

CWP No.23718 of 2016 (O&M)
CWP No.878 of 2018 (O&M)

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

DATE OF DECISION: JANUARY 29, 2021

1. CWP No.23718 of 2016 (O&M)

KIRAN PARKASH ..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS ...RESPONDENTS

2. CWP No.878 of 2018 (O&M)

JAGTAR SINGH ..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. K.L. Arora, Advocate,
for the petitioner in CWP No.23718 of 2016 and
for respondent No.4 in CWP No.878 of 2018.

Mr. Vijay Lath, Advocate,
for the petitioner in CWP No.878 of 2018 and
for respondent No.3 in CWP No.23718 of 2016.

Ms. Maloo Chahal, DAG, Punjab.

SUDHIR MITTAL, J.

This judgment will decide CWP No.23718 of 2016 as well as
CWP No.878 of 2018 as both are between the same parties and related
issues are involved therein.

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Brief facts:

Kiran Parkash s/o Ruldu Ram as well as Jagtar Singh s/o Dalip Singh are employed in the Punjab Water Supply and Sanitation Department. Kiran Parkash was appointed as Work Munshi on 01.12.1985 on daily wages. His services were regularized vide order dated 19.03.2001 w.e.f 23.01.2021. On the other hand, Jagtar Singh was appointed on 09.12.1985 as a Peon but on regular basis. He was promoted to the post of Surveyor on 07.09.2000. For promotion to the post of Junior Engineer (Civil) both of them took the departmental qualifying examination held on 29/30.06.2006. Both qualified the same as is evident from result circulated vide memo. dated 21.07.2006.

Promotion to the post of Junior Engineer (Civil) is governed by the Punjab, Department of Water Supply and Sanitation Junior Engineers (Group 'C') Service Rules, 2006 (herein after referred to as the Rules). Rule 5 along with Appendix 'B' governs the method of appointment and also prescribes the eligibility conditions. The same is reproduced below:-

“5. Method of appointment, qualifications and experience:-

(1) Appointment to the Service shall be made in the manner as specified in Appendix 'B' :

Provided that if, no suitable candidate is available for appointment by promotion and by direct appointment, then appointment to the Service shall be made by transfer of a person holding a similar or an identical post under a State Government or Government of India.

(2) No person shall be appointed to a post in the Service unless

he possesses the qualifications and experience as specified against that post in Appendix ‘B’.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis, but no person shall have any right to claim promotion on the basis of seniority alone.

APPENDIX ‘B’					
(See rules 5)					
Percentage for appointment by				Method of appointment, qualifications and experience by	
Sr. No.	Designation of the post	Promotion	Direct Appointment	Promotion	Direct Appointment
1.	Junior Engineer (Civil)	Twenty five per cent	Seventy five per cent	Twenty five per cent by promotion in the following manner, namely :- (i) Six per cent from amongst the work Mushies, Work Mistries, Surveyors, Pipe Fitters, Plumbers, Store Munshis, 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 any one or more of these posts for a minimum period of ten years, and who qualify the departmental examination as specified in rule 9; (ii) xxxxxx (iii) xxxxx	Should possess Diploma in Civil Engineering or its equivalent from a recognized university or institution or any other equivalent qualifications recognized by the Government.

Rule 9 pertaining to the qualifying examination is also reproduced:-

“9. Qualifying examination for appointment by promotion:-

(1) The Chief Engineer shall conduct a qualifying examination every year for preparing a list of candidates to be considered for promotion to the posts in the Service.

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(2) The Chief Engineer shall with the approval of Government, specify the syllabus for the qualifying examination and he shall appoint a committee of examiners for conducting the qualifying examination.

(3) A candidate shall be allowed to sit in the qualifying examination only, if he has an experience of working as such for a minimum period of ten years.

(4) The Chief Engineer shall prepare a list of successful candidates for the purpose of considering them for promotion in accordance with these rules.”

From the aforementioned relevant Rules, it is evident that both Kiran Parkash as well as Jagtar Singh could be promoted to the post of Junior Engineer (Civil) for filling up 6% of 25% of posts to be filled up by promotion, as both were part of the Feeder Cadre of Work Munshi, Surveyor etc. provided they had an experience of working of 10 years and had qualified the departmental examination. Promotion was to be made on seniority-cum-merit basis but no person had the right to claim promotion on the basis of seniority alone as is evident from Rule 5(3) reproduced above. According to Rule 9(3), only a candidate who possessed 10 years experience was qualified to take the departmental examination.

