

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

CWP No.10047 of 2018 (O&M)

Reserved on: 06.02.2020

Date of Pronouncement:10.12.2020

Abhinav

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. M.S. Rana, Advocate for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

Mr. Rishabh Gupta, Advocate for respondents No.2 to 5.

TEJINDER SINGH DHINDSA J.

Petitioner joined the respondent-Punjab State Power Corporation Limited (hereinafter to be referred to as Corporation) as auxiliary Plant Attendant-APA pursuant to appointment letter dated 19.10.2015 having been issued.

Instant petition has been filed seeking a mandamus directing the Corporation to treat the petitioner as an appointee of 2014 batch w.e.f. the dates other Auxiliary Plant Attendants-APAs were appointed through the same selection process alongwith consequential benefits in the nature of promotion and seniority etc. Directions have also been sought to make applicable instructions/policy dated 08.08.2016 (Annexure P-6) upon the petitioner as the relief sought for in the instant petition stands granted by the Corporation vide such policy but confined to the cadre of Assistant Engineers.

Brief facts would require notice.

The Corporation issued advertisement dated 10.05.2012 inviting applications for selection and appointment to various posts including Auxiliary Plant Attendants. Clause 6 of the advertisement dealt with the selection process. The eligible candidates were required to undergo written test and the merit was to be prepared on the basis of marks secured in the written test. There was to be a common test for A.P.A./Electrical, J.E./Electrical, A.J.S/Electrical and the candidates applying for these posts were required to indicate the order of their preference of post, which was to be allocated based upon the merit secured.

The written test was got conducted by the Corporation through an independent outsourced agency. A bunch of writ petitions including CWP No.14036 of 2012 titled as **Major Singh and others Vs. PSPCL and others** came to be filed alleging large-scale bungling and cheating in the test. Taking note of the allegations the Corporation decided to annul the written test and hold a fresh one. Thereafter, Corporation issued a notice for re-conducting the written test for filling up the posts earlier advertised vide advertisement dated 10.05.2012. As per the notice, the test for the post of Assistant Engineers was to be held on 27.07.2013 and for the post of Junior Engineers and other posts, the test was to be held on 28.07.2013. Alongwith the notice the Corporation issued instructions dated 10.07.2013. Clause 5 thereof stated that the candidates who have applied online for the post for which they do not possess required qualifications as indicated in the advertisement and have filled the application form by giving incorrect/incomplete information and admit cards have been sent to them by

online process, such candidates would be appearing at their own risk. Their application/candidature was liable for rejection at any stage during and after the process of selection. Clause 6 stated that candidates who have applied for the post of A.E.(OT)/Electrical, J.E./Electrical, A.P.A./Electrical, A.J.S./Electrical but have the qualifications/degree in Mechanical/Instrumentation and Communication/Electrical and Electronics Engineering (i.e. other than the Degree in Electrical Engineering), in case admit cards have been issued to such candidates through online process, they shall be appearing at their own risk and in case such candidates are found during selection process, their candidature would be rejected.

Corporation then held the written examination on 28.07.2013 and the petitioner appeared in the examination and was declared successful. However, in view of the instructions dated 10.07.2013, the Corporation did not appoint the petitioner as well as other similarly situated persons for the reason that they possessed Degree in Electrical and Electronics Engineering.

At this stage, petitioner filed CWP No.387 of 2014 (**Gurdeep Singh and others Vs. Punjab State Power Corporation Limited and others**) and other connected petitions assailing condition No.6 in the instructions dated 10.07.2013 as per which candidates holding a degree in Electrical and Electronics Engineering had been declared to be ineligible for the post of APA, JE/Electrical. Directions were sought for the Corporation to consider them eligible for appointment to the post in question by considering the degree in Electrical and Electronics Engineering as equivalent/prescribed qualifications for the post.

