

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 2259 of 2016 (O & M)

Reserved on: 22.02.2022

Date of decision: 25.05.2022

211

Jai Kishan

....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

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

Present: Mr. Rajiv Atma Ram, Sr. Advocate,
with Mr. Brijesh Khosla, Advocate,
for the appellant.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. R.K. Malik, Sr. Advocate,
with Mr. J.S. Dahiya, Advocate,
for respondent No.4.

Mr. Amit Rao, Advocate,
for Mr. Anurag Goyal, Advocate,
for respondent Nos.2, 3, 5 and 6.

G.S.SANDHAWALIA, J.

The challenge in the present letters patent appeal is by the present appellant, who was the 4th respondent in CWP No. 3611 of 2013, Devender Singh vs. State of Haryana and others, to the decision of the learned Single Judge dated 21.09.2016 passed in the said case wherein, directions have been issued to the Maharshi Dayanand University (in short 'the University') to consider the case of the writ petitioner namely Devender Singh (respondent No.4 herein) for promotion as Sub Divisional Engineer (C) [(in short 'SDE (C)']. The same is to be done from the date of occurrence

of vacancy in the promotional quota and from the date the 4th respondent was promoted notionally i.e. 21.08.2008 with pecuniary and non-pecuniary benefits till 28.12.2012 with all consequential benefits thereafter in accordance with Rules.

The grounds which weighed with the learned Single Judge were that the current duty charge for the said post was handed over to the present appellant whereas, the writ petitioner was *intentionally* ignored on 21.08.2008 though there was nothing to show that he was not eligible or suitable to be given the said charge thereafter. The promotion order which was issued in favour of the appellant could not have been done since the Rules did not provide for the same and the writ petitioner had the right of consideration for promotion as SDE (C). The appellant, who was the Head Draftsman could not cross over the line of promotion being not in the feeder cadre and the relaxation which had been given was an admission of the existence of lack of statutory authority and in the absence of any support from the legislative provisions, the executive actions could not be sustained. Resultantly, the action of the respondents being arbitrary, it was held that both of them belong to different cadres and crossing over of the appellant thus was declared impermissible. Thus the decision of the Executive Council dated 27.09.2008 (Annexure P-9) and granting approval of the current duty charge on 21.08.2008 and the order dated 28.12.2012 (Annexure P-4) were declared invalid. The dissent of Dr. Bhagat Singh (Annexure P-6) was thus approved of, including the legal advice which had been tendered to the Vice Chancellor on 10.05.2013 to sustain the said findings and the said orders were accordingly quashed by issuing a writ of certiorari.

Mr. Rajiv Atma Ram, senior counsel for the appellant has

vehemently submitted that there was a promotional policy of the year 1994

and notification of Statute No.46 on 12.10.2010 provided that conditions of service of University employees were to be as prescribed in the Ordinance governing the service and conduct Rules of University Teachers and Non-Teaching Employees. The Executive Council of the University, in its meeting on 28.12.2012, had accepted the request of the appellant on the basis of the Haryana Government Policy in PWD (B&R) and that Rule 45 of the Maharshi Dayanand University for Non-Teaching Employees (Terms & Conditions of Service) Rules, 1980 (Annexure R-4/2) provided that if the case did not fall within the purview of the Rules, the same may be decided in accordance with Rules framed for the Haryana Government employees in the manner the Vice Chancellor/Executive Council may deem fit or proper.

Resultantly, it was argued that the current duty charge which was given in the year 2008 would not be challenged in the year 2013. It was further argued that Rule 24 of the Maharshi Dayanand University Non-Teaching Employees (Punishment & Appeal) Rules provided for power to relax and the said exercise had been done by the Executive Council on 28.12.2012 and, therefore, the learned Single Judge was not correct and the said exercise had been conducted. It was submitted that the directions had been issued to reconsider the case and a fresh decision had been taken after the earlier Vice Chancellor had retired and as per Resolution No.43 of the meeting held on 18.09.2013 (Annexure R-2/6) and, therefore, the order of the learned Single Judge was liable to be set aside.

On the contrary, Mr. R.K. Malik, senior counsel for respondent No.4, the successful writ petitioner, summarized the argument in his usual brief manner, that it had already been decided that 75% sanctioned posts of the Sub Divisional Engineers (C) were to be filled up by promotion from

Junior Engineers and, therefore, the learned Single Judge was justified in setting aside the promotion of the appellant and directing reconsideration as such. It was submitted that it was a recurring right once the CDC charge has been wrongly given and, therefore, there is no error as such in the order of the learned Single Judge as the writ petitioner had been denied the benefits of right of consideration for promotion wrongly.

