

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

LPA-539-2021 (O&M)

Date of Decision:-25.8.2021

State of Punjab

... Appellant

Versus

Anil Sharma and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Vikas Mohan Gupta, Addl. A.G. Punjab
for the appellant.

Mr. G.S. Bal, Senior Advocate with
Mr. M.K. Madahar, Advocate
for the caveator-respondent No.1.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The appellant-State has filed this appeal against order
28.4.2021 whereby the CWP-12348-2020 (O&M), filed by respondent
No.1-Anil Sharma (petitioner therein) was allowed as follows:-

“In light of the above discussions, discussed and
detailed above, the instant petition stands allowed and

impugned orders/letter Annexures P-13, P-19 and P-21, are hereby set aside and quashed.

The claim of the petitioner needs to be decided within a period of one month, from the date of receipt of certified copy of this order, by passing a speaking order.

The petition stands disposed off accordingly.”

Case of respondent No.1 (petitioner therein) in brief is that he joined Department of Soil and Water Conservation as Section Officer on 5.8.1989. The said post was subsequently re-designated as Soil Conservation Officer. Respondent No.1 was promoted as Sub-Divisional Soil Conservation Officer. He was further promoted as Divisional Soil Conservation Officer on 16.9.2015 vide (Annexure P-7). Subsequently he was also given additional charge of Conservator of Soils vide order dated 24.5.2018 (Annexure P-8). At that time, the post of Chief Conservator of Soils was vacant and the State Government appointed respondent No.2-Dharminder Sharma, the then Chief Conservator of Forests, Punjab as Chief Conservator of Soils, Punjab, on deputation for the period from 2.7.2018 to 2.7.2020. The tenure of the said incumbent had expired on completion of deputation period of two years. However, respondent No.2-Dharminder Sharma manipulated the things and got extended his period of deputation for another one year/till the departmental officer becomes available for appointment as such, vide order dated 27.5.2020 (Annexure P-13). The

the Department could complete the requisite period of service, for promotion to the post of Chief Conservator of Soils. The promotion of respondent No.1 was unnecessarily got delayed and finally he was promoted as Conservator of Soils vide order dated 14.10.2019 (Annexure P-10). The respondent No.1 being aggrieved filed the writ petition that he be considered and promoted as Chief Conservator of Soils, Punjab w.e.f. 24.5.2020, as on that date he was having the requisite experience of two years as Conservator of Soils. He also sought quashment of the instructions dated 14.12.2016 (Annexure P-19) which provide that the period of Current Duty Charge will not be counted for the purposes of experience, seniority or any other benefit. He also challenged order dated 27.5.2020 (Annexure P-13).

On notice of motion, the State filed reply by way of affidavit of Mr. Rahul Gupta, Joint Secretary Agriculture, Punjab. Even respondent No.2 filed short reply. The State as well as respondent No.2-Dharminder Sharma contested the claim of respondent No.1 (petitioner therein) and took plea that the respondent No.1 (petitioner therein) was just given additional charge of the post of Conservator of Soils vide order dated 24.5.2018 (Annexure P-8) and the said period cannot be counted towards experience of two years, as is required, for promotion to the post of Chief Conservator of Soils. The State while taking the said plea referred to Notification dated 14.12.2016 (Annexure P-19) as per which the period of Current Duty Charge has not to be counted for the purposes of experience, seniority or any other benefit.

After hearing both the parties, the learned Single Judge allowed

the writ petition as has been described above.

Being dissatisfied, the State has filed the present appeal.

We have heard the State counsel and the learned Senior counsel for respondent No.1-caveator.

The State counsel contended that respondent No.2-Dharminder Sharma belongs to Indian Forest Service and at the relevant time he was Chief Conservator of Forests, Punjab being the senior most Officer in the cadre. He further contended that the Punjab Government issued instructions dated 19.4.2005 regarding giving of Current Duty Charge to its employees. The State counsel further argued that thereafter number of judgments regarding rights of employees deputed on Current Duty Charge, were delivered by the Hon'ble Apex Court and this Court. Taking notice of the said developments, the State Government issued fresh instructions dated 14.12.2016 (Annexure P-19) regarding Current Duty Charge. It is further argued that the said instructions are uniformly applicable to all the employees who are given Current Duty Charge. The said instructions are neither arbitrary nor unjust. The State counsel further contended that the learned Single Judge fell in error while setting aside instructions dated 14.12.2016 (Annexure P-9).

