

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

**Civil Writ Petition No. 36031 of 2019 (O&M)  
Date of decision : 20.12.2019**

**Varinder Kumar Goel**

**... Petitioner**

**versus**

**State of Punjab & Anr.**

**... Respondents**

**CORAM:- HON'BLE MR. JUSTICE ARUN MONGA**

Present: Mr. Rajiv Atma Ram, Senior Advocate with  
Mr. Sube Sharma, Advocate  
for the petitioner.

Ms. Monica Chhibbar Sharma, Sr. DAG Punjab.

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**ARUN MONGA, J(ORAL)**

1. *Inter alia* issuance of a writ in the nature of *mandamus* has been sought herein commanding the respondents to decide various representations dated 02.11.2019, 23.11.2019, 25.11.2019, 27.11.2019, 01.12.2019 and 04.12.2019(Annexure P-10 Colly.) submitted by the petitioner.

2. Grievance of the petitioner is that despite recommendations of the Departmental Promotion Committee(DPC) vide its meeting held on 25.09.2019, wherein the name of the petitioner, being senior-most, was considered and found meritorious enough, yet no decision on the said recommendations has been taken so far.

3. While issuing notice of motion, this Court had made certain observations in order dated 12.12.2019, *prima facie* though, but it would be apposite to reproduce the said order as below:-

*“Learned Senior counsel assisted by Mr. Brijesh Khosla, Advocate relies on earlier DPC proceedings dated 06.12.2018 contained at Annexure P-7 in support of his arguments that the petitioner is one of most meritorious serving Superintending Engineers, eligible to be considered and promoted to the post of Chief Engineer. That*

*apart, the petitioner is also stated to be the senior-most Superintending Engineer. Learned Senior counsel under instructions submits that DPC for promotion to the post of Chief Engineer was conducted on 25.09.2019 and as per his information, the recommendations were forwarded, inter alia, to the Office of the Hon'ble Minister concerned as well as Hon'ble the Chief Minister. The Hon'ble Minister incharge has already favourably recommended the case of the petitioner.*

*Learned Senior counsel submits that petitioner is slated to retire on 31.12.2019 and yet for no plausible reasons decision on the recommendations of the DPC is not being taken, notwithstanding that the office of Hon'ble the Chief Minister vide e-mail dated 04.12.2019 (Annexure P-11) has requested the administrative Secretary of the department to take appropriate decision, in accordance with the applicable Government Rules and Policy in the matter.*

*Learned Senior counsel submits that the only ostensible hindrance, which may come in the way of the petitioner is appointment of a suitable Scheduled Caste candidate qua the same post. He submits that currently no eligible Scheduled Caste candidate is available since no one fills the minimum requirement of having served as Superintending Engineer for two years, which is a prerequisite to be considered for promotion to the post of Chief Engineer.*

*Notice of motion.*

*On advance service of the petition, Mr. P.S.Bajwa, Additional A.G., Punjab appears and accepts notice on behalf of the respondents and seeks time to get instructions.*

*Given the nature of urgency involved and in order to not render the writ petition infructuous, it is expected of the respondents to take a decision in the pending matter on or before 17.12.2019.*

*Let the decision/appropriate orders passed thereon be communicated to the petitioner as well.*

*A copy of the same be placed on record on the Court file.”*

4. After passing of the above order, matter was once again heard on 18.12.2019, wherein following order was passed:-

*“Learned State counsel, in course of hearing, has handed over short affidavit of Principal Secretary, Department of Water Resources, which is taken on record. Copy thereof has been supplied to learned counsel for the petitioner, who may go through the same before rendering further assistance.*

*A perusal of affidavit would reveal that the Departmental Promotion Committee(DPC) in its meeting held on 25.09.2019 has already recommended the name of the petitioner for appointment to the post of Chief Engineer. Not only this, learned Senior counsel for the petitioner submits that said recommendations have been duly accepted by Hon'ble the Minister Incharge.*

