

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

CWP-13513-2020(O&M)

Reserved on:-24.11.2021

Date of Pronouncement:-29.11.2021

Naurty Ram

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ravinder Malik(Ravi), Advocate
for the petitioner.

Mr.Sharad Aggarwal, AAG, Haryana.

Mr.Sanjeev Majra, Advocate
for respondent No.2.

Mr.Dushyant Sarvesh, Advocate for
Mr.Shekar Verma, Advocate
for the applicant in CM-1039-CWP-2021.

H.S. MADAAN, J.

1. Petitioner Naurty Ram working as SDE, Horticulture Haryana Shehri Vikas Pradhikaran has brought the instant civil writ petition seeking his promotion to the post of Executive Engineer contending that he fulfils the necessary conditions for such promotion in the form of experience and qualification and vacancies are also available, therefore deserves to be promoted; the respondent department is not

taking any action in that regard and rather has been getting work done by giving current duty charge to various other officers. According to the petitioner, he was assigned current duty charge of post of SDE, Horticulture vide order 31.3.2010 and ultimately he was promoted as such and has been working on regular basis since 1.8.2017. The petitioner also craves for grant of salary and other emoluments attached with the regular post of SDE Horticulture during the period, he had held the current duty charge of that post.

2. The writ petition is being resisted by the respondent.

3. I have heard learned counsel for the parties besides going through the record. A perusal of the the Haryana Urban Development Authority Services Regulations, 1989, (hereinafter referred to as 'the Regulations'), goes to show that Executive Engineer (Horticulture), is a promotional post, requiring 8 years experience as Sub Divisional Officer (Horticulture). As it comes out from the record, posts of Executive Engineer (Horticulture), are lying vacant with Haryana Shehri Vikas Pradhikaran and no regular incumbents have been promoted against those vacancies, rather the work is being looked after by the Officers of the level of Sub Divisional Officer (Horticulture) by giving current duty charge or to some other Officers like Manager, Cactus Garden, Panchkula, by giving additional charge. Such type of adhocism usually results in loss of efficiency and smoothness in working. The Officer, who is given temporary charge cannot work with same dedication, devotion and interest as a regular incumbent can do, because in case of temporary charge, the officer knows that it can be taken away from him at any time

and he or she need not put in extra efforts to show good results. Similarly, when additional charge is given to an officer, on account of work pressure, much attention cannot be given to the work of the additional charge given. It is a different matter if suitable persons are not available for appointment/promotion. It is not case of the respondents that on account of financial constraints, the posts are not being filled up. The post of Executive Engineer (Horticulture), is to be filled up by promotion from the cadre of SDO (Horticulture). Name of the petitioner is stated to be in line for consideration for promotion. He is stated to be holding current duty charge of Sub Divisional Engineer (Horticulture) w.e.f. 6.4.2010 to 3.8.2017, i.e. for a period of more than 7 years and thereafter he was promoted as Sub Divisional Engineer (Horticulture) on 1.8.2017. He is stated to be at Sr. No.2 in seniority. The respondents have nowhere taken up the plea that the work and conduct of the petitioner has not been satisfactory. The only hurdle coming in his path is that he is not having experience of 7 years working on substantive post of Sub Divisional Engineer (Horticulture). Though if the period during which he held current duty charge of that post is counted, then he is to be taken as eligible for consideration for such promotion.

4. Now the question arises as to whether such period during which the petitioner has worked as Sub Divisional Engineer (Horticulture), holding current duty charge, can be counted towards his experience. Though according to learned counsel for the petitioner, it can certainly be done but according to the State counsel, it is not permissible.

5. It may be observed here that rules in that regard are not very

clear. For that we will have to take the help of case law. A Division Bench of this Court, while dealing with a similar proposition in **LPA No. 539 of 2021 decided on 25.8.2021, titled as State of Punjab vs. Anil Sharma and another**, referring to various judgments on the subject, had come to a clear conclusion 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. There are various other judgments in that regard on this point, delivered by Single Benches of this Court, i.e. **Chief Engineer, Union Territory vs. Ram Sarup Walia and others, in CWP No. 77 of 2012, decided on 6.1.2012** and **Sukhminder Singh and others vs. State of Punjab and others in CWP No. 26621 of 2013, decided on 10.11.2016**.

6. Therefore, in case of petitioner, if the period for which he held current duty charge as Sub Divisional Engineer (Horticulture), is counted coupled with his seniority, then he can certainly be considered for promotion as Executive Engineer (Horticulture). The action of respondents in not doing so is not correct and cannot be justified.

7. With regard to the relief claimed by the petitioner, seeking salary and other allowances attached to the post of Sub Divisional Engineer (Horticulture), for the period he held current duty charge, learned counsel for the petitioner has stated at the Bar that he has got instructions from his client, not to press the said relief and he gives up the same. Therefore, the writ petition qua that portion is dismissed as not pressed.

8. Although one Nidhi Bhardwaj, working as Manager, Cactus

Garden, Panchkula, had filed an application for being impleaded as respondent No.3 in this case but since the writ petition filed by her bearing CWP 4196 of 2019, alongwith another writ petition bearing CWP 26003 of 2019, have been disposed of by a Co-ordinate Bench of Hon'ble Mr. Justice Harsimran Singh Sethi, vide judgment/order dated 2.8.2021, (copy of which has been placed on record), observing that Dr. Nidhi Bhardwaj has no right to demand the additional duties of the post Executive Engineer (Horticulture Division, Panchkula), which are not the part and parcel of the duty of Manager, Cactus Garden, Panchkula, and that withdrawal of additional duties by the department cannot be held to be bad, especially, in view of the fact that as of now, the post of Executive Engineer (Horticulture Division, Panchkula), is not even a promotional post from the post of Manager, Cactus Garden, Panchkula, the application so moved by her, is doomed for failure and is dismissed accordingly.

9. As a result of the detailed discussion above, the writ petition is allowed partly, in as much as, the respondents are directed to consider the claim of the petitioner for promotion, counting the period he held current duty charge of Sub Divisional Engineer (Horticulture), towards his experience, by passing a speaking order, within a period of one month from the date of receipt of certified copy of this order by them.

29.11.2021
Brij/chugh

(H.S.MADAAN)
JUDGE

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