The State counsel further argued that respondent No.1-Anil Kumar has failed to demonstrate that respondent No.2 took benefit of his position and got himself appointed as Chief Conservator of Soils, Punjab vide order dated 10.12.2018 (Annexure P-9), by using his political clout. He further contended that at that time no employee of the department, was eligible for appointment to the post of Chief Conservator of Soils, Punjab.

The State counsel further argued that respondent No.1 was promoted as Divisional Soil Conservation Officer on 16.9.2015. For promotion to the next post of Conservator of Soils, he was required to have minimum experience of three years, so he was not eligible even to be promoted as Conservator of Soils on 2.7.2018, when respondent No.2 being the senior most Officer of Forest Department, Punjab was deputed as Chief Conservator of Soils, Punjab vide order (Annexure P-9). The State counsel further argued that admittedly respondent No.1 was given additional work of the post of Conservator of Soils vide order dated 24.5.2018 (Annexure P-8). He was promoted as Conservator of Soils, Punjab vide order dated 14.10.2019 (Annexure P-10). The State counsel further argued that respondent No.1 was simply holding the additional charge of Conservator of Soils w.e.f. 24.5.2018 in addition to his substantive post of Divisional Soil Conservation Officer. It is further argued that the duties discharged by respondent No.1 on additional charge of Conservator of Soils cannot be counted towards his experience for the purpose of promotion to the post of Chief Conservator of Soils, as the same is neither permissible in law nor under the statutory rules i.e. Punjab Soil and Water Conservation (Group-A) Service Rules, 2014. He also referred to Government instructions (Annexure P-19) in support of his arguments. The State counsel also brought to the notice of this Court, the judicial pronouncements of the Hon'ble Supreme Court in **Ramakant Shripad Sinai Advalpalkar vs. Union of India and Others, 1991 Supp (2) SCC 733**, wherein it was held that asking an Officer who substantively holds a lower post, merely to discharge the duties of a higher post cannot be treated as a promotion in the

same context. The State counsel also referred to **Selvaraj vs. Lt. Governor of Island, Port Blair, 1998 (4) SCC 291.**

While summing-up his arguments, the State counsel urged that the impugned order passed by the learned Single Judge deserves to be set aside, being against the settled proposition of law as has been referred above.

On the other hand, the learned Senior counsel for respondent No.1 while supporting the order passed by the learned Single Judge, submitted that there is no illegality in the impugned order dated 28.4.2021 passed by the learned Single Judge. It is further submitted that the learned Single Judge examined the entire matter in right perspective and while doing so the learned Single Judge also analyzed the case law referred by both the parties. Learned Senior Counsel on behalf of respondent No.1 further argued that after proper analysis of the matter, the learned Single Judge rightly concluded that respondent No.1 (petitioner therein) has gained experience while working as Conservator of Soils on Current Duty Charge and the same is to be counted towards experience while considering his case for promotion to the post of Chief Conservator of Soils. Thus making it clear that respondent No.1 (petitioner therein) gained required experience of 2 years as Conservator of Soils as on 24.5.2020, for the purpose of his further promotion to the post of Chief Conservator of Soils. In support of his submissions, learned Senior Counsel referred to decisions of the Co-ordinate Bench of this Court in **Chandigarh Administration vs. Vipin Gupta and another 2011(2) RSJ 641; Chief Engineer, Union Territory, Chandigarh vs. Ram Sarup Walia and others, 2012(3) RSJ 418** and

CWP-2948-1996, D.P. Mehta (Dr.) vs. P.G.I. and its Governing Body
decided on **16.05.1996**.

The learned Senior counsel for the respondent No.1 further argued that the Executive Instructions (Annexure P-19) being totally against the settled law, were rightly set aside by the learned Single Judge. He further contended that in the circumstances, the learned Single Judge rightly held that the claim of respondent No.1 (petitioner therein) needs to be decided by the government in a time bound manner.

We have considered the submissions made by the counsel for the parties.

