

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

CR No.7834 of 2015

Date of decision:15.09.2022

B. N. Gupta

..... Petitioner

versus

Haryana State Electricity Board, Panchkula

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate,
Ms. Vidushi Kumar, Advocate and
Mr. Ravinder Chaudhary, Advocate
for the petitioner.

Mr. Dhananjay Mittal, Advocate
for the respondent.

TRIBHUVAN DAHIYA J.

This revision petition under Article 227 of the constitution of India has been filed for quashing the order dated 29.10.2015 (Annexure P-8) passed by the Executing Court, Civil Judge (Junior Division), Karnal, by which execution application filed by the petitioner/decreed-holder was dismissed as the decree dated 17.11.2003 stood fully satisfied.

2. The facts in brief are, the petitioner/decreed-holder joined the respondent-Board as an Assistant Engineer. He was placed under suspension by order dated 12.08.1981 w.e.f. 13.05.1981 on account of

willful absence from duty. A departmental enquiry was held and a show cause notice of proposed punishment was issued. However, instead of taking any decision on the show cause notice, the petitioner was reinstated in service vide order dated 04.05.1987 with immediate effect. Thereafter, a *denovo* enquiry was ordered to be held against the petitioner vide order dated 28.08.1989; another charge sheet was served upon him by order dated 26.08.1988 alleging that he had willfully absented himself since 04.05.1987. After the enquiry, the petitioner was finally removed from service vide order dated 27.11.1992 w.e.f. 13.05.1981. The petitioner filed a civil suit for declaration to the effect that the order dated 27.11.1992 passed by the Chairman of the respondent-Board was illegal and arbitrary. The claim raised in the plaint was as under:

A decree of declaration to the effect that the order dated 27.11.92 passed by the Chairman of the Board and conveyed by the Secretary, Haryana State Electricity Board, Panchkula by which punishment of removal from service was awarded to the plaintiff with effect from 13.05.1981, is illegal arbitrary, against the rules of natural justice, not binding on the rights of the plaintiff, malafide, with a biased & prejudiced mind and against the provisions contained in the relevant punishment and Appeal Rules applicable to him and the plaintiff be deemed in service on full pay and allowances from the passing of impugned order along with interest @ 18% per annum on the arrears of pay and allowances from the date of accrual to the date of actual payment.

3. The trial Court dismissed the suit filed by the petitioner/plaintiff by judgment and decree dated 22.12.2001. He preferred an appeal against the same which was allowed by the lower

Appellate Court vide judgment and decree dated 17.11.2003 (Annexure P-1); the suit was decreed as under:

It is ordered that the appeal accepted and the suit is decreed, without any order as to costs and order Ex-P20 dated 27.11.1992 is set aside. The plaintiff/appellant is held (entitled) to all consequential benefits i.e. all service benefits. However, he would not be entitled to any interest on the arrears of salary etc, which has become payable to him. The appeal is accordingly accepted.

4. The Regular Second Appeal bearing No.1465 of 2004 against the judgment and decree dated 17.11.2003 of the lower Appellate Court was dismissed by this Court vide order dated 08.04.2004. Resultantly, the decree attained finality.

5. The petitioner thereafter approached the Executing Court for execution of the judgment and decree dated 17.11.2003 (P-1). The respondent filed objection petition by taking the plea that after consideration of the matter, the Competent Authority has decided, vide order dated 28.01.2005 (Annexure-P/3), to regularize the period from 13.05.1981 to 31.05.1998. While doing so, the period of petitioner's absence from 04.05.1987 to 31.05.1998 was ordered to be treated as leave of kind due. The objections were heard and dismissed by the Executing Court, vide order dated 14.11.2006, and the respondent/judgment debtor was further directed to make the entire payment to the petitioner/decreed holder in compliance of the judgment and decree dated 17.11.2003 within a period of one month. Against this order, the respondent/judgment-debtor filed Civil Revision

petition bearing No.6912 of 2006, which was also dismissed by this Court order dated 08.04.2015 (Annexure-P/5) with the following observations:

The reasons given by the executing Court while dismissing the objections filed by the petitioner, are sound reasons. In fact, while decreeing the suit of the respondent, the first Appellate Court had set aside the order dated 27.11.1992, whereby respondent was removed from service. It was further held that the respondent would be entitled to all consequential benefits, i.e. all service benefits. However, respondent was not held entitled to receive any interest on the arrears of salary etc. In these circumstances, respondent was entitled to receive the service benefits as if the impugned order has not been passed. The executing Court could not go behind the decree. Therefore, the petitioner-Board could not claim that for certain period, respondent was not entitled to receive service benefits as if he had remained absent from duty.

No ground for interference by this Court, is made out.

Dismissed.

