

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20380-2022
Reserved on: 29.11.2022
Date of decision: 22.12.2022

NANCY KAMBOJ AND ANOTHER

...Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Jatin Bansal, Advocate for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Simrandeep Singh Sandhu, Advocate
for respondents No.2 to 5.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing the respondents to treat the petitioners as appointees of 2014 batch w.e.f. 05.03.2014 i.e. the date when their other counterparts/batchmates were appointed, pursuant to common selection process as per the *inter se* merit with a further prayer to grant the petitioners all consequential benefits including seniority, re-fixation of pay, promotion, increments w.e.f. 05.03.2014, with a further prayer to issue a writ in the nature of certiorari to set aside the orders dated 01.04.2022 (Annexure P-22) and dated 18.04.2022 (Annexure P-23) respectively, whereby the claim of the petitioners stood rejected.

2. In brief, the facts, as stated, are that the Punjab State Power Corporation Limited (hereinafter referred to as respondent-Corporation) issued

an advertisement No.CRA-276/2012 for recruitment of various posts including the Junior Engineers/Auxiliary Plant Attendant/ Assistant Junior Specialist/Supervisor Instrumentation along with number of other posts, collectively termed as 'Technical Subordinates'. In pursuance to the said advertisement, the petitioners applied to be appointed as Junior Engineers (Electrical). The selection process became a subject matter of challenge before this Court in a bunch of writ petitions, the lead petition being **CWP No.14036 of 2012**, titled as **Major Singh and others versus PSPCL and others**, and during the pendency of the aforesaid petitions, the respondent-Corporation decided to re-conduct the written examination and, accordingly, the aforesaid petitions were disposed of by this Court vide order dated 03.04.2013. Since the respondent-Corporation decided to re-conduct the examination, new/amended instructions dated 10.07.2013 were issued, vide which the degree in Electrical and Electronics Engineering i.e. the degrees held by the petitioners were declared as invalid degrees for qualification for the post of Junior Engineer (Electrical). The instructions dated 10.07.2013 were challenged by similarly situated candidates by way of filing **CWP No.387 of 2014**, titled as **Gurdeep Singh and others versus Punjab State Power Corporation Limited and others** along with other clubbed matters and vide order dated 27.05.2015, this Court set aside the said instructions and, accordingly, revised combined merit list was prepared (Annexure P-3) as per which, the petitioners herein cleared the test and they came into the zone of consideration.

3. Thereafter, the petitioners were appointed as Junior Engineers (Electrical) in the respondent-Corporation vide appointment letter dated 23.09.2015 (Annexure P-4 and P-5 respectively). While issuing the appointment letters to the petitioners herein, it was mentioned therein that their

seniority among others, will be as shown in the merit list prepared by the Staff Selection Committee of PSPCL and it was further mentioned that irrespective of their date of joining, they would not be treated senior to the persons declared senior to them by the Committee, meaning thereby that *inter se* seniority will be determined on the basis of merit. On 08.08.2016, the respondent-Corporation itself formulated instructions/policy for considering and deciding the issues related to seniority, pay fixation, promotion etc. of those employees, who had joined the service later than their other counterparts/batchmates for reasons attributable to the Corporation. As per the policy, any candidate who joins as AE/OT later than his batch, should be placed in seniority as per merit obtained by him in recruitment test along with the other members of the batch irrespective of his actual/delayed date of joining, if the appointment of the candidate does not involve some element of concession offered by the employer and acknowledged by the Court or otherwise, meaning thereby that *inter se* seniority has to be maintained as per the merit obtained by a candidate in the recruitment test of all batchmates. In terms of the policy decision, a letter dated 27.01.2017 was issued from the office of the Deputy Secretary, Recruitment, PSPCL to the Superintendent, Regularization Branch informing that the seniority list of appointments under advertisement No.CRA-276/2012 was to be prepared on the basis of merit attained by the candidates. While preparing the said seniority list, the actual date of joining of the candidates for the purpose of preparing seniority list was taken into account.