Admittedly respondent No.1 was promoted as Divisional Soil Conservation Officer on 16.9.2015 vide Annexure P-7. Later on he was also handed over the additional charge of Conservator of Soils vide order dated 24.5.2018 (Annexure P-8). He was promoted as Conservator of Soils vide order dated 14.10.2019 (Annexure P-10). He is seeking promotion to the post of Chief Conservator of Soils w.e.f. 24.5.2020. As per Government Notification dated 29.8.2014 (Annexure P-11) published on 9.9.2014 only those Conservators of Soils who have an experience of working as such for a minimum period of two years are eligible for promotion to the post of Chief Conservator of Soils. The plea of the respondent No.1 is that his experience from 24.5.2018 to 14.10.2019 when he was having additional charge of Conservator of Soils, should be taken into consideration, while calculating minimum two years experience required for his promotion to the post of Chief Conservator of Soils. However, State is contesting the claim of respondent No.1.

Learned State counsel has referred to **Ramakant Shripad Sinai Advalpalkar**'s case (supra) and **Selvaraj**'s case (supra) to refute the plea taken by respondent No.1. In **Ramakant Shripad Sinai Advalpalkar**'s case (supra), the appellant, acting 3rd grade officer of the Caixa Economica de Goa was ordered on 30.8.1963 to perform the duties of Treasurer of Caxia Economica de Goa vice Shri Antonio Xavier Furtado who died that very morning and on the basis of the said order, the appellant sought a mandamus directing the respondents to absorb him in an equivalent to that of Treasurer of a financial institution of the former Portuguese Government in Goa, after its take over by Indian Government. The Hon'ble Apex court dismissed the appeal filed by the appellant. We are of the view that facts and circumstances of the referred case are distinct from that of the case in hand. In the referred case, the appellant was given the charge of Treasurer on account of sudden demise of the official who was working on the said post on regular basis. Whereas in the case in hand, Current Duty Charge of Conservator of Soils was given to respondent No.1 by the Government on account of administrative exigencies, as the said post was lying vacant.

Reliance placed by learned State Counsel on **Selvaraj**'s case (supra) is also not of much assistance to the appellant. In the said case, the question involved was that the appellant who worked on the higher post though temporarily and in an officiating capacity pursuant to order dated 28.1.1992, was entitled to get salary attached to the said higher post. The Hon'ble Apex Court allowed the appeal filed by the appellant to the limited extent that the respondents will be called upon to make available to the

appellant the difference of salary in the time scale of 1640-2900 during the period from 29.1.1992 to 19.9.1995, during which time, the appellant actually worked. The facts and circumstances of the aforesaid referred case are also entirely different from that of the present case.

For appreciating the controversy in issue, we will have to go through various judgments as has been discussed below.

The Hon'ble Apex Court in **State of Madhya Pradesh and another v. Laxmishankar Mishra**, (1979) 2 SCC 270 interpreted Rule 3(b) of the Rules enacted under Madhya Pradesh Local Authorities School Teachers (Absorption in Government Service) Act, 1963. The said Rule reads as follows : -

“3. (b) For absorption on the post of Head Master/Principal of a High/Higher Secondary School, the person concerned should possess the post-graduate degree and should have worked on the post for a minimum period of 7 years in the same institution and should have 10 years' teaching experience in any recognised institution of Madhya Pradesh.”

While dismissing the petitions filed by the State, the Hon'ble Apex Court observed as follows : -

“13. Perhaps there would have been some merit in the submission on behalf of the petitioner if in Rule 3(b) the words used were “who held the post” but the language in Rule 3(b) is so materially different and it speaks that a person should have worked on the post. The State was apparently wrong in introducing the element of rank for the purpose of Rule 3(b).

The controversy that surfaced in **Ramrattan v. State of Madhya Pradesh** and the subsequent decision in **State of Madhya Pradesh v. Gokul Prasad**, which led to a reference to a Full Bench in **Girja Shankar v. S.D.O., Harda**, on account of the use of the expressions such as “person appointed to be incharge of the current duties of the office” which indicated that such person did not hold the rank and, therefore, could not discharge statutory functions assigned to the post should not detain us. The language here indicates emphasis on work being done while on the post irrespective of the capacity. The absorption of a person as Principal under Rule 3(b) does not depend on rank but on the nature of functions and duties that an incumbent discharges for a particular number of years, i.e. the duties of a Principal for a period of 7 years.

14. It thus clearly transpires that while computing the period of 7 years for the purpose of Rule 3(b) what is determinative is performing duties and discharging functions of the post of Head Master/Principal irrespective of the capacity in which the post was held. The High Court was, therefore, right in holding that the period during which the petitioners (respondents in these petitions) worked as incharge Head Masters/Principals ought to be taken into account by the State Government for computing the period of 7 years.