6. After dismissal of the revision petition, the petitioner again approached the Executing Court, and filed reply (Annexure P-7) to the objections of the respondent/judgment debtor. It was stated that the judgment and decree dated 17.11.2003 had not been fully complied with by the respondent as all the service benefits, which included the benefit of promotion to higher post(s) at par with his juniors, had not been released which resulted in financial loss to him. It was admitted that arrears of pay etc. as detailed by the judgment debtor in his reply have already been paid as per decree dated 17.11.2003. The only remaining issue in the Execution Petition was whether in terms of the

decree dated 17.11.2003, he/decree holder was entitled to the benefit of promotion or not.

7. The Executing Court, vide impugned order dated 29.10.2015 (Annexure P-8), held that the petitioner was not entitled to be promoted as a matter of right. He was promoted as Assistant Engineer on 07.12.1978; before this, he was officiating as JE(I) with effect from 3.7.1976. He was eligible to appear in the Departmental Accounts Examination for Engineering Officers for further promotion to the post of AEE, XEN and above. Since the petitioner/decree holder did not clear the Departmental Accounts Examination as per Service Rules, he was not entitled to be considered for further promotion. Apart from this, all other benefits as per the decree dated 17.11.2003 have already been released, and therefore, the order dated 08.04.2015 passed in the Civil Revision by this Court stood complied with.

8. Learned Senior Counsel for the petitioner has argued that the order passed by the Executing Court dated 29.10.2015 is liable to be set aside as the decree dated 17.11.2003 passed by the lower Appellate Court has not been fully complied with. In terms thereof, the petitioner/decree holder is entitled to all consequential benefits, i.e., all service benefits, which would include promotion to higher post(s) as well. He has placed reliance upon the judgment of the Supreme Court in ***Haryana Vidyut Parsaran Nigam Limited and another vs. Gulshan Lal and others***, 2009(13) SCC 354.

9. *Per contra*, learned counsel for the respondent/judgment-debtor has argued that the applicable service rules, "Punjab State

Electricity Board Service of Engineers Recruitment Regulations, 1965 (as applicable to HVPNL)” (hereafter referred to as ‘the Regulations’).

He has referred to Regulation 11 to argue that no member of service is eligible for promotion to the post of Assistant Executive Engineer and above until he/she clears the Departmental Accounts Examination and Safety Code Examination prescribed for Engineering Officers. As the examination has not been passed by the petitioner, is not entitled to the benefit of further promotion(s).

10. To analyse the issue in proper perspective, it is apposite to refer to the relevant Regulations, which read as under:

Regulation 11:
Appointment by Promotion

Appointment by promotion shall be made on the basis of merit and suitability in all respects with due regard to seniority. No officer shall have any claim to promotion as a matter of right on the basis of mere seniority.

Provided that a member of the Service shall not be eligible for promotion to the post of Assistant Executive Engineer and above until he has passed the Departmental Accounts Examination and Safety Code Examination prescribed for Engineering Officers, unless exempted by the Board from passing the said examinations. The Board may, however, promote an officer, who has not passed the Safety Code Examination, as Assistant Executive Engineer on provisional basis subject to the condition that he shall pass the said examination within a period of 3 months of his promotion or such extended period, as may be allowed by the Board.

Regulation 18**Accounts Examination**

The members of the Service shall be required to pass the Accounts Examination prescribed for Engineer Officers of the Board under Appendix-I(L) of the Electricity Board Manual of Orders, as amended from time to time.

Appendix I(L) 11 reads as under:

11. Period within which an officer is required to pass the examination and the penalties for failure to pass it. Ordinarily Officer shall be required to pass the examination within two years of the date of his recruitment or promotion. If an officer fails to pass the examination:

(i) Within the initial period of two years the increment falling due to him on the expiry of that period will be withheld and will not be granted with retrospective effect on his passing the examination. On passing the examination he will with effect from the date following that on which the examination ended, be entitled to the rate of pay which would have been admissible him had his increment not been withheld for his failure to pass the examination. If, however, his failure to pass the examination be due to circumstances beyond his control, the Punjab Govt. may grant the increment.

(ii) Even after availing himself of all the chances per under rule 10 (iv), Govt. may dispense with his services if he was recruited directly or revert him to a non-gazetted post if promoted from a subordinate post in the branch or revert him to the Department from which he was recruited, provided that Government may exempt him from passing the whole or any portion of the examination.