The Coordinate Bench in CWP No. 387 of 2014 (**Gurdeep Singh**

and others vs. Punjab State Power Corporation Limited and others) as also the connected matters held in favour of the petitioners therein and took a view that a candidate possessing the qualification of a Degree in Electrical and Electronics Engineering is liable to be treated as eligible for the post of Junior Engineering (Electrical) that had been advertised vide advertisement dated 10.05.2012.

It is in compliance of the common judgment dated 27.05.2015 rendered in CWP No.387 of 2014 and connected petitions that the petitioner was issued appointment letter dated 19.10.2015 and joined on the post of Auxiliary Plant Attendant on 03.11.2015.

Next promotion from the post of Auxiliary Plant Attendant is to the post of Desk Controller. An APA becomes eligible for promotion to the post of Desk Controller upon completion of two years service. Grievance of the petitioner is that since appointment letter had been issued after delay, other candidates who had participated in the same very process of selection and had secured a lower merit position were issued appointment letters prior in point of time and as such have stolen a march for purposes of promotion to the post of Desk Controller.

Petitioner is seeking the benefit of instructions/policy dated 08.08.2016 (Annexure P-6) whereby the corporation had considered the issue relating to Seniority, Pay fixation and Promotion etc. of those employees who had joined the service later than their counter-parts/batch-mates and had taken a decision that when such delay is attributable to the Corporation itself and there is no fault of the employee, the deemed date of appointment and other consequential benefits is to be granted. However the benefit under the

policy dated 08.08.2016 (Annexure P-6) has been confined to the cadre of Assistant Engineers.

It is against such backdrop that the instant writ petition has been filed.

In the written statement filed on behalf of the Corporation it has been stated that the petitioner has been granted promotion to the post of Desk Controller vide office order dated 14.06.2018 upon completion of two years of service on the post of Auxiliary Plant Attendant. There is, however, no denial to the specific averments made in para 8 of the writ petition that other candidates who were lower in merit in the common selection process for appointment to the post of APA had been promoted to the post of Desk Controller as they had been issued appointment letters earlier in point of time and as such had completed the requisite two years of service prior to the petitioner.

Counsel for the parties have been heard and pleadings on record have been perused.

Identical issue stands adjudicated by this court in **CWP No.20169 of 2017 (Karambir Singh and others Vs. Punjab State Power Corporation Limited and others)** decided on 30.09.2020. In the case of **Karambir Singh (supra)** the post in question was that of Junior Engineer/Electrical which had also been advertised through the same very advertisement dated 10.05.2012. The petitioners therein had also been denied appointments as they possessed a Degree in Electrical and Electronics Engineering. The petitioners therein had also been issued appointment letters later in point of time pursuant to the common judgment rendered by

this Court in **CWP No.387 of 2014 (Gurdeep Singh and others Vs. Punjab State Power Corporation Limited and others)**. They were also seeking the applicability and benefit of the instructions/policy dated 08.08.2016 issued by the Corporation. In other words the claim put forth by the petitioner in **Karambir Singh's case (Supra)** was identical to the one raised in the instant petition and related to the same very recruitment process. In **Karambir Singh's case (supra)** this Court held as follows:-

*“Undisputedly, petitioners had applied for the post of Junior Engineer (Electrical) in response to the advertisement dated 10.05.2012, issued by the Corporation. As per selection procedure, petitioners appeared in a written test held on 28.07.2013. In spite of having successfully negotiated the written test, they were denied appointment on the basis of instructions dated 10.07.2013 declaring them to be ineligible as they possessed the qualifications of Degree in Electrical and Electronics Engineering. This led to the filing of **CWP No.387 of 2014 (Gurdeep Singh and others Vs. Punjab State Power Corporation Limited and others)** and other connected petitions. The Writ Court took note that the Corporation upon examining the representation by certain candidates had constituted a Committee to consider the equivalence of Electrical and Electronic Engineering with Electrical Engineering. Based upon the recommendations of the Committee the Board of the*

