

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

233

LPA-130-2020 (O&M)

Date of Decision: May 09, 2022

Hardev Singh

....Appellant

VERSUS

State of Punjab & another

....Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present:- Mr.A.S.Virk, Advocate
and Mr.S.S.Behl, Advocate, for the appellant.

Ms.Anju Arora, Addl.A.G., Punjab, for respondent No.1.

None for respondent No.2.

G.S. SANDHAWALIA, J. (Oral):

CM-351-LPA-2020

Application for condonation of delay of 30 days in filing the present appeal is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 30 days in filing the appeal is hereby condoned.

CM stands disposed of.

LPA-130-2020

The present appeal is directed against the order of the learned Single Judge passed in CWP-20747-2015 on 16.10.2019, wherein the writ petition was allowed directing the respondents to consider the claim of the appellant for promotion to the post of Addl.Chief Administrator on completion of 5 years' service as General Manager

w.e.f. 19.06.2001 and from 19.06.2006 and to pass appropriate orders. Similarly, the appellant is also aggrieved against the order dated 05.12.2019 passed in the review petition which was dismissed by the learned Single Judge.

The sole grievance of the appellant is that his 5 years' experience should be considered completed from 01.05.2001 and not from 19.06.2006. The said claim is based on the fact that he had been selected for appointment as General Manager (Regulatory) in the Punjab Urban Development Authority (PUDA) on deputation for a period of one year in the first instance on usual terms and conditions as per communication (Annexure P-14) which is stated to be of the year 1996. It is the case of the appellant that though he was wrongly absorbed as General Manager in the scale of Deputy General Manager vide order dated 19.06.2001 (Annexure P-1) w.e.f. 11.04.2001 since he had been appointed in the year 1996. Thus, the period of 5 years' experience had to be from the said date. It is thus submitted that the order passed by the learned Single Judge suffers from illegality which requires correction.

A perusal of the paperbook would go on to show that the learned Single Judge, while granting the benefit, has come to the conclusion that he was eligible to be considered for promotion after a period of 5 years on 20.06.2006. The learned Single Judge came to the conclusion that it is a rank which is relevant for the purpose of considering a General Manager for promotion to the post of Addl. Chief Administrator and not the pay-scale. The respondent-authority has not

challenged that aspect of the finding by filing any separate appeal. It was also noticed that the appellant served as an Addl.Chief Administrator on officiating capacity w.e.f. 15.02.2005 until the date of his retirement i.e. 30.09.2009 and thus, the vacancy aspect has been noticed.

Counsel for the appellant, in such circumstances, has rightly argued that the 5 years' experience as General Manager was the requirement for consideration as Addl.Chief Administrator which should be counted from the date of his initial appointment.

Once the appellant had been selected and appointed by way of deputation with PUDA and he had resigned from PSIDC as Assistant General Manager, we are of the considered opinion that merely by an order dated 19.06.2001 (Annexure P-1), the Chief Administrator, PUDA could not scale him down to the extent that he be absorbed as a General Manager in the scale of Deputy General Manager w.e.f. 11.04.2001. The appointment order reads as under:

“To,

The Managing Director,
P.S.I.D.C., Udyog Bhawan,
Sector 17, Chandigarh

Sub: FILING UP THE POST OF GENERAL MANAGER
(REGULATORY) IN THE PUNJAB URBAN
PLANNING & DEVELOPMENT AUTHORITY.

Sir,

I am directed to refer on the subject cited above and to inform you that Sh. Hardev Singh A.G.M. of your orgn. has been selected for appointment as General Manager (Regulatory) at Mohali in the Punjab Urban Planning &

Development Authority on deputation for a period of one year in the first instance on usual terms and conditions of deputation. You are therefore requested to relieve him immediately to join his duty in the Authority.

Yours Faithfully.

Sd/-

(SUBHASH CHANDER RANA)

Administrative Officer,

For Chief Administrator”

The appellant had applied in pursuance of the offer which had been given by PUDA and has resigned from the said post to take up the post of General Manager and he could not have been put to any disadvantage. Once the appellant had the necessary experience from the date of his initial appointment, the period of 5 years' experience is necessarily to be counted from that date. It is to be noticed that appellant had been ventilating for redressal of his grievance and during his period of service also, he had filed CWP-12049-2009 and had sought direction for promotion to the post of Addl.Chief Administrator on regular basis. The writ petition was disposed of on 22.07.2014 (Annexure P-11) with direction to decide the representation expeditiously in accordance with law preferably within 3 months from the receipt of the representation by passing a speaking order.

Eventually, order dated 26.11.2014 (Annexure P-13) was passed wherein the Chief Administrator rejected his case solely on the ground that he had not been placed in the pay-scale of General Manager while noticing that condition No.2 in the order dated 21.06.2001 had

been withdrawn whereby he was to be granted the scale of General Manager, PUDA as and when his junior in PSIDC is to be promoted as General Manager. It was accordingly held that the authority had yet to take a decision as to from which date he was to be placed in the pay-scale of General Manager and then only he would become eligible for promotion after completing 5 years' experience as General Manager. It was accordingly held that he had superannuated on 30.09.2009 and that he would only become eligible for promotion from 10.04.2006 after completing 5 years as General Manager and he was not liable to be granted the benefit of consideration.

The said authority thus failed to take into consideration the fact that there was a selection and appointment as General Manager on deputation basis on 30.04.1996 and once that was the case, the period of 5 years' experience had to be necessarily counted from 01.05.2001 irrespective of the subsequent orders wherein he was placed at a lower pay-scale. As per the PUDA Employees (Service) Regulation, 1999, the 5 years' experience as General Manager does not provide the distinction as to whether he shall be eligible only if he was paid the scale of General Manager. In such circumstances, the learned Single Judge, to that extent, had rightly granted the relief but wrongly restricted it only from 20.06.2006 by not taking into consideration the order dated 30.04.1996 which apparently had been placed on record at a subsequent point of time and which fact has been mentioned in the replication.

Resultantly, in view of the above discussion, the present appeal is allowed and the respondents are directed to consider the case of the appellant for the post of Addl.Chief Administrator from 01.05.2001 instead of 19.06.2006, as observed by the learned Single Judge, within a period of 3 months from today.

The pending misc. applications if any, stand disposed of.

(G. S. SANDHAWALIA)
JUDGE

(PANKAJ JAIN)
JUDGE

MAY 09, 2022
sailesh

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