15. These petitions are accordingly dismissed.”

In **Vipan Gupta** and **Ram Sarup Walia**’s cases (supra), which

have been relied upon by respondent No.1, the Co-ordinate Bench of this Court has held that the employee was entitled to reckon service rendered by him on current duty charge towards qualifying service for determining eligibility for promotion to the next higher post. SLPs filed against both the said judgments were dismissed by the Hon'ble Supreme Court vide order dated 6.2.2013 while observing that vide the impugned order, the High Court has kept the question of law open and granted the relief in the peculiar facts of the case.

In **D.P. Mehta's** case (supra), which has also been relied upon by respondent No.1, the petitioner, a Medical Officer discharged duties of Deputy Medical Superintendent with effect from 1.9.1988, in addition to his own duties before his appointment as regular Deputy Medical Superintendent on 11.2.1995. The Coordinate Bench of this Court while allowing the writ petition directed the respondents to consider the petitioner's claim for promotion to the post of Joint Medical Superintendent by including the experience of aforesaid period during which he discharged additional duties of Deputy Medical Superintendent.

We may also gainfully refer to the decision of the Co-ordinate Bench of this Court in CWP-11007-2006; **Jaskaran Singh v. State of Punjab and another**; decided on 6.12.2007 wherein it was held that for determination of eligibility of the petitioner to the post of Superintending Engineer the 'experience' earned by him while working on Current Duty Charge as Executive Engineer w.e.f. 7.11.1997 has to be taken into consideration. Furthermore, similar view was taken by this Court in judgments rendered in CWP-4247-1991 decided on 3.10.1991; **Amar Singh**

v. State of Punjab and Sukhminder Singh and others v. State of Punjab and another; 2017 (1) SCT 552.

From the perusal of aforesaid legal pronouncements, it is manifest that the experience gained by an employee while working on Current Duty Charge is to be treated as a part of experience for promotion to the next higher post.

Now advertng to the facts of the present case, the Executive Instructions dated 14.12.2016 (Annexure P-9) provide that the period of Current Duty Charge will not be counted for the purposes of experience, seniority or any other benefit, which is totally against the settled law as has been discussed above. So, the learned Single Judge while passing the impugned order also set aside the Executive Instrcutions (Annexure P-19). We concur with the said finding.

As per order dated 14.10.2019 (Annexure P-10), whereby respondent No.1 was promoted as Conservator of Soils alongwith four other Divisional Soil Conservation Officers, the seniority number of respondent No.1 is 86 while the other four promotees were behind him in the seniority.

It is not disputed that the Government Notification dated 29.8.2014 (Annexure P-11) published on 9.9.2014 provides that Chief Conservator of Soils is to be promoted from amongst Conservator of Soils, who have experience of working as such for a minimum period of 2 years. To our mind, the said notification does not specify that the aforesaid experience for a minimum period of two years should be as Conservator of Soils on regular basis. The Notification did not make any difference

person having additional charge of the said post. So, the learned Single Judge rightly observed that respondent No.1 (petitioner therein) has gained requisite experience while working on Current Duty Charge and he clearly fulfills the requirement of the Rules and therefore qualifies to be considered for promotion to the post of Chief Conservator of Soils.

It appears that posts of Conservators of Soils were lying vacant on 24.5.2018, when respondent No.1 was given additional charge of the said post. However, at that time, he was not eligible for promotion to the said post, not having requisite experience of working as Divisional Soil Conservator Officer for a minimum period of three years. Respondent No.1 gained the said minimum experience of three years as on 16.9.2018 and he became eligible to be considered for promotion to the post of Conservator of Soils on that date i.e. 16.9.2018. So, we are of the view that the experience gained by respondent No.1 during his tenure of Current Duty Charge as Conservator of Soils from 16.9.2018 is to be treated as a part of experience for promotion to the next higher post of Conservator of Soils. To this extent, we are in agreement with the direction given by the learned Single Judge.

In view of the above, the claim of the respondent No.1 be decided by the Government within a period of two months from the date of receipt of certified copy of this order, by passing a speaking order.

Consequently, the instant appeal is hereby disposed of in the aforesaid terms.

25.8.2021	(RAJAN GUPTA)	(KARAMJIT SINGH)
	JUDGE	JUDGE