

2023:PHHC:167013
HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3107-2021 (O&M)
Decided on 20.12.2023

Satpal Singh Rathi & Anr.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. JS Toor, Advocate for the petitioners

Mr. Kapil Bansal, DAG Haryana

Mr. BR Mahajan, Sr. Advocate with
Mr. Jagbir Malik, Advocate for respondent No.2
In CWP-9135-2021

Mr. Jagbir Malik, Advocate for respondent No.2
In CWP-3107-2021

Sandeep Moudgil, J.

This order shall dispose of CWP-3107-2021 & CWP-9135-2021 as common issues are involved. For the purpose of order, CWP-3107-2021 is treated as the lead case.

The petitioners have filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of certiorari to set aside the impugned orders dated 24.10.2019 & 13.11.2019 (Annexures P15 & P16, respectively) whereby the representations dated 26.07.2019 and 04.09.2019 (Annexures P13 & P14) of the petitioners have been rejected. Further a direction is sought to the respondents to grant promotion to the petitioners, retrospectively w.e.f. 12.01.2016 instead of 29.08.2018 to the post of Senior Environmental Engineer along with consequential benefits with interest from

the date on which the petitioners were designated and assigned the duties of Senior Environmental Engineer.

The respondent No.2-Haryana State Pollution Control Board had approved the proposal for creation of additional posts of Sr.Environmental Engineer in the 155th meeting held on 04.10.2010. Thereafter, in the year 2012, the petitioners were designated as Senior Environmental Engineers vide order dated 27.06.2012 in the 164th meeting held on 26.06.2012 of the Board. The said proposal was approved by the Government on 21.08.2012 (Annexure P5) and as such, selection grade i.e. Rs.37400-67000 GP Rs.8700 was granted to all the designated Senior Environmental Engineers, however, the said selection grade was granted to only one designated Senior Scientist, namely, Dinesh Kumar and that too without obtaining prior approval, however, the case of the petitioner for promotion to the post of Senior Environmental Engineer was kept in abeyance for want of AMIE Degree qualification, but later on the petitioner was also promoted to the said post vide order dated 29.08.2018 but with immediate effect and not with effect from 12.01.2016 i.e. when the post of Senior Environmental Engineers were created by the Board and the petitioner was eligible for promotion on that very day and had been already discharging his duties as such even before creation of such posts. The representations moved by the petitioners in this regard have also been rejected vide impugned orders dated 24.10.2019 & 03.11.2019 (Annexures P13 to P16, respectively) prompting the petitioners approach this Court.

Learned counsel for the petitioners refers to letter dated 06.06.2017 (Annexure P-10) whereby two posts of Senior Environmental Engineers were sanctioned. Vide minutes of meeting dated 27.06.2012 (Annexure P-4), at agenda No. 164, the Board had decided to change the designation of Senior Scientist 'C' and Environmental Engineers having minimum 10 years of service as Senior Scientist/Senior Environmental Engineers as a personal measure and this agenda was approved by the Board vide letter dated 21.08.2012 (Annexure P-5). The petitioners were granted selection grade as per the minutes of meeting (P-4).

It is argued that since the posts of Senior Environmental Engineers were created firstly in the year 2010 by the respondent Board vide agenda No.155, dated 04.10.2010 and thereafter in the year 2012, the petitioners were designated as Senior Environmental Engineers vide agenda dated 27.06.2012 and since the time of designation till their regular promotion to the post of Senior Environmental Engineers, the petitioners had been rendering the services as such, thus, the condition in their designation order that they were designated in their own pay scale has no significance in ascertaining their right for the pay scale of the post of Senior Environmental Engineers on the ground of equal pay and equal work and principle of '*Quantum Meruit*' and as such the petitioners are entitled to the benefit attached to the post of Senior Environmental Engineer since the time of their respective designation. Reliance has been placed on (i) **Smt. P.Grover vs. State of Haryana 1983 AIR SC 1060** and (ii) **Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma, 1998 (3) SCT 90.**

On the other hand, Mr. B.R. Mahajan, Senior Advocate assisted by Mr. Jagbir Malik, Advocate appearing on behalf of the respondents submit that the petitioners cannot claim promotion as a matter of right from the date of sanction of post, accrual of vacancy or date of eligibility of the employee. It is the prerogative of the employer to fill up any post or to keep the post vacant and as such, no mandamus can be issued directing the employer to fill up any post from a specific date. He thus contended that the prayer of the petitioners seeking ante dated promotion and consequential benefit is not in accordance with law.

