

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

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**CM-1424-LPA-2021 in/and
LPA No.780 of 2018
Decided on : 16.12.2021**

Harjinder Pal Singh and others

... Appellants

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. R.S. Bains, Senior Advocate with
Mr. Vishesh Chandhok, Advocate for the appellant (s).

Mr. Pankaj Gupta, Addl. AG, Punjab
for respondents No.1 & 2.

Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate
for the respondents No.3 to 7.

G.S. Sandhawalia, J. (Oral)

Case has been fixed for consideration on CM-1424-LPA-2021 which has been filed for vacation of the interim order dated 31.05.2018 (Annexure A-1). However, with the consent of counsels for the parties, the main appeal is preponed from 08.03.2022 to today itself and taken up for hearing.

Challenge in the present letters patent appeal is to the decision of the learned Single Judge dated 06.04.2018 passed in **CWP No.2673 of 2018 'Bhupinder Singh and others Vs. State of Punjab and another'** whereby the writ petition was dismissed.

The writ petitioners had raised challenge to the Departmental Promotion Committee (DPC) held on 30.01.2018, in pursuance of the recommendations made on 14.12.2017 for consideration for promotion to

the posts of Sub-Divisional Engineers (SDE). The candidature of Junior Engineers/Assistant Engineers, Civil and Mechanical having been considered under the AMIE quota and having been obtained from IME, Mumbai, was the subject matter of dispute, in view of the Division Bench judgment of this Court passed in '**Kartar Singh Vs. Union of India and others**' 2012 (4) SCT 741.

The learned Single Judge has come to the conclusion that the applicants who had filed application for impleadment as such as respondents had the necessary certificates of the courses conducted by the Institutes of Kolkata and Mumbai upto 31.05.2013. Therefore, the certificates were held valid and there was no illegality in the action of the DPC considering the qualification of IME, Mumbai as valid for the purpose of promotion to the post of SDE.

Another factor which was noticed by the learned Single Judge was that the writ petition was not maintainable being premature and since admittedly no promotion order had been passed, the writ petition itself was not maintainable, while referring to the judgment passed in **Dr. G. Sarana Vs University of Lucknow & others AIR 1976 SC 2428** and **Mrs. Kunda S. Kadam and others Vs. K. Kher Soman & others AIR 1980 SC 881**, which have been subsequently followed by this Court in **CWP No.20318 of 2016** decided on **04.10.2016** titled as **Paramjit Goyal & others Vs. Sate of Punjab and others (Annexure R-3/1)**.

In spite of that the learned Single Judge chose to decide

the writ petition on merits in favour of the applicant-respondents herein, while dismissing the writ petition. Resultantly, promotion order has also been passed on 30.05.2018 (Annexure A-6), which has been placed on record vide CM-1424-LPA-2021.

The grouse of the appellants herein is very limited to the extent that the writ petition came up for hearing on 06.02.2018 and while issuing notice of motion, it was ordered to be listed in the urgent on 19.02.2018. Thereafter, the matter was listed on 19.02.2018 and Secretary Department of Water Resources was asked to be present on 07.03.2018 and judgment was reserved on the said date and eventually the case was decided on 06.04.2018. Thus, the grouse is that the response of the State had not been taken in black and white by filing of written statement before deciding the contentious issue regarding the issue of the recognition of the certificates of the contesting parties from both sides, which are stated to be contrary to the statutory provisions governing the parties.

To be fair to the counsel for the respondents, reliance is placed upon the subsequent decision of the Apex Court passed in **'Institution of Mechanical Engineers (India) through its Chairman Vs. State of Punjab and others'** (2019) 16 SCC 95, to contend that the matter as such would still be covered in favour of the applicant/respondents. Since, the said judgment is post the decision of the learned Single Judge, we do not want to opine on the

said fact, as it is the settled proposition that both parties should be given adequate opportunity as such to put forth their case when a writ petition is heard, which proceedings are by way of original jurisdiction.

In such circumstances, in the absence of same being done, the Appellate Court is left gropping with the issues not having been summarized, debated upon and with the factual matrix still not having been crystallized. In such circumstances, we are constrained as such to set aside the impugned judgment on this limited aspect itself, since contentious issues of right of promotion and validity of various certificates are involved *inter se* the parties.

Accordingly, the present appeal is allowed to the above-stated extent. The impugned judgment dated 06.04.2018 is set aside and the writ petition is restored to its original number. However, needless to say that all the interim orders passed in the writ petition stand vacated. The writ petition be listed before the appropriate Court on 15.03.2022.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

December 16, 2021

Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No