Jagtar Singh was promoted to the post of Junior Engineer (Civil) vide order dated 24.06.2009 and thus Kiran Parkash filed CWP No.23718 of 2016 claiming himself to be senior to Jagtar Singh and demanding promotion w.e.f. the date his junior was promoted. He also sought for quashing of order dated 24.06.2009. In the writ petition, it has

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been stated that he acquired knowledge of the promotion of Jagtar Singh only two months before filing of the writ petition.

During the pendency of the aforementioned writ petition, vide order dated 04.12.2017, Jagtar Singh was reverted to the post of Surveyor after issuing show cause notice and after he had filed his reply thereto. The order of reversion is under challenge in CWP No.878 of 2018.

CWP No.23718 of 2016

In this writ petition Kiran Parkash has pleaded that he is senior to the 3rd respondent therein i.e. Jagtar Singh because he joined the Feeder Cadre of Work Munshi on 01.12.1985 whereas respondent No.3 was brought into the Feeder Cadre only on 07.09.2000 when he was promoted as Surveyor. Thus, the promotion of Jagtar Singh on 24.06.2009 was illegal and bad in law and deserved to be quashed. The petitioner i.e. Kiran Parkash was entitled to be promoted to the post of Junior Engineer (Civil) w.e.f. the date his junior had been promoted.

In the written statement filed by the State of Punjab, the fact that Kiran Parkash is senior has been admitted. It has been submitted that a list of eligible personnel is maintained for promotion to the post of Junior Engineer (Civil) and Kiran Parkash is higher in the said list than Jagtar Singh. Thus, promotion of Jagtar Singh before Kiran Parkash was illegal and erroneous and steps are being taken to rectify the error. It has further been stated that even though Kiran Parkash was senior, he was not entitled to promotion as there were many others above him waiting to be promoted.

In the replication filed on behalf of the petitioner to the written statement filed on behalf of the State the fact that persons senior to Kiran

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Parkash were still in the waiting list has not been denied.

Learned counsel for the petitioner has argued that since the petitioner-Kiran Parkash was admittedly senior to the 3rd respondent-Jagtar Singh and promotion was to be made in accordance with seniority-cum-merit as provided in Rule 5(3) of the Rules, the petitioner was entitled to be promoted. The rules amended vide amendment of 2010 whereby the Civil, Mechanical and Electrical posts have been combined and new seniority list has been prepared would not affect the rights of the petitioner. The principle of '*old vacancy old rule*' shall apply to the case of the petitioner. Reliance has been placed upon two Division Bench judgments of this Court in '**Ramesh Chand Yadhuwanshi vs. Sandeep Kharab and others, 2019 (1) SCT-DB-433** as well as *Sanjay Sharma vs. Union of India and others, 2011(3) SCT-DB-343*'.

In response learned State counsel submits that so far as the relief of quashing of the order of promotion of the 3rd respondent is concerned, the writ petition has been rendered infructuous as he has since been reverted to the post of Surveyor vide order dated 04.12.2017.

Learned counsel for the 3rd respondent-Jagtar Singh has argued that petitioner was regularized vide order dated 19.03.2001 whereas the 3rd respondent was promoted as Surveyor on 07.09.2000. The 3rd respondent was always a regular employee and seniority is governed by length of regular service thus, it is erroneous to argue that the petitioner is senior. Moreover, the writ petition is hit by delay and laches and for this purpose, he has relied upon a Division Bench judgment of this Court in '**Paramjit**

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Singh Walia vs. State of Punjab and others, 2005(2) SCT 131'. The fact that respondent No.3 is senior to the petitioner is further evident from the seniority list circulated vide memo. dated 11.12.2020 (Annexure 3/4) with CM No.119 of 2021.

As referred to hereinabove, twin prayers have been made in this writ petition i.e. quashing of order dated 24.06.2009 whereby 3rd respondent was promoted and for directions to the respondents to consider the case of the petitioner for promotion to the post of Junior Engineer (Civil) from the date the junior was promoted. The relief of quashing of order of promotion dated 24.06.2009 is no longer available to the petitioner as meanwhile, vide order dated 04.12.2017, the 3rd respondent has been reverted to the post of Surveyor.