Learned senior counsel vehemently controverted the claim of the petitioners on the ground that the post of Senior Environmental Engineer was not in existence at the time petitioners were re-designated as Senior Environmental Engineer prior to decision vide minutes dated 26.06.2012 (Annexure P4). It is further averred that in view of decision taken in the meeting of Board of Director, the Board vide letter No. HSPCB/Estt./2018/3172 dated 05.02.2018 sent the proposal of promotion of petitioners to the post of Senior Environmental Engineer in the Pay Scale of Rs. 37,400-67,000+8700GP to the Government and ultimately, the approval was granted by the Government vide letter dated 28.08.2018 and as such, the petitioners were given promotion to the post of Senior Environmental Engineer vide order dated 29.08.2018 with immediate effect. He relies upon (i) **Union of India & Anr. Vs. Manpreet Singh Poonam etc. 2022(4) SCT 550**; (ii) **Union of India & Ors. vs. KK Vadera & Ors., 1990 AIR SC 442**; (iii) **Virender Kumar vs. State of Haryana & Ors., 2022 (4) SCT 416** to

contend that mere existence of vacancy per se will not create right in favour of employee for retrospective promotion when vacancies in promotional post.

Heard learned counsel for the parties and gone through the record.

From the record, it can be ascertained that the posts of Senior Environmental Engineers were created firstly in the year 2010 by the respondent Board vide agenda No.155, dated 04.10.2010 (Annexure P-2) and thereafter in the year 2012, the petitioners were designated as Senior Environmental Engineer vide agenda dated 27.06.2012 (Annexure P-4) and since the time of designation till their regular promotion to the post of Senior Environmental Engineer on 29.08.2018, the petitioners had been rendering their services satisfactorily with the respondent-Board. The condition in their designation order that they were designated in their own pay scale has no significance in ascertaining their right for the pay scale of the post of Senior Environmental Engineer on the ground of equal pay and equal work and principle of 'Quantum Meruit'. Moreover, perusal of Minutes of Meeting dated 26.06.2012 (Annexure P-4) makes it clear that at the time of designation, posts of Senior Environmental Engineer were deemed to have been approved by the Government.

It is apparent on the face of record that post of Senior Environmental Engineer had been created vide agenda item No.174.6 in 174th meeting held on 12.01.2016 (Annexure P-9) and the same was approved by the Govt, and thus by no stretch of imagination, petitioner can be deprived from the right of promotion inasmuch as, at that time, they were rendering the duties of Senior Environmental Engineer by virtue of their

designation on 27.06.2012 and by virtue of their eligibility for promotion to the post of Senior Environmental Engineer.

In **Selva Raj vs. Lt. Governor of Island, Port Blair, 1993 AIR SC 838**, the Supreme Court considered the question "whether the petitioner is entitled to draw the salary attached to the post of Secretary (Scouts) during the time he actually worked on that post pursuant to the order at Annexure 'E' dated 28-1-1992. And if so, what was the scale of pay for the said post according to him", and held that:-

“...Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.”

In **Hari Om Sharma's** case (supra), while rejecting the contention that since the respondent (therein) was promoted on the basis of stop-gap arrangement, he could not claim promotion as a matter of right nor could he claim salary for the post of Junior Engineer-I as he was given only current duty charge of the post, the Supreme Court held that:-

“...An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy . it would, therefore, be unenforceable in view of Section 23 of the Contract Act.”

On scrutiny of the above case laws and the facts and circumstances of the case in hand, the contention of the respondents that no person can claim promotion as a matter of right from the date of sanction of post, accrual of vacancy or date of eligibility of the employee is to be observed and rejected simply on the ground that every case has to be decided on its own facts and a straight-jacket formula cannot be applied uniformly.

In the case in hand, a perusal of the minutes dated 26.06.2012 (Annexure P4) makes it clear that at the time of designation, posts of Sr.EE were deemed to have been approved by the Government and thus further approval for grant of pay scale for the post of Sr.EE was not warranted. Since the post of Sr.EE was created on 12.01.2016 and thereafter duly approved by the Government, thus there was no requirement for further approval and in this backdrop the petitioners cannot be deprived of promotion to the post of Sr.EE and the benefit attached thereto w.e.f. 12.01.2016, moreso in view of the fact that the petitioners were rendering their duties as Sr.EE by virtue of their designation on 27.06.2012 on which they were very much eligible for promotion as such.

For the reasons mentioned above, this writ petition is allowed and the impugned orders dated 24.10.2019 & 13.11.2019 (Annexures P15 & P16, respectively) whereby the representations dated 26.07.2019 and 04.09.2019 (Annexures P13 & P14) of the petitioners have been rejected, are hereby set aside. The respondents are directed to grant promotion to the petitioners, retrospectively w.e.f. 12.01.2016 instead of 29.08.2018 to the post of Senior Environmental Engineer along with consequential benefits along with interest @ 6% p.a. from the date on which the petitioners were designated and assigned the duties of Senior Environmental Engineer, within a period of two months from the date of receipt of certified copy of this order failing which, the petitioners shall be granted further interest @ 12% p.a. However, the promotion will remain intact from the date it has been granted to the petitioners i.e. 29.08.2018.

Ordered accordingly.

20.12.2023
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No