

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

CWP/17873-2016
Date of Decision: 31.01.2020

Yasin Khan.

... Petitioner

Versus

State of Haryana and Others.

...Respondents

Coram: **Hon'ble Mr. Justice B. S. Walia**

Present: Mr.Sunil K. Nehra, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Deepak Balyan, Advocate
for respondent No.3.

Mr. Jatinder Nagpal, Advocate
for Sh. Parmod Kumar, Advocate
for respondent No.4.

B.S. Walia, J. (Oral)

1. Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of *certiorari* for quashing Annexure P/6 dated 10.05.2012 granting promotion to respondent No. 4 as Sub Fire Officer w.e.f 19.09.2007, thereby treating him senior to the petitioner.

2. Learned Counsel contends that as per qualifications stipulated for promotion to the post of Sub Fire Officer under Haryana Municipal Service (Integration, Recruitment and Condition of Service) Rules, 1982, apart from being a matriculate and having five years of service as Leading Fireman in class A or B class committee, a person should also possess certificate of Sub Fire Officer's Course from National Fire Service College, Nagpur. Grievance is that although respondent No. 4 did not possess a certificate of Sub Fire Officer's Course from National Fire Service College, Nagpur as on

19.09.2007, nevertheless he was promoted as such vide order Annexure P/1 dated 19.10.2010 w.e.f 19.09.2007. Relevant extract of the Rules is reproduced as under :

15	<i>Sub Fire Officer (100% by promotion)</i>	<i>Should be Matriculate and possess a certificate of Sub-Officer's course from National Fire service College, Nagpur with five years service as Leading Fireman in A or B Class Committee.</i>
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3. Learned counsel has also referred to Annexure P/8 dated 22.11.2007 i.e. information received by the petitioner under the RTI, as per which respondent No.4 is shown to have passed the 19th External Sub Officers Course and on said basis contends that the question of promoting respondent No.4 prior to his having passed the 19th External Sub Officers Course and possessing a certificate did not arise.

4. Learned counsel for respondent Nos.3 and 4 has handed over certificate dated 13.03.2008 issued by the National Fire Service College, Nagpur, disclosing respondent No.4 to have successfully completed Sub Fire Officer's Course at National Fire Service College, at R.T.C. New Delhi conducted from 8th January, 2007 to 29th June, 2007 and of having been placed in pass class. Afore-mentioned certificate dated 13.03.2008 is taken on record.

5. Learned counsel for respondent Nos.3 and 4 has failed to explain as to on what basis respondent No. 4 was promoted as Sub Fire Officer w.e.f. 19.09.2007 in view of certificate taken on record being of 13.03.2008 whereas intimation of respondent No. 4 having passed 19th External Sub Officers Course is dated 22.11.2007 i.e. Annexure P/8. Learned counsel for respondent Nos. 3 & 4 state that the certificate taken on record depicting date of 13.03.2008 is merely the date of issuance of certificate whereas the result of

respondent No.4 was declared much earlier. However, date of declaration of result is not on record except for the intimation Annexure P/8 dated 22.11.2007.

6. Learned counsel for the petitioner has referred to decision of Hon'ble the Supreme Court in '**Puran Das Vs. Union of India & Others**' **2006(3) SCC 97** to contend that in case a candidate becomes eligible for consideration subsequent to the date of consideration, the question of giving retrospective effect to his eligibility is not permissible as per law. Relevant extract of the aforementioned decision is reproduced as under :

“7. XX XX XX

The appellant could not be considered for promotion as he did not have the basic qualification under the India-Tibetan Border Police (Non Gazetted Telecommunication Cadre) Rules, 1983 (in short the 'Rules'). The appellant had qualified grade-II and grade I test in March, 1984 and June, 1986 respectively. He became eligible for promotion test i.e. "D" list test and became qualified subsequently. The question of giving any retrospective effect to his qualification is clearly impermissible. In C.O. Arumugam's case (supra) the factual position was different. The persons whose cases were not considered, had already qualified and in that background this Court held that they were entitled to be considered from an anterior point of time. That logic is not applicable in the present case, as admittedly the appellant did not possess the requisite qualification on the date of consideration. “

7. Learned counsel has also relied upon decision of Hon'ble the Supreme Court in case titled as '**K.Balarama Raju Vs. Ch.V. Subramanya Sarma & Others**', **2011(13) SCC 574** to contend that any relaxation in qualification to permit unqualified candidates to be considered for appointment, cannot be to the prejudice of qualified candidates and they could not steal a march over qualified and selected candidates. Relevant extract of the afore-mentioned decision is reproduced as under :

“28.....The selection was done after a test and on the basis of merit. Possessing the necessary diploma certificate was a part of the qualification and merit. The passing of the examination required minimum 45 marks. Obviously those who had the qualification and who obtained 45 marks and above will have to be placed at the top of the list in seniority. Those who did not have the qualification at that time but obtained it later on, even if they

had obtained higher marks in the test will have to be placed at a position lower than these candidates having qualification, and necessary marks. As far as the first respondent is concerned, his probation having started earlier he will complete the same earlier to the appellants no.1, 2 and 3 and will have to be reckoned senior to them. The governing rules will have to be read and applied meaningfully in this manner so that no prejudice will be done to a candidate who otherwise had the qualifications and who is appointed after passing the test. It is settled law that one should have the qualifications on the date when the applications are invited. Any such relaxation to permit unqualified candidates cannot be to the prejudice of the qualified candidates. They can be taken into the service but cannot steal a march over the qualified and the selected candidates....”

8. Learned counsel has also referred to the Full Bench decision of Hon’ble the Bombay High Court in “**Vaijanath Vs. Secretary, Marathwada Shikshan Prasarak Mandal, Devgiri College Campus, Aurangabad and others, 2006 (12) SCT 447**” to contend that seniority of an employee is to be counted from the date he acquires educational and training qualifications as prescribed under the rules.

9. Learned counsel contends that in the circumstances, respondent No.4 who admittedly was issued certificate by the National Fire Service College, Nagpur only on 13.03.2008 of having successfully completed Sub Fire Officer’s Course from National Fire Service College, Nagpur was not eligible for consideration for promotion from a date prior thereto.

10. Learned counsel for respondent No.4 on the other hand contends that the certificate only depicts the date of issuance of the certificate whereas the result of the course was declared much earlier.

11. I have considered the submissions of learned counsel. Since no material has been shown to have been available with the official respondents of respondent No. 4 possessing certificate of Sub Fire Officer’s Course from National Fire Service College, Nagpur before issuing Annexure P/6 dated 10.05.2012 granting promotion to respondent No. 4 as Sub Fire Officer w.e.f 19.09.2007 and thereby treating him senior to the petitioner, promotion of

respondent No.4 w.e.f. 19.09.2007 as made vide order Annexure P/6, is set aside. Respondent No.3 is directed to pass fresh orders of promotion of respondent No.4 with effect from the date of entitlement in terms of the Rules as referred to above. Needless to mention, it would be open to respondent No.4 to submit proof of fulfilling the requirements in terms of the Rules so as to be granted promotion with effect from 19.09.2007. Entire exercise be carried out within a period of three months.

12. Writ petition stands disposed of as above.

January 31, 2020
Sonia Puri

(B.S. Walia)
Judge

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