Corporation vide Agenda Item No.50 dated 30.01.2014 took a conscious decision to amend the Recruitment Rules and thereby making holders of degree in Electrical and Electronic Engineering eligible for the post of Assistant Engineer/Electrical and also Junior Engineer (Electrical). Regulations were accordingly amended and in a subsequent advertisement dated 04.09.2014 issued by the Corporation inviting applications for recruitment to the post of Assistant Engineer (OT)/Electrical, the degree in Electrical and Electronic Engineering was recognized as a valid qualification. The Writ Court took a view that even though the decision/amendment had been made specifically applicable to subsequent recruitments but the statutory recognition of equivalence needs to be given full effect to and the petitioners in the connected petitions could not be denied benefit thereof. The Coordinate Bench finally held in the following terms:-

“ In my view the benefit of the decision of the Corporation legitimately accrues to the petitioners. What the respondent-Corporation, in effect has done is not to alter the qualifications for the posts. If it were so, then it could surely be made applicable only for future recruitments. But what has been done is only to declare, confirm and recognize the equivalence which already

existed in fact and thereby bring the regulations in accord therewith. Thus, in fact, the petitioners were eligible when they applied and the mere fact that this recognition came later ought not to work to their prejudice. Accordingly, I hold that the petitioners are liable to be treated as eligible for the posts.”

*Thus, it clearly emerges that the petitioners were not clothed with eligibility from any subsequent date. Rather they have been held eligible on the date they applied in response to the advertisement. The clear fall out of the judgment in **Gurdeep Singh's case (supra)** and connected petitions is that the petitioners would have to be treated at par with other candidates who had applied for the post in question in response to the advertisement dated 10.05.2012 and had participated in the same very selection process/written test held on 28.07.2013. In other words even though appointment letters may have been issued to the petitioners herein in the month of September 2015 but they are vested with the right to be treated as appointees of the 2014 batch w.e.f. the date(s) their counter-parts had been so appointed to the post of Junior Engineer (Electrical).*

*The judgement in **Gurdeep Singh's case (supra)** has since attained finality. The appointment letters have been issued to the petitioners in the month of*

*September 2015 in purported compliance of the judgment. Since the finding recorded by the Writ Court in **Gurdeep Singh's case (supra)** is that the petitioners were eligible on the date they had applied in response to the advertisement, the action of the respondent-Corporation in not treating the petitioners as appointees to the post of Junior Engineer (Electrical) of the batch of 2014 i.e. at par with their counter-parts is held to be arbitrary. Such view is fortified upon perusal of an office order dated 08.08.2016 issued by the respondent-Corporation at Annexure P-6 which contained a policy decision for considering promotional cases of Assistant Engineers who had joined Corporation later than their batch-mates for reasons attributable to the Corporation. In such office order it was observed that in some recruitments, few candidates could not join at the appropriate time alongwith their batch-mates due to one reason or the other which was attributable to the Corporation and on account of such late joining such candidates suffer on account of loss of seniority, pay fixation etc. and are not able to fulfil the required time gap and other condition of eligibility alongwith their batch-mates for subsequent promotions. Accordingly, a policy decision was taken by the Corporation and as contained in the order dated 08.08.2016 (Annexure P-6)*

*that such candidates who joined as Assistant Engineers later than their batch-mates, they would be placed in seniority as per merit obtained in the recruitment test alongwith other members of the batch irrespective of the actual/delayed date of joining. In the present case as well the petitioners were issued appointment letters later in point of time i.e. in September 2015 as opposed to their batch-mates who had joined in the year 2014 and who had otherwise participated in the same very selection process/written examination. The reason for such late joining was clearly attributable to the respondent-Corporation who had held the petitioners to be ineligible and not possessing the requisite qualifications for the post and such view did not find favour with the Writ Court in the case of **Gurdeep Singh's case (supra)**. Apart from taking a stand that the office order dated 08.08.2016 (Annexure P-6) applies to the post of Assistant Engineer which is a distinct and separate cadre, no justification is coming forth at the hands of the counsel representing the respondent-Corporation as to why the rationale contained in the policy decision dated 08.08.2016 (Annexure P-6) would not apply qua the post of Junior Engineer (Electrical) as well. Action of the respondent-Corporation smacks of arbitrariness and is held to be violation of Article 14*

and 16 of Constitution of India.