The relief of consideration for promotion by applying the principle of '*old vacancy old rule*' also cannot be granted. This is for the reason that the State has pleaded in its written statement that a large number of persons senior to the petitioner are still on the waiting list. The petitioner is not at number one in the waiting list and he is not entitled to claim promotion to the vacancy created on reversion of the 3rd respondent. The principle of '*old vacancy old rule*' will not apply in this case. The rule has been distinguished by the Supreme Court in '***Deepak Aggarwal vs. State of Uttar Pradesh, 2011 (2) SCT 766'***', wherein it has been held that the rule is not of universal or absolute application and is interlinked with the candidate having acquired a right to be considered for promotion under the old rules. In this case, it is evident that although the petitioner was in the waiting list, there were many others senior to him who had to be accommodated before

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his turn ripened. Although, learned counsel for the petitioner has argued that vacancies exist under the Rules, he has not been able to show that the number of candidates above him on the waiting list are less than the number of vacancies. On the other hand, a perusal of the written statement of the State shows that the last candidate appointed possessed merit 130 whereas the petitioner was at Sr.No.533.

The judgments relied upon by the petitioner do not help him as I have found that the principle of '*old vacancy old rule*' cannot apply in the facts and circumstances of this case.

It is also necessary to notice that the writ petition challenging order dated 24.06.2009 has been filed only in the year 2016. Although, a bald assertion has been made in the writ petition that the petitioner acquired knowledge of the promotion of the 3rd respondent only two months back, the same cannot be accepted as the petitioner has been following this case very closely for a long period of time as is evident from the fact that he is in possession of communications pertaining to the year 2006. There is no averment in the writ petition that the said communications were obtained by him only after he acquired knowledge of the promotion of the 3rd respondent. Under the circumstances, the judgment in ***Paramjit Singh Walia (supra)*** applies squarely to this case. In the said case, a Division Bench of this Court has held that an order of promotion should normally be challenged within six months to one year. Thus, the writ petition is hit by the principle of delay and latches also.

For the aforementioned reasons, the writ petition has no merit and is dismissed.

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CM No.119-CWP-2021

Application for placing on record documents is also dismissed as the documents annexed therewith are not relevant.

CWP No.878 of 2018

The order of reversion dated 04.12.2017 is under challenge in this writ petition filed by Jagtar Singh. Kiran Parkash is the 4th respondent in this writ petition. Prayer for quashing seniority list dated 01.04.2016 has also been made.

Learned counsel for the petitioner has argued that inclusion of the name of the petitioner at Sr. No.687-A in the seniority list dated 01.04.2016 wherein the 4th respondent is shown at Sr. No.533 is illegal as the name was included therein without granting an opportunity of hearing. The fact that the petitioner is senior to the 4th respondent is evident from the seniority list dated 26.12.2017 wherein the petitioner has been shown at Sr. No.117 whereas the 4th respondent has been shown at Sr. No.118. For this reason, the reversion order dated 04.12.2017 is also illegal.

Since the seniority list dated 01.04.2016 has been replaced by the seniority list dated 26.12.2017 and the petitioner has been shown senior to the 4th respondent in the said list, grievance of the petitioner stands redressed. Thus, the prayer for quashing of seniority list dated 01.04.2016 has been rendered infructuous.

A perusal of the impugned order dated 04.12.2017 shows that the petitioner was reverted not only on the ground of seniority but also on the ground that he did not possess the requisite experience to sit for the

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departmental test. Another reason is that promotion against 5% quota for the post of Surveyor provided under the 1991 Rules was illegal as by the time the petitioner was promoted the Rules of 2006 had come into force and there was no separate quota therein for Surveyor.

A perusal of Rule 9(3) of the Rules, leaves no doubt that before a candidate can be permitted to take the departmental examination he must possess experience of 10 years in the Feeder Cadre. Admittedly, the petitioner joined the Feeder Cadre on 07.09.2000 when he was promoted to the post of Surveyor. The test was held on 29/30.06.2006 and on the said date the petitioner had less than six years experience. Thus, he was not qualified for taking the test and could not have been placed in the seniority list of persons qualified for promotion to the post of Junior Engineer (Civil). Thus, the order of reversion is entitled to be upheld on this ground alone.

Learned counsel for the petitioner has not argued anything regarding the 5% quota of Surveyors having come to an end after the 1991 Rules were replaced by the Rules of 2006. Illegality in promoting the petitioner against the 5% quota of Surveyors is thus apparent. The order of reversion deserves to be upheld on this ground also.

For the aforementioned reasons, this writ petition also deserves to be dismissed. Ordered accordingly.

(SUDHIR MITTAL)
JUDGE

January 29, 2021
Ankur

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>