4. Aggrieved against the action of the respondent-Corporation, similarly situated employees of the Corporation filed representations that their seniority has to be determined on the basis of merit of their batchmates. One such petition bearing **CWP No.20169 of 2017, titled as Karambir Singh and**

others versus State of Punjab and others was allowed on 30.09.2020, and the respondent-Corporation was directed to treat the petitioners therein as appointees to the post of Junior Engineers (Electrical) w.e.f. the dates other Junior Engineers were appointed, who had participated in the same very selection process/written examination held on 28.07.2013 and *inter se* seniority would be determined on the basis of merit secured in such written examination. It was further directed that further consideration for promotion to the post of Assistant Engineer would be on the basis of such fresh seniority to be determined and the petitioners would be entitled to pay fixation by treating them as appointees of the 2014 batch. Similar orders have been passed by this Court in CWP No.5288 of 2018, titled as *Sahil Bansal and others versus State of Punjab and others*, decided on 19.11.2020 and CWP No.10047 of 2018, titled as *Abhinav versus State of Punjab and others*, decided on 10.12.2020. Aggrieved against the action of the respondent-Corporation in treating them as appointees of the 2015 batch i.e. from the date of their appointment, the instant writ petition has been filed.

5. Learned counsel for the petitioners herein would contend that the petitioners are entitled to the same relief as has been allowed by this Court to similarly situated candidates by treating their seniority as per the *inter se* merit of their batchmates. It is argued that the petitioners undertook the examination at the same time with their batchmates for being appointed as Junior Engineer (Electrical) and the delay in offering them appointment, even though they were meritorious is attributable to the respondent-Corporation. It is submitted that in terms of the policy dated 08.08.2016 (Annexure P-6), the *inter se* seniority has to be maintained as per the merit position with their other batchmates and they are entitled to all consequential benefits by taking their notional appointment

w.e.f. 05.03.2014.

6. *Per contra*, learned counsel for respondent-Corporation would contend that the relief as claimed by the petitioners herein cannot be accorded since their date of appointment is being taken as in the year 2015 i.e. when appointment letters were issued to them. It is argued that at that point of time, the petitioners did not raise any objection claiming their seniority and other benefits at par with persons, who had been appointed in the year 2014.

7. I have heard learned counsel for the parties and with their able assistance have gone through the pleadings of the case as well as case laws cited.

8. The present writ petition has been filed by the petitioners seeking benefit of being treated on parity with their other counterparts/batchmates, who were appointed earlier pursuant to common selection process and for maintaining the *inter se* seniority as per the merit determined by the Staff Selection Committee of PSPCL. As noted above, advertisement No.CRA-276/2012 was issued by the PSPCL for filling up various posts of Junior Engineers/Auxiliary Plant Attendant/Assistant Junior Specialist/Supervisor Instrumentation along with number of other posts, collectively termed as 'Technical Subordinates'. The petitioners herein participated under the said selection process and after having cleared the examination, were brought on the combined merit list, which was published on 29.11.2013. Certain candidates on the merit list were offered appointment in the year 2014, whereas there was a delay in offering appointment to the petitioners herein. The delay in issuance of the appointment letters cannot be attributed to the petitioners herein.

9. Accordingly, CWP No.387 of 2014, titled as Gurdeep Singh and others versus Punjab State Power Corporation Limited and others and other

connected petitions came to be filed seeking appointment, which petitions were allowed on 27.05.2015. In compliance of the said judgment dated 27.05.2015, the petitioners were issued appointment letters in September, 2015. Similarly situated candidates filed **CWP No.20169 of 2017**, titled as **Karambir Singh and others versus State of Punjab and others**, seeking to treat the petitioners therein as appointees of 2014 batch with effect from the dates other Junior Engineers were appointed along with all consequential benefits. The said writ petition was allowed on 30.09.2020 and this Court held as follows:-