11. Reading of the aforesaid Regulation 11 shows that appointment by promotion is to be made on the basis of merit and suitability in all

respects with due regard to seniority. No officer shall have any claim to promotion as a matter of right on the basis of mere seniority. The proviso to the regulation states that a member of the service shall not be eligible for promotion until he has passed the Department Accounts Examination and Safety Code Examination prescribed for Engineering Officers, unless exempted by the Board. An officer who has not passed the Safety Code Examination can be promoted as Assistant Executive Engineer by the Board on provisional Basis, subject to the condition that he shall pass the examination within a period of three weeks of the promotion or such extended time as may be allowed. Regulation 18 provides that member of the Service shall be required to pass the Accounts Examination prescribed for Engineering Officers of the Board. Appendix A-1 (L) 11 refers to the period within which an officer is required to pass the Examination, as well as the penalties for failure to pass it. Ordinarily, an officer shall be required to pass the examination within two years of his date of recruitment or promotion. If an officer fails to pass such an Examination within the period stipulated, the increment falling due to him on the expiry of the period will be withheld, and the same will not be granted with retrospective effect on his passing the examination. It further states, if the failure to pass the examination is due to circumstances beyond his control, the Government may grant the increment. It is further recorded that the Government may exempt an employee from passing the whole or any portion of the examination, if after availing all the chances under Rule 10 (iv), the Officer fails to pass the Examination.

12. It is, therefore, clear that the Regulations stipulate, promotion as Assistant Executive Engineer in service shall be made only on the basis of merit and suitability with due regard to seniority. Seniority in itself does not confer the right to promotion on an officer. The promotion is further subject to the officer clearing two Departmental Examination: (i) Departmental Accounts Examination, and, (ii) Safety Code Examination, prescribed for Engineering Officers, unless exempted by the Board from the passing the same. A perusal of the claim in the suit for declaration filed by the petitioner/decreed-holder, as well as the judgment and decree dated 17.11.2003 passed by the lower Appellate Court, does not in any manner indicate that the relief of promotion was claimed by the petitioner/plaintiff or granted by the Court therein. The suit in question was filed seeking a declaration to the effect that the order of removal from service dated 27.11.1992 was illegal, arbitrary and against the rules of natural justice. The consequential relief that the plaintiff be deemed in service on full pay and allowances from the date of the passing of the impugned order, was also sought. In the decree passed, order of removal dated 27.11.1992 was set aside, and the petitioner/plaintiff was held entitled to all consequential benefits, i.e., all service benefits. It is further apparent that the petitioner's entitlement to service benefits is consequential to setting aside of the order of removal. Neither the petitioner/plaintiff claimed relief of mandatory injunction to consider him for promotion pursuant to setting aside of the order of removal, nor any such relief was granted

to him by way of decree dated 17.11.2003. The relief of further promotion(s) being claimed by the petitioner is not a consequential relief, nor can it be so, keeping in view the Regulations and the prescribed mode of promotion, i.e., merit and suitability in all respects with due regard to seniority. Therefore, any such relief cannot be said to have been granted to him, nor can it be a part of “all consequential benefits i.e. all service benefits” granted by the decree, since the relief of further promotion upon setting aside of the order of removal was never sought in the suit.

13. Further, passing of the Departmental Examination is another requirement of promotion to the post of Assistant Executive Engineer. Even if argument of learned Senior Counsel for the petitioner is to be accepted, that passing of the examination can be exempted by the respondent/Board in appropriate cases, and the petitioner’s case would fall in one of those cases as, having been removed from service at the relevant time, he could not have cleared any such examination, it does not take the petitioner’s case any further. In fact, the issue of exemption from clearing the Examination does not arise for consideration here, as the petitioner is first required to cross another hurdle imposed by Regulation 11 itself, which mandates, the only ground of promotion is merit and suitability in all respects with due regard to seniority. This mandate requires consideration of merit and suitability of the officer by the competent authority, and the same cannot be presumed to have been done in absentia. The words “all consequential benefits i.e. all service

benefits” contained in the decree would not include a promotion which can only be granted on consideration of merit and suitability in all respects with due regard to seniority.

14. Learned Senior Counsel’s reliance on the judgment in ***Gulshan Lal*** (*supra*) does help the petitioner either. Since therein, apart from the relief of declaration declaring the plaintiff entitled to receive higher pay scale, the decree of mandatory injunction, directing the defendants to release pay to the plaintiffs in higher pay scales along with interest, was also sought. The issue of considering an employee for promotion in terms of the relevant service rules was not before the Supreme Court. The judgment further lays down, if on a fair interpretation of the judgment, order and decree passed by a court, the reliefs sought by the plaintiff appear to have been granted, there is no reason why the executing court shall deprive him of the fruits of decree. In the instant case, as discussed herein above, a fair interpretation of the judgment and decree in question dated 17.11.2003 establishes that the relief of promotion does not appear to have been granted to the petitioner.

15. In view of the aforesaid analysis, the petition fails and is hereby dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

15.09.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No