The objection raised on behalf of the respondent-Corporation in terms of referring to Regulation 10.7 of 1965 Regulations as regards the petitioners not possessing the three years experience on the post of Junior Engineer to be considered for promotion to the post of Assistant Engineer on account of their joining in the month of September 2015 is untenable. Under Regulation 10.07 the pre-requisite is of completion of three years service and not experience. The term “experience” is sought to be imported by the Corporation in the statutory rule and which is not permissible. The requirement is of three years service to be eligible for promotion to the post of Assistant Engineer. Once a view is taken that the petitioners are entitled to be treated as appointees of the 2014 batch w.e.f. the dates other Junior Engineers were appointed through the same very selection process, such condition of completion of three years service would be deemed to have been met in the year 2017 itself.

The contention raised on behalf of the private respondents that the petitioners have secured appointment by virtue of a separate list that was prepared for candidates possessing the Degree of Electrical and Electronics Engineering and as such

*there can be no determination of seniority inter-se is ill-founded. In **Gurdeep Singh's case (supra)** one of the contentions noticed by the Writ Court on behalf of the respondents was specifically noticed to the following effect:-*

“If at all the petition has to be allowed then all the posts which have been kept reserved for the petitioners by various interim orders should be made available to all candidates possessing the Degree of Electrical and Electronics Engineering and the posts should be filled by inviting fresh applications.”

Such submission was elaborately dealt with by the Writ Court and it was observed that the written test for the post in question had been held on 28.07.2013. By virtue of different interim orders, posts for the petitioners had been directed to be kept vacant. The argument on behalf of the respondents therein that a written examination be conducted for such reserved post wherein all the candidates who possessed the Degree of Electrical and Electronic Engineering on the date of advertisement be permitted to participate was held to be not fair and equitable as such candidates had neither applied in response to the advertisement nor challenged the condition in any Court of law. It was observed that fairness and equality of treatment requires that the

benefit be extended to all such candidates who like the petitioners possess the Degree of Electrical and Electronics Engineering and had participated in the test on 28.07.2013, even though they may not have filed writ petitions.

The operative part of the judgment rendered in CWP(s) No.387, 4980, 10087,21012 and 21646 of 2014 read as follows:-

“A merit list of all the candidates (including the petitioners in these five writ petitions) who possessed the degree of Electrical and Electronics Engineering and had taken the written test held on 27/28.07.2013 be prepared. Appointments to the post kept reserved vide interim orders in these petitions be made from amongst those highest in this merit list.”

Clearly the sole purpose of such merit list was to identify such of the candidates including the petitioners in the five connected petitions as also those who possessed the Degree in Electrical and Electronics Engineering and had taken the written test on 28.07.2013 so as to be appointed against the posts reserved by virtue of different interim orders passed in the connected writ petitions.

On completion of such exercise and appointment letters having been issued the inter-se

seniority of all the candidates would have to be necessarily determined on the basis of merit obtained in the common written examination that was held on 28.07.2013. It is ordered accordingly.

In the considered view of this Court the reasoning furnished by this court in **Karambir's case (supra)** and as afore-reproduced would cover the claim of the petitioner herein as well.

Accordingly the writ petition is allowed.

The petitioner is directed to be treated as an appointee to the post of Auxiliary Plant Attendant w.e.f. the dates other APAs were appointed and who had participated in the same very selection process/written examination held on 28.07.2013. Inter-se merit would be determined on the basis of merit secured in such written examination. Petitioner is also held entitled to the consequential benefits of promotion/seniority/pay fixation etc. by treating him as an appointee of the 2014 batch. However, such benefit of pay-fixation would be on a notional basis and he would not be entitled to arrears of salary for the period that he had not worked on the post of Auxiliary Plant Attendant.

Writ petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

December 10, 2020

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No