

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

**CWP No.8386 of 2016 (O&M).
Date of Decision: 23.05.2019**

Gurpal Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Vikas Cuccria, Advocate,
for the petitioner.

Ms. Gunkirat Kaur, AAG Punjab.

JITENDRA CHAUHAN J.

By way of present civil writ petition, the petitioner has sought issuance of a writ in the nature of mandamus directing the respondents to fix the notional seniority of the petitioner. The petitioner has also sought quashing of order dated 30.09.2015 (Annexure P-9) vide which claim of the petitioner for notional promotion was rejected.

The petitioner is posted as Sub Divisional Engineer in Irrigation Department of Punjab. He had joined the department as Junior Engineer on 20.04.1987 on *ad hoc* basis and was regularised on 31.12.1990. He is a member of Scheduled Caste. He had passed Departmental Revenue Examination (DRE) on 13.12.2001 vide notification (Annexure P-1) and thereafter had passed Department Professional Examination (Annexure P-2) on 26.06.2002 and then he cleared his Section A and Section B examination and obtained degree dated 04.06.2003 (Annexure P-3). After three years of his obtaining

degree in Engineering on 04.06.2003, he became eligible for further promotion to the post of Sub Divisional Officer on 04.06.2006.

It is contended that as per Group-A Service Rules, 2004 of the Irrigation Department, Punjab (for short “the Rules”), it is mandatory to have three years' experience after passing of degree to qualify for promotion to the post of SDO. Prior to joining as ADE in the department of BBMB Nangal, a DPC was held on 01.08.2007 and various eligible candidates in the Scheduled Caste category were promoted because promotions to the post of SDOs were ordered on the recommendation of the Departmental Promotional Committee. It came to the notice of the Government that backlog of Scheduled Caste category could not be examined in the DPC. The Welfare Department had recommended notional promotions to six candidates for the post of SDO in the Scheduled Caste category. The department had to find six eligible candidates on the day i.e. 18.01.2008 when the general category candidates were promoted. Thereafter, the department had identified six candidates in the SC category and in pursuance to the DPC, six candidates, namely, Satpal, Joginder Pal, Gurmeet Singh, Jagtar Singh, Vijay Kumar and Hakam Singh were promoted. Thereafter, they approached the authorities for notional promotion with effect from 18.01.2008 i.e when General category candidates were promoted and backlog of six vacancies of SC quota was established. Ultimately, they were given notional promotion with effect from 18.01.2008 but the problem had arisen in the case of 6th

candidate, namely, Hakam Singh as he had passed his degree in the month of June, 2005 and as per the Rules, Hakam Singh had completed three years' experience in June, 2008 so notional promotional could not be given to him as he did not possess the requisite experience. Resultantly, 6th post was kept vacant by ousting said Hakam Singh from the promotion order dated 07.04.2011 (Annexure P-4). The 6th post was to be given to the next eligible candidate i.e. the petitioner who had also appeared before the DPC held on 01.08.2007.

It is further contended that the petitioner had completed his three years' experience on 04.06.2006 after obtaining his degree (Annexure P-3) on 04.06.2003. The petitioner had represented to the department in this regard but his claim was rejected vide impugned order dated 30.09.2015 (Annexure P-9).

On behalf of the respondents, it is contended that Hakam Singh was senior to the petitioner in the seniority list of Assistant Engineer/Junior Engineer. As per the Government policy, names of the persons were considered as per their seniority. The name of Hakam Singh was considered in the DPC held on 26.09.2008 and he was promoted vide order dated 28.11.2008. At that time, Hakam Singh fulfilled all the requisite qualifications hence the claim of the petitioner is not maintainable. The promotion to the higher cadre is based on the principle of "seniority-cum-merit". The seniority of an official is of utmost importance. Hakam Singh is senior to the petitioner and

suitable for promotion. He is entitled to promotion on the basis of seniority in preference to his juniors. Vide order dated 07.04.2011, five employees, namely, Satpal, Joginder Lal, Gurmeet Singh, Jagtar Singh and Vijay Kumar were found eligible to fill Scheduled Caste backlog vacancies and they were given due notional promotion with effect from 18.01.2008 but the petitioner is junior in the seniority list, therefore, the claim of the petitioner was rightly rejected.

Heard.

It is to be noticed that the precise claim of the petitioner is that on 01.08.2007 when a DPC was held, the petitioner was an eligible candidate to be promoted to the post of SDO. There were six vacancies and only five candidates were found eligible and the 6th candidate i.e. Hakam Singh was ineligible for promotion. In regard to this specific claim made by the petitioner, the respondents have given response as under:-

“Sh. Hakam Singh had become eligible for promotion in June-2008. Sh. Hakam Singh, Sub Divisional Officer (JSL 1978 Civil), who passed departmental exams in 2007 and degree in 6/2005 could be considered after 3 years of passing degree as per provisions of Promotion Rules. So this employee having degree in 2005 became eligible in June/2008 for promotion, whereas Departmental Promotional Committee was held on 01.08.2007 and promotions were ordered on 18.01.2008. Therefore, the petitioner was not eligible candidate on the day of holding DPC/Promotion orders. Accordingly, the petitioner does not deserve the claim for notional promotion w.e.f. Back

date. Moreover, it is pertinent to mention here that on the date of promotion order of Hakam Singh, he fulfilled all the requisite qualifications and was seniority to the present petition. That the claim of the petitioner will adversely affect other persons and also disturb the existing seniority.”

A perusal of the reply shows that it is silent on the point as to why the petitioner who was eligible on 01.08.2007 was not considered on the 6th vacant post. The State has sought to justify their action on the plea that Hakam Singh was senior to the petitioner but the fact remains that on the date of consideration i.e. on 01.08.2007 he was not eligible to be promoted as SDO as he became eligible in the month of June, 2008. The respondents have failed to show any defect in the petitioner for the purpose of promotion to the post of SDO. Thus, the petitioner deserves to be promoted to the post of SDO with effect from 01.08.2007.

In view of the above, the present civil writ petition is allowed. The impugned order dated 30.09.2015 (Annexure P-9) is quashed. The respondents are directed to issue notional promotion order in favour of the petitioner on the basis of DPC held on 01.08.2007. The necessary exercise be done within a period of two months from the date of receipt of certified copy of the judgment.

23.05.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No