

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

120

LPA No.372 of 2021 (O&M)
Date of Decision: April 9th, 2021

Kiran Parkash

...Appellant

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. K.L. Arora, Advocate
for the appellant.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment dated 29.01.2021 passed by the learned Single Judge in CWP No.23718 of 2016, whereby the writ petition preferred by the appellant-petitioner stands dismissed.

2. It is the contention of learned counsel for the appellant that the appellant was appointed as Work Munshi on *ad hoc* basis on 01.12.1985. The services were regularized vide order dated 19.03.2001 with effect from 23.01.2001. He passed the departmental examination as specified under Rule 9 of the Punjab, Department of Water Supply and Sanitation Junior Engineers (Group 'C') Service Rules, 2006 (hereinafter referred to as '2006 Rules') for promotion to the post of Junior Engineer on 21.07.2006.

3. 25% posts are reserved for promotion out of which 6% promotions are to be held from amongst Work Munshies, Work Mistries, Surveyors, Pipe Fitters, Plumbers, Store Munshies, Carpenters, Store Keepers, Masons, Work Inspectors, Mortar Mates, working under the control of the Chief Engineer, who are Matriculates or possess equivalent qualification, and have an experience

of working on anyone or more of these posts for a minimum period of ten years and who qualify the Departmental Examination as specified in Rule 9.

4. Jagtar Singh, who is private respondent No.3, was appointed on regular basis as a Peon on 09.12.1985. He was promoted to the post of Surveyor on 07.09.2000 and, therefore, came in the feeder cadre for promotion to the post of Junior Engineer. He also passed the departmental qualifying examination along with the appellant on 21.07.2006. Jagtar Singh was promoted as a Junior Engineer on 24.06.2009 without considering the case of appellant-Kiran Parkash, who was also a part of the feeder cadre and senior to respondent No.3-Jagtar Singh. This order gave a cause of action to the appellant for claiming promotion to the post of Junior Engineer from the date his junior was promoted i.e. 24.06.2009, for which claim he filed the above-mentioned writ petition in the year 2016.

5. Counsel for the appellant asserts that the official respondents have admitted the factum that the appellant is senior to respondent No.3 and have also acknowledged the fact that there was an erroneous act on the part of the respondents in promoting Jagtar Singh and acknowledging the said factor, Jagtar Singh has been reverted to the post of Surveyor after issuing show cause notice vide order dated 04.12.2017. Counsel on this basis asserts that once the respondents have acknowledged the fact that the person junior to the appellant had been promoted, the learned Single Judge should have proceeded to grant him the benefit of promotion from the date his junior was promoted. That apart, it is asserted by the counsel that the appellant had filed a rejoinder to the written statement, which has been filed by the respondents, asserting therein that there were 41 vacancies at the relevant time as per the 2006 Rules, against which the appellant can be and should have been accommodated,

especially when one Deshraj, who was also senior to Jagtar Singh-respondent No.3, was promoted as a Junior Engineer vide order dated 07.09.2016 with effect from 24.06.2009, the date of promotion of Jagtar Singh as a Junior Engineer (Civil) under the provisions of 2006 Rules. Similar benefit was required to be given to the appellant.

6. Counsel for the appellant challenges the judgment of learned Single Judge dismissing the writ petition of the appellant on the ground of delay by asserting that the appellant came to know about the promotion of respondent No.3-Jagtar Singh only two months prior to the date of filing of the writ petition and, therefore, there was no delay whatsoever on his part in approaching the Court. He, therefore, asserts that the judgment passed by the learned Single Judge cannot sustain and deserves to be set aside.

7. We have considered the submissions made by the counsel for the appellant and with his assistance, have gone through the pleadings and the judgment passed by learned Single Judge.

8. The facts as have been narrated above by the counsel for the appellant makes it amply clear that the appellant admittedly was senior to Jagtar Singh-respondent No.3. The question which is required to be considered by this Court is not only limited to the aspect that there being an erroneous conferring of a right of promotion on a junior in violation of the statutory rules, which aspect having been duly acknowledged by the official respondents and on rectifying the same, reverting such junior, would entitle a person for promotion, who himself is junior to other similarly situated persons who are senior to him, merely on this ground that the wrongly promoted person was junior to the appellant.