*Notwithstanding, the file of the petitioner, under advise of the Chief Secretary has been referred to the Department of Social Justice and Empowerment for de-reserving the said post of Chief Engineer, as per provision of Section 7(2) of the Punjab Scheduled Castes and Backward Classes(Reservation in Services) Act, 2006. While on the other hand, learned Senior counsel, has further drawn my attention to the previous DPC which took place on 06.12.2018, wherein the issue of de-reserving the said post was threadbare discussed in the presence of representative of the Department of Welfare. In para No.6 of the said DPC, it has been noted that there are total 13 sanctioned posts of Chief Engineers in Water Resources Department and only 10 posts therefrom are proposed to be filled up. Applying the criteria of 14% reservation quota, point No.1 and 7 are already reserved for Scheduled Castes(SC). As such in the cadre of Chief Engineer, only two posts are reserved for SC candidates and currently no Officer belonging to the SC category is eligible for consideration to be appointed on the said post. It is further noted in the said DPC proceeding that currently 9 Officers belonging to SC category are working as Superintending Engineer. Out of these, 3 Officers are on extension and remaining 6 have been promoted as Superintending*

*Engineer only on 06.11.2018. Two years of experience as Superintending Engineer being a pre-requisite, they would not become eligible for promotion as Chief Engineer before 13.11.2020.*

*In the premise, the reference of the case file to the Department of Welfare for ostensible reason of de-reserving the said post, prima facie, seems to be complete moon-shine to simply frustrate the right of the petitioner to be promoted before he superannuates on 31.12.2019. It is not comprehensible as to how the proposed de-reservation of the post, particularly, in the light of the fact, when even currently available two posts have not been filled up due to lack of eligibility by the serving Superintending Engineers of SC category, would advance the purpose of SC Category or otherwise be in the better interest of the administration. That apart, the entire red tapism on the part of Department of Welfare and Personnel flies in the face of the credible reasoning already recorded by the DPC in its meeting held on 06.12.2018. It also transpires, that in past also due to lack of availability of eligible SC candidates, the vacancies on the post of Chief Engineer were filled up from General Category Candidates but this time on the turn of petitioner, as a volte face, matter has been referred to Department of Welfare. At the first blush, there seems to be a deliberate attempt to superannuate the petitioner first and then take decision thereafter.*

*In order to resolve the current impasse, it is deemed appropriate to direct Secretary of Welfare Department through respondent No.1 to take a decision on the pending reference and place the same on Court file on or before the next date of hearing and convey the same to the petitioner as well as to the Department of Personnel for further decision to be taken thereupon, failing which, the Secretary of the Welfare Department shall personally appear before the Court on the next date of hearing.”*

5. Short affidavit has been filed by Principal Secretary, Water Resources Department, Government of Punjab, wherein position has been

this Court. One can, therefore, safely assume that the observations, *ibid*, are uncontroverted by the State.

6. In the course of hearing today, a communication dated 19.12.2019 by Department of Social Justice, Rights and Minorities has been handed over, which is taken on record. A perusal of the same would reveal that after considering the proposal, Administrative Department has been advised that two posts of Chief Engineer(Scheduled Castes) be kept vacant.

7. Evaluating the position in the light of the communication dated 19.12.2019, there seems, thus, no hindrance in passing appropriate further orders pursuant to the recommendations of DPC.

8. The position as adumbrated in this Court orders, *supra*, is also fortified from the proceedings of DPC held on 25.09.2019 wherein, it has been stated in no uncertain terms that there are 13 sanctioned posts of Chief Engineer in the Department, out of which New Sanctioned/ Scheduled Expenditure for 12 posts has been issued for the year 2019-2020. However, the Water Resources Department is under advise from the Department of Personnel to fill up only 10 posts of Chief Engineer. Two posts have already been kept vacant at quota point No.01 and 07 and, therefore, the advise of the Department of Social Justice to the extent of keeping two posts of Chief Engineers vacant has already been complied with. Currently, there are 9 Chief Engineers serving and thus, clearly there is one post of Chief Engineer vacant in General Category.

9. I am in agreement with the contention of learned Senior counsel for the petitioner that, in other words, on a simple mathematics, out of 12 new sanctioned expenditure posts, currently 9 are filled up and after keeping 2 posts vacant for Scheduled Castes Category, as per communication dated 19.12.2019, one post in General Category still remains unfulfilled.

10. As an upshot of my discussion and the reasoning contained hereinabove, the writ petition is disposed of with a direction to the respondents to pass appropriate orders for filling up the current vacancy of Chief Engineer in General Category, keeping in view the recommendations of DPC contained at Annexure R-1. Since the petitioner is slated to superannuate on 31.12.2019, it is expected of the respondents to comply with this order within 7 days of receipt of its certified copy.

11. Disposed of in above terms.

20.12.2019

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(ARUN MONGA)  
JUDGE

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|----|-----------------------------|---------|
| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable:         | Yes/ No |