“Undisputedly, petitioners had applied for the post of Junior Engineer (Electrical) in response to the advertisement dated 10.05.2012, issued by the Corporation. As per selection procedure, petitioners appeared in a written test held on 28.07.2013. In spite of having successfully negotiated the written test, they were denied appointment on the basis of instructions dated 10.07.2013 declaring them to be ineligible as they possessed the qualifications of Degree in Electrical and Electronics Engineering. This led to the filing of CWP No.387 of 2014 (Gurdeep Singh and others Vs. Punjab State Power Corporation Limited and others) and other connected petitions. The Writ Court took note that the Corporation upon examining the representation by certain candidates had constituted a Committee to consider the equivalence of Electrical and Electronic Engineering with Electrical Engineering. Based upon the recommendations of the Committee the Board of the Corporation vide Agenda Item No.50 dated 30.01.2014 took a conscious decision to amend the Recruitment Rules and thereby making holders of degree in Electrical and Electronic Engineering eligible for the post of Assistant Engineer/Electrical and also Junior Engineer (Electrical). Regulations were accordingly amended and in a subsequent advertisement dated 04.09.2014 issued by the Corporation inviting applications for recruitment to the post of Assistant Engineer (OT)/Electrical, the degree in Electrical and Electronic Engineering was recognized as a valid qualification. The Writ Court took a view that even though the decision/amendment had been made specifically applicable to subsequent recruitments but the statutory recognition of equivalence needs to be given full effect to and the petitioners in the connected petitions could not be denied benefit thereof. The Coordinate Bench finally held in the following terms:-

“In my view the benefit of the decision of the Corporation legitimately accrues to the petitioners. What the respondent-Corporation, in effect has done is not to alter the qualifications for the posts. If it were so, then it could surely be made applicable only for future recruitments. But what has been done is only to declare, confirm and recognize the equivalence which already existed in fact and thereby bring the regulations in accord therewith. Thus, in fact, the petitioners were eligible when they applied and the mere fact that this recognition came later ought not to work to their prejudice. Accordingly, I hold that the petitioners are liable to be treated as eligible for the posts.”

Thus, it clearly emerges that the petitioners were not clothed with eligibility from any subsequent date. Rather they have been held eligible on the date they applied in response to the advertisement. The clear fall out of the judgment in Gurdeep Singh's case (supra) and connected petitions is that the petitioners would have to be treated at par with other candidates who had applied for the post in question in response to the advertisement dated 10.05.2012 and had participated in the same very selection process/written test held on 28.07.2013. In other words, even though appointment letters may have been issued to the petitioners herein in the month of September 2015 but they are vested with the right to be treated as appointees of the 2014 batch w.e.f. the date(s) their counter-parts had been so appointed to the post of Junior Engineer (Electrical).

The judgement in Gurdeep Singh's case (supra) has since attained finality. The appointment letters have been issued to the petitioners in the month of September 2015 in purported compliance of the judgment. Since the finding recorded by the Writ Court in Gurdeep Singh's case (supra) is that the petitioners were eligible on the date they had applied in response to the advertisement, the action of the respondent-Corporation in not treating the petitioners as appointees to the post of Junior Engineer (Electrical) of the batch of 2014 i.e. at par with their counter-parts is held to be arbitrary. Such view is fortified upon perusal of an office order dated 08.08.2016 issued by the respondent-Corporation at Annexure P-6 which contained a policy decision for considering promotional cases of Assistant Engineers who had joined Corporation later than their batch-mates for reasons attributable to the Corporation. In such office order it was observed that in some recruitments, few candidates could not join at the appropriate time alongwith their batch-mates due to one reason or the other which was attributable

to the Corporation and on account of such late joining such candidates suffer on account of loss of seniority, pay fixation etc. and are not able to fulfil the required time gap and other condition of eligibility alongwith their batch-mates for subsequent promotions. Accordingly, a policy decision was taken by the Corporation and as contained in the order dated 08.08.2016 (Annexure P-6) that such candidates who joined as Assistant Engineers later than their batch-mates, they would be placed in seniority as per merit obtained in the recruitment test alongwith other members of the batch irrespective of the actual/delayed date of joining. In the present case as well the petitioners were issued appointment letters later in point of time i.e. in September 2015 as opposed to their batch-mates who had joined in the year 2014 and who had otherwise participated in the same very selection process/written examination. The reason for such late joining was clearly attributable to the respondent-Corporation who had held the petitioners to be ineligible and not possessing the requisite qualifications for the post and such view did not find favour with the Writ Court in the case of Gurdeep Singh's case (supra). Apart from taking a stand that the office order dated 08.08.2016 (Annexure P-6) applies to the post of Assistant Engineer which is a distinct and separate cadre, no justification is coming forth at the hands of the counsel representing the respondent-Corporation as to why the rationale contained in the policy decision dated 08.08.2016 (Annexure P-6) would not apply qua the post of Junior Engineer (Electrical) as well. Action of the respondent-Corporation smacks of arbitrariness and is held to be violation of Article 14 and 16 of Constitution of India.