A perusal of the paper book would go on to show that the writ petitioner as such had raised challenge to the action dated 28.12.2012 (Annexure P-4) whereby, the request of the present appellant as a Head Draftsman and who was holding the current duty charge of the Sub Divisional Engineer (Civil) for promotion to the said post which had fallen vacant was under consideration. The said claim was made in view of the long experience as Draftsman/Head Draftsman/SDE on current duty charge and on the strength that the Haryana Government Departments like Panchayat Raj/Irrigation/B&R etc. were promoting such persons.

A perusal of the said decision would go on to show that it was noted that by Executive Council's earlier Resolution dated 17.03.1994 as per the recommendations of the Committee then constituted, decision had been taken that promotion from Circle Head Draftsman to the post of SDE was not desirable nor in the interest of the University. It was also noticed that vide Resolution No.46 dated 24.02.2003, 75% of the sanctioned posts of SDEs were to be filled up by promotion from Junior Engineers and 25% were to be through direct recruitment. In spite of the said fact, solely on the request of the appellant who had placed reliance upon the Punjab Service of Engineers, Class-II, PWD (Public Health) Haryana Amendment Rules, which had been notified on 29.03.2004, wherein a provision had been made

for promotion from Draftsman, the decision as such was taken for relaxation of the promotional policy as adopted by the University. A Note of Dissent had been given by one Dr. Bhagat Singh, Member of the Executive Council. On the basis of the said decision, the offer of promotion as such was given to the present appellant in the pay scale of Rs.9300-34800+5400 grade pay as per the State Government Policy to be adopted by the University. It is also to be noticed that the writ petitioner had also represented way back on 17.03.2009 (Annexure P-12) regarding the fact that the Head Draftsman and his junior namely Jai Kishan had been given charge over and above him and he was being forced to work under him. The said legal notice was replied (Annexure P-13) with no response to the specific point of the senior being asked to work under the junior by deflecting the issues that it related to the Establishment Branch. The writ petitioner thereafter again submitted request for promotion on 25.10.2012 (Annexure P-15) that he was entitled for promotion having been appointed on 21.02.1991 and having completed 15 years of service.

Admittedly, there was a Resolution No.21 dated 17.03.1994 (Annexure P-3) passed by the Executive Council earlier, as noticed above vide which specifically, on an earlier occasion, decision had been taken that posts had to be filled up of the SDE (C) by promotion from Junior Engineers of the University and it also laid down the educational criteria as such. The claim of one Narinder Kumar was under consideration at that point of time and it had then been decided that the works being carried out by the University were of highly specialized nature and promotion from Chief Head Draftsman to the post of SDE was not desirable nor it was in the interest of the University. Thereafter, a decision was taken on 24.02.2003 vide

resolution No.46 (Annexure R-2/2) whereby, 75% of the sanctioned posts of SDEs were to be filled up by promotion from Junior Engineers. The said resolution reads thus:-

“46. Promotion quota for the post of S.D.E.

Considered the proposal that 75% of the sanctioned posts of S.D.Es. in the University may be filled up by promotion from J.E of the University and 25% posts by direct recruitment instead of existing criteria of 50% by promotion and 50% by direct recruitment; on the pattern of Ch. Charan Singh, Haryana Agricultural University, Hissar and other non-teaching posts above the rank of Superintendent in this University.”

The learned Single Judge has found that the case of the present appellant was considered on his representation dated 19.12.2012 (Annexure P-5) without even considering the case of the private respondent-writ petitioner and the approval was granted. The said fact as such is a matter of record that a person who was entitled for consideration as per the earlier Resolution of the University was not even considered by the Executive Committee and, therefore, the Executive Committee's decision as such, which was solely for the purpose of granting the benefit to the present appellant, cannot be sustained in any manner.

It is not disputed that the appellant was working as a Head Draftsman and was not a Junior Engineer and was not entitled for promotion. The criteria which had been approved on 17.03.1994 (Annexure P-3) mandated that the Junior Engineer had to have a 10 years' experience as a Junior Engineer before being promoted to Sub Divisional Engineer in case he has the qualification of B.Sc. (Engineering), B.E., B.Tech., AMIE or

equivalent. In cases of diploma, the Junior Engineer was to have 15 years'

experience. The relevant portion of the criteria which had been prescribed at that point of time reads thus:-

“a) The Junior Engineer who has attained the qualification of B.Sc. (Engineering), B.E, B.Tech, A.M.I.E or equivalent in required specialization should have acquired 10 years experience as J.E. before being promoted to Sub Divisional Engineer.

b) For a Junior Engineer of M.D. University who is having only diploma in required specialisation and has not been able to attain the degree qualification should have an experience of 15 years of Junior Engineer before being promoted to Sub Divisional Engineer.”

