**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CWP No. 901 of 2020
Date of decision: December 30, 2020

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Parveen Kumar and another ....Petitioners

Versus

State of Himachal Pradesh & Others ....Respondents

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*Coram*
**The Hon'ble Mr. Justice Sandeep Sharma, J.**
*Whether approved for reporting ?*[1]

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**For the Petitioners** : Mr. Hamender Singh Singh Chandel, Advocate.

**For the Respondents** : Mr. Sudhir Bhatnagar, Additional Advocate General, for the State.

Mr. Sunil Mohan Goel, Advocate, for respondents No. 3 to 8.

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**Sandeep Sharma, Judge**(Oral)**:**

**(Through Video Conferencing)**

By way of instant petition, petitioners have prayed for following substantive reliefs:-

> "(i) That the impugned seniority list dated 1.3.2016, Annexure P-5, may be quashed and set aside.
>
> (ii) That respondents No. 1 & 2 may be directed to show the petitioners senior to respondents No. 3 to 8 and accordingly, the further promotion to the post of Executive Engineer may be made."

**2.** It is not in dispute inter se parties that by now it is well settled that once an employee belonging to a reserved category is promoted to higher post, superseding his/her seniors in the

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[1] Whether the reporters of Local Papers may be allowed to see the judgment?

feeder post, such seniors when subsequently promoted to the next post/level, inter-se seniority of the reserved and unreserved candidates will be maintained as per the seniority in the feeder/entry grade and in that event, reserve category candidates, who were promoted prior in time, due to applicability of reservations, shall remain /shown junior to the unreserved category candidates, who are promoted to the next level in later point of time.

**3.** In the case at hand, precisely, the grouse of the petitioners is that since they were senior to respondents Nos. 3 to 8 in the entry grade and respondents Nos. 3 to 8 got accelerated promotions on account of reservation, they, after being promoted to the post of Assistant Engineer, are required to be shown senior to respondents Nos. 3 to 8, who, admittedly, at the time of their promotion, were working as Assistant Engineers. Since the aforesaid grouse never came to be redressed by the competent Authority, despite there being repeated representations on behalf of the petitioners, they were compelled to approach this Court in the instant proceedings, praying therein for the reliefs, reproduced supra.

**4.** I have heard learned counsel for the parties and perused the material available on record. Perusal of the zimni orders passed by this Court from time to time reveal that before

filing reply to the petition at hand, respondents, in terms of order dated 15.6.2020 passed by Hon'ble Division Bench of this Court, placed on record instructions dated 20th June, 2020, issued under the signatures of the Special Secretary (Public Works) to the Government of Himachal Pradesh, which read as under:

> *"I am directed to refer to you letter No. CWP No. 901/20-20-10088 dated 16th June, 2020, on the subject cited above and to say that in CWP No. 901 of 2020, the petitioners have challenged the seniority assigned to respondents No. 3 to 8 in the final seniority list of Assistant Engineers (Civil) circulated on 1.3.2016 on the grounds that respondents No. 3 to 8 are juniors to them in the entry grade and they have got accelerated promotion due to rule of reservation. The petitioners have been promoted to the post of Assistant Engineer on 16.5.2016, therefore, as per law laid down by the Hon'ble Supreme Court, in case the general category candidates catches the junior reserved category candidates of the feeder category in the next higher post, in that case, the inter-se-seniority of the feeder category revives and the general category candidates have to be placed above the reserved category candidates who had superseded the general category candidates by virtue of reservation and are to be shown senior.*
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> *In this behalf, it is humbly submitted that after receipt of judgment in S.S. Kutlehira case, a review DPC was held in the HPPSC during the month of May,2013 against the vacancies of the year 1984 to 31.12.2012. Although, all the petitioners who belong to general category, were senior to respondents No. 3 to 8, but due to less number of vacancies of general category, the petitioners could not find place in the recommended list*