The objection raised on behalf of the respondent-Corporation in terms of referring to Regulation 10.7 of 1965 Regulations as regards the petitioners not possessing the three years' experience on the post of Junior Engineer to be considered for promotion to the post of Assistant Engineer on account of their joining in the month of September 2015 is untenable. Under Regulation 10.07 the pre-requisite is of completion of three years' service and not experience. The term "experience" is sought to be imported by the Corporation in the statutory rule and which is not permissible. The requirement is of three years' service to be eligible for promotion to the post of Assistant Engineer. Once a view is taken that the petitioners are entitled to be treated as appointees of the 2014 batch w.e.f. the dates other Junior Engineers were appointed through the same very selection process, such condition of completion of three years' service would be deemed to have been met in the year 2017 itself.

The contention raised on behalf of the private respondents that the petitioners have secured appointment by virtue of a separate list that was prepared for candidates possessing the Degree of Electrical and Electronics Engineering and as such there can be no determination of seniority inter-se is ill-founded. In Gurdeep Singh's case (supra) one of the contentions noticed by the Writ Court on behalf of the respondents was specifically noticed to the following effect:-

"If at all the petition has to be allowed then all the posts which have been kept reserved for the petitioners by various interim orders should be made available to all candidates possessing the Degree of Electrical and Electronics Engineering and the posts should be filled by inviting fresh applications."

Such submission was elaborately dealt with by the Writ Court and it was observed that the written test for the post in question had been held on 28.07.2013. By virtue of different interim orders, posts for the petitioners had been directed to be kept vacant. The argument on behalf of the respondents therein that a written examination be conducted for such reserved post wherein all the candidates who possessed the Degree of Electrical and Electronic Engineering on the date of advertisement be permitted to participate was held to be not fair and equitable as such candidates had neither applied in response to the advertisement nor challenged the condition in any Court of law. It was observed that fairness and equality of treatment requires that the benefit be extended to all such candidates who like the petitioners possess the Degree of Electrical and Electronics Engineering and had participated in the test on 28.07.2013, even though they may not have filed writ petitions.

The operative part of the judgment rendered in CWP(s) No.387, 4980, 10087,21012 and 21646 of 2014 read as follows:-

"A merit list of all the candidates (including the petitioners in these five writ petitions) who possessed the degree of Electrical and Electronics Engineering and had taken the written test held on 27/28.07.2013 be prepared. Appointments to the post kept reserved vide interim orders in these petitions be made from amongst those highest in this merit list."

Clearly the sole purpose of such merit list was to identify such of the candidates including the petitioners in the five connected petitions as also those who possessed the Degree in Electrical and Electronics Engineering and had taken the written test on 28.07.2013 so as to be appointed against the

posts reserved by virtue of different interim orders passed in the connected writ petitions.

On completion of such exercise and appointment letters having been issued the inter-se seniority of all the candidates would have to be necessarily determined on the basis of merit obtained in the common written examination that was held on 28.07.2013. It is ordered accordingly.”

10. In the considered view of this Court, the reasoning furnished by this Court in ***Karambir's case (supra)*** as reproduced above would cover the claim of the petitioners herein as well. The arguments raised by learned counsel for respondent-Corporation are untenable and despite valid attempts, he has not been able to distinguish the case of the petitioners herein from the judgments as relied upon.

11. Consequently, the instant writ petition is allowed. The petitioners are directed to be treated as appointees to the post of Junior Engineers (Electrical) with effect from the dates other Junior Engineers were appointed who had participated in the same very selection process/written examination held on 28.07.2013. *Inter se* merit would be determined on the basis of merit secured in such written examination. Further consideration for promotion to the post of Assistant Engineer would be on the basis of such fresh seniority to be determined and as has been directed. Petitioners would also be entitled to benefit of pay fixation by treating them as appointees of the 2014 batch. However, such benefit of pay fixation would be on notional basis and they would not be entitled to arrears of salary for the period that they had not worked on the post of Junior Engineers (Electrical).

(JAISHREE THAKUR)
JUDGE

22.12.2022
Chetan Thakur

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