basis of reservation, was contrary to the judgment of this Court in ***Rajbir Singh's case (supra)***. Respondents-department while reconsidering the issue, has withdrawn the benefit of promotions extended to Sh. Parminder Kumar after realizing the mistake. Correcting a mistake is within the domain of the employer. Once the mistake has been rectified, though the same was done after being pointed out by the petitioner(s), no grievance can be raised by the petitioner(s). Once, the promotions, which were extended to Sh. Parminder Kumar, on the basis of reservation, stood withdrawn and his revised promotion as Assistant Engineer has been revised to a date subsequent to the date of promotion of the petitioner(s), grievance of the petitioner(s) no longer exists. Further, the promotions of Sh. Parminder Kumar as Assistant Executive Engineer and Executive Engineer have been completely

withdrawn and, therefore, the grievance, which was being raised by the petitioner(s) that a junior person, has been given promotion as Assistant Executive Engineer and Executive Engineer in preference to the petitioner (s), by wrongly granting the benefit of reservation, stood redressed. As of today, no grievance of the petitioner(s) with regard to the promotions given to Sh. Parminder Kumar subsists any further as no date of promotions of Sh. Parminder Kumar, is from a date prior to that of petitioner(s).

13. Learned counsel for the petitioner(s) argues that though the benefits of promotions have been withdrawn from Sh. Parminder Kumar but once the financial benefits, which Sh. Parminder Kumar enjoyed while working on the promoted posts, have not been withdrawn from him, the claim of the petitioner(s) for claiming promotion, with effect from the date Sh. Parminder Kumar was granted the same subsists.

14. The claim of promotion and grant of financial benefits are two different aspects. The petitioner(s) are not disputing that the benefit of promotion extended to Sh. Parminder Kumar already stands withdrawn. Once, wrong promotions extended to Sh. Parminder Kumar already stand withdrawn, the same cannot be given to the petitioner(s). In the absence of any promotion to the petitioner(s) of the higher rank, question of grant of the benefit of the said promotion does not arise. In the facts and circumstances of this case, once, unfortunately, Sh. Parminder Kumar had already died in the year 2012, while in service, and the benefit of promotions were withdrawn after his death, financial benefits could not have been withdrawn from a dead employee by the respondents. Merely that legal heirs of Sh. Parminder Kumar were allowed to keep the financial

benefits, the said act is no ground to extend the benefit of promotion to the petitioner(s) and the consequential financial benefits. No fault can be found with the respondents in not withdrawing the financial benefits from a dead employee though, the benefit of promotions have already been withdrawn, which were extended wrongly to Sh. Parminder Kumar. Therefore, the petitioner(s) prayer that their right to get promotion as Assistant Executive Engineer and Executive Engineer as well as consequential financial benefits only on the ground that the financial benefits are not recovered from Sh. Parminder Kumar after withdrawing the benefit of promotion, even if he has already died, is not at all sustainable in the facts and circumstance of the present case.

15. In fact, in the present writ petitions, the prayer of the petitioner (s) is to restore the benefit of promotions to Sh. Parminder Kumar and then grant the same benefit of promotions to the petitioner(s). Initially, the grievance which was raised by them in this writ petitions was that the benefit of promotions, which were granted to Sh. Parminder Kumar was wrong and contrary to law. Once the petitioner(s) were of the view that the benefit of promotions could not have been granted to Sh. Parminder Kumar by way of reservation, the same benefit cannot be prayed by them. Petitioner(s) are blowing hot and cold in the same breath. Petitioner(s) cannot pray that benefit of promotions wrongly granted to Sh. Parminder Kumar, should not be withdrawn but the said benefit, which is contrary to law, should be extended to them as well.

16. Learned counsel for the petitioner(s) further argues that the order dated 24.10.2017 (Annexure P-11) has been passed with bias mind.

This fact cannot be gone into by this Court. In fact, by the order dated 24.10.2017 (Anexure P-11), which is being impugned by the petitioner(s), the petitioner(s) have regained their seniority over Sh. Parminder Kumar and Sh. Parminder Kumar has been granted promotion to the post of Assistant Engineer, which is subsequent to the date of promotion of the petitioner(s). Rather the grievance of the petitioner(s) that promotions were wrongly given to Sh. Parminder Kumar, has been redressed by the impugned order as promotion orders in favour of Sh. Parminder Kumar have been withdrawn by the impugned order. Further, petitioner(s) cannot challenge an order, which has been passed against Sh. Parminder Kumar. Vide order dated 24.10.2017 (Annexure P-11), the benefits, which were extended to Sh. Parminder Kumar during his lifetime by granting promotions to the posts of Assistant Engineer, Assistant Executive Engineer and Executive Engineer, by way of reservation, have been withdrawn. Impugned order dated 24.10.2017 is only causing prejudice to Sh. Parminder Kumar and it is only an employee, who is aggrieved against an order, can challenge the same.

17. Learned counsel for the petitioner(s) argues that petitioner(s) were making representations since the year 2014 but the benefits from Sh. Parminder Kumar was only withdrawn after filing of the writ petitions.

18. In my opinion, petitioner(s) made the respondents-wiser by bringing to their notice the illegality/the mistake, which respondents had committed by granting promotions to Sh. Parminder Kumar on the basis of reservation. Merely that the order rectifying the mistake was passed during the pendency of the writ petitions, it cannot be said that the same was done

only to avoid the grant of benefit to the petitioner(s). Benefits, which are extended to an employee, which are contrary to rules or settled principles of law, are to be withdrawn and are not to be extended to others. It will amount to perpetuating its illegality, which is impermissible.

19. In the facts and circumstance of the case, no ground is made out for grant of benefit to the petitioner(s) equivalent to that of Sh. Parminder Kumar in respect of the promotions to the posts of Assistant Engineer, Assistant Executive Engineer and Executive Engineer when the said promotion orders passed in favour of Sh. Parminder Kumar already stand withdrawn by the respondents.

Resultantly, all the writ petitions stand dismissed.

November 14, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*