

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

CWP-22-2021 (O&M)

Date of decision: April 06, 2022

Gurdial Singh and another

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sunil K. Nehra, Advocate for the petitioners.

Mr. Sharan Sethi, Additional AG Haryana.

Mr. Harkesh Manuja, Advocate for respondent No.4.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari seeking to quash impugned order dated 23.11.2020 (Annexure P-5), which has been passed by respondent No.2-Additional Chief Secretary to Government of Haryana, Public Works (B&R) Department. It is alleged that neither any prior notice nor an opportunity of hearing was granted to the petitioners before respondent No.4 was made senior to them, which is against the statutory Rules.

2. Having heard the rival contentions for sometime, in course thereof, my attention has been drawn to the administrative instructions dated 25.03.2022 tendered in Court and taken on record and marked as Annexure 'A') issued by the office of the Chief Secretary to Government of Haryana *qua* "Grant of Reservation in Promotion to the Persons with Benchmark Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, more particularly

clauses XII & XV contain therein. For ready reference, the same is reproduced herein below:

“XII. CREATION OF SUPERNUMERARY POST OR RESERVATION OF JUNIOR MOST –

(i) Benefit to PwD who have retired: In case of PwD employees those have been retired after 01.01.1996 and are found eligible for deemed date promotion, supernumerary post shall be created for limited period, if necessary.

For example, Mr. X, a PwD, retired from service as Assistant after 25 years' Government service on this post. He/She is to be granted applicable deemed date benefits of reservation in promotion under these instructions. Let us say as per service rules, the next promotion post(s) in the hierarchy are Deputy Superintendent, Superintendent and Administrative Officer and so on. His/her name will be considered for each promotional post next to Assistant, i.e. for the post of Deputy Superintendent, Superintendent and Administrative Officer and so on subject to his/her eligibility/entitlement. For this purpose supernumerary post may be got created, if necessary.

(ii) Benefit to PwD who are in service: To grant the benefit of reservation in promotion to the eligible PwD employees who are in service, the junior-most may be reverted, if necessary, after following due procedure.

For example, Mr. X, a PwD, initially recruited as Junior Engineer in Government Services as on 01.01.1996 or working earlier than that, he/she is to be granted applicable deemed date benefit of reservation in promotion under these instructions. Let us say as per service rules, the next promotional post(s) in the hierarchy are Junior Engineer-1, Assistant Engineer, Assistant Executive Engineer, Executive Engineer and Superintending Engineer and so on. His/her name will be considered for every promotional post next to Junior Engineer with applicable deemed dates, i.e. for the post of Junior Engineer-1, Assistant Engineer, Assistant Executive Engineer, Executive Engineer and Superintending Engineer and so on subject to his/her eligibility/entitlement. For this purpose supernumerary post may be got created, if necessary.

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XV. BENEFIT OF RESERVATION TO THE EMPLOYEES WHO GET DISABLED IN SERVICE:

(a) The PwD Act does not make any distinction between persons acquiring disability before or after entering into service. A Government employee who acquires disability after entering into service will be equally entitled to get the benefit of reservation as provided to the disabled employees at the time of entry into service, with effect from the date he produces a certificate of disability to the Appointing Authority issued by the competent medical authority.

(b) To grant the benefit of reservation in promotion to persons of benchmark disabilities against their earmarked vacancy, who acquire any disability while in service, the junior most employee, if necessary, may be reverted after following due procedure.

(c) If a person of benchmark disability is promoted on higher post against his earmarked vacancy, the original seniority for promotion on his normal line of hierarchy shall remain intact. Meaning thereby, the original seniority of a disabled employee shall not be disturbed even if he has been promoted to higher post.

(d) Further promotion of disabled employee to the higher post shall again be subject to availability of earmarked vacancy for the person with disabilities.”

3. Having perused the aforesaid instructions, which admittedly have been issued during pendency of the writ proceedings, I am of the view that the matter ought to be reconsidered by the competent authority in light thereof.

4. Accordingly, writ petition is disposed of, with the expectation that appropriate fresh orders will be passed by the competent authority as expeditiously as possible, after going through the aforesaid instructions, with liberty to the affected parties to seek their remedy *qua* the same in accordance with law.

(ARUN MONGA)
JUDGE

April 06, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No