The answer to this question would be in the negative as in our

considered view, mere promotion of a junior and that too in violation of the statutory rules would not confer any right upon a senior for being promoted to the same promotional post on that ground alone. What is required to be seen is, whether, such a senior is firstly eligible for promotion under the statutory rules or not. If yes, then is there any other person senior to him eligible for consideration for promotion or not and thereafter was there a vacancy available after considering the eligible senior to him, against which he could be considered for promotion.

In the present case, it is an acknowledged fact on the part of the official respondents that the appellant was eligible for consideration for promotion and fulfilled the requisite qualifications and experience for the said purpose. The star question which now craves consideration of this Court is whether there was a vacancy available, against which the appellant could be considered for promotion after considering the other eligible persons who were senior to the appellant. Unfortunately the appellant has not been able to demonstrate or prove from the pleadings that there was a vacancy so available, against which the appellant could be considered for promotion or that there was none eligible senior to him for such promotion.

9. In the reply which has been filed by the respondents, it has been specifically stated that even though appellant-Kiran Parkash was senior to Jagtar Singh-respondent No.3 but in the light of the error having been rectified by reversion of junior Jagtar Singh-respondent No.3, he would not be entitled to promotion as there were many others above him waiting for promotion.

10. Counsel for the appellant has not been able to show from the pleadings that even if it is assumed that there were 41 vacancies available under the then prevalent 2006 Rules, there were less than 41 persons available

who were eligible for promotion and senior to the appellant. Had the appellant been able to demonstrate that he was in the list of eligible candidates under the 2006 Rules within the available 41 vacancies according to the seniority, his claim could have been considered. The appellant having failed to do so has rightly been denied the benefit of promotion to the post of Junior Engineer (Civil) from 24.06.2009, the date on which his junior Jagtar Singh-respondent No.3 was wrongly promoted, who has now been admittedly reverted.

11. Assertion of the counsel for the appellant that one Deshraj, who was also senior to Jagtar Singh, stands promoted as Junior Engineer (Civil) vide order dated 07.09.2016 with effect from 24.06.2009, the date on which Jagtar Singh was promoted as Junior Engineer and, therefore, the appellant is also entitled to the same benefit, suffice it to say that nothing has come on record nor is it the case of the appellant that Deshraj was junior to the appellant. Since Deshraj was senior to the appellant, the appellant cannot claim the same benefit and assert violation of Article 14 of the Constitution of India. The judgment passed by the learned Single Judge on this aspect, therefore, cannot be faulted with.

12. Another ground on which the learned Single Judge has proceeded to dismiss the writ petition is the delayed approach on the part of the appellant to this Court challenging the promotion of private respondent No.3. It is not in dispute that the order dated 24.06.2009 promoting Jagtar Singh-respondent No.3 as Junior Engineer (Civil) has been challenged by the appellant by filing the writ petition in the year 2016 i.e. after a period of seven years. It is difficult to believe that the appellant was not aware of the fact that Jagtar Singh stood promoted in the year 2009, especially when the appellant

was in possession of the communications relating to the year 2006. It has also not been pleaded that he had obtained the documents/communications pertaining to the year 2006 after he having acquired the knowledge of promotion of respondent No.3. Dismissal of the writ petition preferred by the appellant on the ground it being delayed cannot be said to be without any basis or unjustified. The learned Single Judge has rightly relied upon the Division Bench judgment of this Court in ***Paramjit Singh Walia Versus State of Punjab and others, 2005 (2) SCT 131***, where it has been held that an order of promotion should normally be challenged within a period of six months to one year and in the absence of any justifiable reason, the writ petition so preferred deserves to be dismissed on the principle of delay and latches.

13. In the light of the above, finding no merit in the present appeal, we dismiss the same.

14. In the light of the dismissal of the appeal, CM No.975-LPA of 2021 praying for stay of the impugned judgment, stands disposed of as infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 9th, 2021
Puneet

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes