

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 660 of 2021 (O & M)
Date of decision: 07.01.2022

209

Kulwant Singh Sandhu

....Appellant(s)

Versus

State of Punjab

....Respondent(s)

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

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate,
with Mr. Suvir Sidhu, Advocate,
for the appellant.

Mr. SPS Tinna, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present letters patent appeal by the writ petitioner is to the order dated 07.04.2021 whereby, by the learned Single Judge has dismissed *CWP No. 7374 of 2007, Kulwant Singh Sandhu vs. The State of Punjab* on the ground of limitation. The said case was filed admittedly in the year 2007, prior to the date of retirement of the writ-petitioner. The learned Single Judge was of the opinion that since the claim of promotion was from 01.01.1986 and the writ petition was filed in the year 2007, there was an unexplained delay of 21 years and, therefore, the writ petition was dismissed.

Counsel for the appellant-writ petitioner has brought to the notice of this Court that firstly there was no such opposition or pleadings by the State in its reply regarding the delay aspect. Rather, it was admitted that the writ petitioner became eligible for regular promotion from January, 1986 and vide the order dated 25.04.2007 (Annexure P-3), he was granted the benefit of the promotion of Sub Divisional Engineer from 01.01.2003 once the Punjab Public

Service Commission had cleared his name from the said date.

It has also been brought to our notice that there was litigation pending in the form of ***CWP No. 8230 of 1988, Achhru Ram Sharma vs. State of Punjab***, which was only decided on 13.07.2001. The said judgment was appended alongwith the writ petition as Annexure P-2. The dispute in the said petition was the right to be promoted as Sub Divisional Engineers from Junior Engineers who had passed AMIE and the fact that the Government had failed to undertake exercise for making promotion in accordance with Rule 6 and Rule 9 of the Punjab Service of Engineers Class-II PWD (Public Health) Rules, 1967. The Division Bench, in its judgment, had issued directions that the seniority list of Junior Engineers should be finalized keeping in view the provisions of Rule 11 of the Punjab Department of Public Works Junior Engineers (Public Health Branch) Class-III Service Rules, 1991 and the exercise was to be completed for making promotion in terms of the order dated 05.08.1994. It is the case of the State itself in the written statement filed before the learned Single Judge that a meeting of the Screening Committee was held on 16.01.2004 but there were divergent views of the Commission on the interpretation of the Departmental Rules and the approval of the names of the officials in the list was not accepted by the Commission. The State Government, vide communication dated 13.07.2005, had sent a fresh case to the Commission for holding the meeting of the Screening Committee and the name of the petitioner then figured in the list of panel of AMIE candidates from the year 1988 onwards. It was further the case that the petitioner was considered every year in the Screening Committee and, thus, he was granted the regular promotion of the post of Sub Divisional Engineer from 01.01.2003.

Thus, it is apparent that it has escaped the notice of the learned

Single Judge that the State Government itself was remiss as such in not acting upon the directions of the Division Bench and the delay aspect could not be attributed to the appellant. Rather, a perusal of the paper book would go on to show that before his retirement, he had sought information under the Right to Information Act, 2005 vide letter dated 07.09.2007, which information was received by him on 25.10.2007 (Annexure P-4). Therefore, it is apparent that the petitioner has always been agitating for his rights and he had filed the writ petition prior in point of time, which had been admitted for regular hearing.

Keeping in view the above, we are of the opinion that the dismissal of the case only on the ground of being barred by limitation is not justified in the facts and circumstances. The matter should have been adjudicated on merits as to whether the appellant as such was entitled for promotion prior in point of time as claimed by him after examining the aspect of the relevant Rules in question.

Resultantly, the impugned order dated 07.04.2021 cannot be sustained and is accordingly set aside. The present letters patent appeal is allowed and the writ petition is restored to its original position. Keeping in view the fact that it pertains to the year 2007, the office shall list the same on the regular side as per Roster immediately as and when regular cases are notified for hearing after the restricted hearing of Covid-19 pandemic ends.

(G.S. SANDHAWALIA)
JUDGE

07.01.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No