*upto the vacancies 31.12.2012 whereas the respondents No. 3 to 8, who were junior to the petitioners as Junior Engineers, were promoted to the post of Assistant Engineers against the vacancies meant for reserved category between the period 2004 to 2012 as per rule of reservation. As per the recommendation of DPC, the promotion orders were issued and final seniority list was circulated on 1.3.2016. The petitioners were promoted to the post of Assistant Engineers on 16.5.2016, therefore, they were not included in the final seniority list of Assistant Engineers circulated on dated 1.3.2016. After issuance of final seniority list dated 1.3.16, showing position as on 31.12.2012, no other final seniority list could be issued because in CWPOA No. 2820 of 2020 titled as Rajesh Sharma & another vs. State of H.P. & another, the petitioners have challenged the review DPC held in HPPSC during May, 2013 as well as final seniority list dated 1.3.2016. In CWPOA No. 2820 of 2020, the erstwhile HPSAT has passed interim order on 21.9.2017 to maintain status quo as on date, which is still in operation Due to status quo order passed by erstwhile HPSAT on 21.9.2017, no regular or adhoc promotion of Assistant Engineers have been made to the post of Executive Engineers in HPPWD and only the charge is being assigned to the Assistant Engineers on the basis of final seniority list of Assistant Engineers circulated on 1.3.2016 in order run the departmental work smoothly. At present, none of respondents No. 3 to 8 have been assigned the charge of the post of Executive Engineer as on today. As and when, status quo interim order passed by erstwhile HPSAT in CWPOA No. 2820 of 2020 on 21.9.2017 will be modified or vacated, the seniority list circulated on 1.3.2016 will be revised as per Department of Personnel instruction dated 27.5.1996."*

**5.** Careful perusal of aforesaid instructions placed on record clearly reveals that though claim of the petitioners as has been set out in the petition has been duly acknowledged and accepted by respondent-State, but relief as has been prayed for in the instant petition could not be granted to them on account of interim order dated 21.09.2017, passed by erstwhile H.P. State Administrative Tribunal in CWPOA No. 2820 of 2020 titled Rajesh Kumar & another. vs. State of H.P. & another, wherein, there was direction to respondents-State to maintain status quo.

**6.** Today, during the proceedings of the case, Mr. Hamender Chandel, learned counsel representing the petitioners while inviting attention of this Court to judgment dated 12.10.2020, passed by Coordinate Bench of this Court in CWPOA No. 2820 of 2020, contends that since order dated 21.09.2017, passed by erstwhile H.P. State Administrative Tribunal has been modified/vacated, relief as has been prayed for in the instant petition, deserves to be allowed.

**7.** Mr. Sudhir Bhatnagar, learned Additional Advocate General and Mr. Sunil Mohan Goel, Advocate, appearing for respondents Nos. 3 to 8, are not able to dispute the judgment dated 12.10.2020 rendered in CWPOA No. 2820 of 2020 by a Coordinate Bench of this Court in Rajesh Kumar's case, rather, they fairly admit that the order dated 21.9.2017, passed by

erstwhile Himachal Pradesh Administrative Tribunal stands modified/vacated. Perusal of judgment dated 12.10.2020 (supra) suggests that the Coordinate Bench of this Court observed that the order dated 21.9.2017 directing the parties to maintain status quo stands clarified vide order dated 12.10.2020 passed in CMP No. 8524 of 2020 in COPC No. 61 of 2020, wherein, it has been provided that this order would only apply to the petitioners, who come under 10% quota i.e. diploma holder engineers, who improved their qualification during the course of their service. Parties are ad-idem that the petitioners do not fall in 10% quota and as such, order dated 21.9.2017, which otherwise stands modified/vacated, is otherwise not applicable to the category of the petitioners.

**8.** Consequently, in view of the aforesaid discussion as well as categorical admission made by the respondent-State in its instructions dated 20.6.2020 with regard to the claim of the petitioners, as set out in the instant petition, this Court deems it fit to dispose of the present petition with a direction to the respondent-State to take appropriate steps for revising the seniority list dated 1.3.2016, expeditiously, preferably within one month. Needless to say that the respondent-State, while taking action pursuant to instructions dated 20.6.2020, would provide adequate opportunity of hearing to respondents Nos. 3 to 8.

Aforesaid respondents, if remain still aggrieved, shall be at liberty to approach appropriate forum in appropriate proceedings, in accordance with law. Petition stands disposed of in the aforesaid terms, so also the pending applications, if any.

**(Sandeep Sharma)**
**Judge**

30th December, 2020.
Vikrant