The argument raised that Rule 45 as such gives a power to adopt the Haryana Government Rules cannot be held to be justified in any manner since the said Rules admittedly did not cover the promotional avenues as such of Sub Divisional Engineers and the feeder cadre for promotion at that point of time. The said Rules read as under:-

“5. Classification of Categories

i) Class-A: The post of Deputy Registrar, equivalent and above.

ii) Class-B: Persons from Superintendent and equivalent and upto the level of Assistant Registrar but not included in category A above.

Iii) Class-C: Persons from Clerk and upto the level of Deputy Superintendent and equivalent but not included in categories A and B above.

iv) Class-D: Persons including all other Class-IV employees of the University.

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Residuary conditions of service:

45. Any case which does not fall within the purview of these rules, may be decided in accordance with the rules

framed by the Haryana Government for its own employees or in such manner as the Vice-Chancellor/Executive Council, as the case may be, deem fit and proper in each case.”

It has also been noticed as such by the learned Single Judge. It is apparently on account of lack of provision, the policy had been made on 17.03.1994 (Annexure P-3) by the University, which was duly given the form of a Resolution vide Resolution No.46 of the Executive Committee on 24.02.2003 (Annexure R-2/2), as reproduced above. It is also relevant to note that a specific plea had been taken by the writ petitioner in para No.6 of the writ petition that as per the applicability of the Haryana PWD (B & R) Draftsmen and Tracers (Group-C) Service Rules, 1988, the mode of promotion of the Head Draftsman was to a Circle Head Draftsman, which would be for the appellant. The same had been replied to by the University that there was no sanctioned post of Circle Head Draftsman and that the Rules applied were not relevant. It is thus apparent that the stand of the University, on the one hand, was that the Haryana PWD (B&R) Draftsmen and Tracers Group-C Service Rules, 1988 are not relevant and not applicable and the writ petitioner had not mentioned the relevant Rules for promotion.

Thus, the University cannot be permitted to blow hot and cold at the same time, on one account admitting that the said Rules are not applicable but adopting the Haryana Government Rules as amended in 2004 at its own convenience without over ruling its earlier policy decision dated 17.03.1994 (Annexure P-3), which was further rectified by the Executive Council on 24.02.2003 (Annexure R-2/2). The learned Single Judge has rightly come to the conclusion that the fall back on Rule 45 was not justified since the said Rules never covered the post of Sub Divisional Engineer or

the Junior Engineer and the University was bound by the earlier decision of the Executive Council. The argument of desperation which is raised that there was a provision for relaxation by relying upon Rule 24 of the Punishment and Appeal Rules is without any basis, as the applicability of the said Rules would not come into play for the purposes of promotion to the post of Sub Divisional Engineer.

Resultantly, a finding which has been arrived at by the learned Single Judge, in the considered opinion of this Court, cannot be faulted in any manner. The University selectively only considered the case of the writ petitioner and has given him the necessary promotion without even considering the case of the present appellant, who was entitled as per their own policy decision. It is not the case of the University that he was ineligible in any case and, therefore, the reconsideration also which has been done on 18.09.2013 was not justified. Reliance on account of amendment made in the Rules in the year 2004 of the Punjab Service of Engineers Class-II PWD (B&R) Rules, 1965, on the basis of which the Draftsmen were liable to be promoted as such to the post of Junior Engineers, is misplaced, keeping in view that the University had earlier taken a policy decision on 17.03.1994 and had passed a resolution on 24.02.2003. The effort of the University apparently was only to consider the case of the appellant only while closing the door in totality to the writ petitioner (private respondent herein). The learned Single Judge was thus well justified in granting the relevant relief for which the said person was clamoring. As noticed, the legal notice had been served on 17.03.2009 (Annexure P-12) and, therefore, it cannot be said that the writ petitioner had not represented for his rights which was at the earliest when the current duty charge was given way back

In such circumstances, we are of the firm view that the learned Single Judge has not faulted in any manner while allowing the writ petition and granting the necessary relief. Accordingly, finding no merit in the appeal, the same stands dismissed. All miscellaneous applications also stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

25.05.2022
shivani

(VIKAS SURI)
JUDGE

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