

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11039 of 2020 (O&M)
Date of decision: 14.03.2023

Raj Kumar Garg and others

..Petitioners

Versus

State of Punjab and others

..Respondents

CWP-12144 of 2020 (O&M)

Sandeep Singh and others

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagjeet Singh Beniwal, Advocate
for the petitioners (in CWP-11039 of 2020)

Mr. Manjit Singh Uppal, Advocate
for the petitioners (in CWP-12144 of 2020).

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

Mr. Arjun Pratap Atma Ram, Advocate
for respondent no.5 and 6.

Mr. D.S.Patwalia, Sr. Advocate, with
Mr. Gaurav Rana, Advocate, and
Mr. Sarthak Gupta, Advocate
for respondent no.7 to 34 (in CWP-11039 of 2020)
for respondent no.7 to 26 (in CWP-12144 of 2020)

ANIL KSHETARPAL, J(Oral)

1. Two connected writ petitions i.e. Civil Writ Petition No.11039
and 12144 of 2020 have come for final disposal.

2. In Civil Writ Petition No.11039 of 2020, the petitioners pray for

the following substantive reliefs:-

- “(a) A writ in the nature of mandamus directing the respondents to prepare only single seniority list for the petitioners including Degree Holders.
- (b) A writ in the nature of mandamus directing the respondents not to constitute the Departmental Promotion Committee (DPC)
- (c) any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in particulars facts and circumstances of the present case.”

3. Whereas, in Civil Writ Petition No.12144 of 2020, the petitioners pray for the following substantive reliefs:-

- “(i) A writ in the nature of certiorari for quashing the impugned separate seniority list dated 06.09.2019, Annexure P-3, which is prepared as separate seniority list of AMIE/Degree Holders and also letter dated 06.05.2020 i.e Annexure P-6 which is in consequence to the separate seniority list dated 06.09.2019 (P-3) vide which the department call for record for further promotion as SDE from the impugned seniority list;
- (ii) Writ in the nature of mandamus directing the respondents to issue final/complete seniority list and call for record for further promotions as Sub-Divisional Engineer from the final/complete/notified inter-se seniority list as per 1993 Rules by including all sources in inter-se seniority

i.e. Direct and promoted category;

- (iii) Operation and effect of the impugned seniority list dated 06.09.2019 i.e. Annexure P-3 and also letter dated 06.05.2020 i.e. Annexure P-6 which is in consequence to the separate seniority list dated 06.09.2019 (P-3) may kindly be stayed during the pendency of the present writ petition;
- (iv) Further this Hon'ble Court may also be pleased to stay the holding of any further promotions in pursuance to the impugned seniority list dated 06.09.2019.”

4. In Civil Writ Petition No.11039 of 2020, the petitioners are Junior Engineers working in Public Works Department (B&R) Branch, Punjab. They were holders of Diploma in Engineering when they were recruited. During their service, they have enhanced their qualification and passed the Degree Courses.

5. In Civil Writ Petition No.11039 of 2020, the private respondents/applicants are Junior Engineers, who are either in the same category as the petitioners in Civil Writ Petition No.11039 of 2020 or they were appointed as Junior Engineers though they already possessed the bachelor's degree in Engineering.

6. The services of the Junior Engineers are regulated by the Punjab Service of Engineer (Civil Wing) Department of Public Works (B&R Branch), Group 'A' Service Rules, 2005 (hereinafter referred to as 'the 2005 Rules'). Appendix 'B' to the 2005 Rules provides for two sources of recruitment to the post of Sub-Divisional Engineers. The 2005 Rules were

amended in the year 2011. Sr. No.4 of the appendix reads as under:-

4.	Sub Divisional Engineer	Fifty Percent	Fifty Percent	(a) Out of fifty percent (i) Thirty three percent from amongst the Junior Engineers, working under the control of the Chief Engineer, who possess a diploma in Engineering in Civil from a recognized institution and have an experience of working as such fro a minimum period of ten years; (ii) Fifteen percent from amongst the Junior Engineers, working under the control of the Chief Engineer, who possess a degree in Engineering in Civil or a degree of AMIE from a recognized university or institution, and have an experience of working as such for a minimum period of three years after obtaining the aforesaid degree; and (iii) two percent	Should possess a degree in Engineering in Civil from a recognized University or Institution
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				from amongst the Circle Head Draftsman or Divisional Head Draftsmen, working under the control of the Chief Engineer, who possess a degree in Engineering in Civil or a degree of AMIE from a recognized university or institution, and have an experience of working as such for a minimum period of two years; and (b) Should have qualified the Departmental Examination in such papers and syllabi, as may be specified by the Government from time to time.	
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7. It is the stand of the respondent that a consolidated seniority list of Junior Engineers has been prepared on 31.08.2016 and the lists prepared on 06.09.2019 and 06.05.2020 are only for the convenience of the authorities to work out the quota between the Diploma and Degree Holders.
8. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper books.
9. The learned counsel representing the petitioners in Civil Writ Petition No.11039 of 2020 contends that some of the private respondents

and the applicants were diploma holders at the time when they entered into service, hence, they should be considered with Diploma Holders and they cannot be given the benefit of the quota reserved for degree holders. The learned counsel representing the petitioners further submits that the seniority list is required to be prepared on the basis of continuous length of service and not on the basis of the date of acquisition of the degree.

10. In Civil Writ Petition No.12144 of 2020, the learned counsel representing the petitioners assails the correctness of the list prepared on 06.09.2019 and 06.05.2020. The learned counsel submits that these lists have been prepared on the basis of seniority list issued on 31.08.2016. He submits that the names of the petitioners, in this writ petition, were not included in 2016 list, therefore, it should not have been in the seniority list prepared on 06.09.2019 and 06.05.2020.

11. On the other hand, the learned State counsel has submitted that the petitioners in Civil Writ Petition No.12144 of 2020 were probationers when the seniority list in the year 2016 was prepared and their names were not included because they were not confirmed at the relevant time.

12. This court has considered the submissions of the learned counsels representing the parties.

13. As far as the first grievance of the petitioners in Civil Writ Petition No.11039 of 2020 is concerned, it is the stand of the State that a single seniority list has been prepared.

14. As regards the second prayer, it is the petitioners, who have obtained an interim order on account of which delay has resulted in

promotion. Once the writ petition is decided, the stay order would come to an end, hence, the Departmental Promotion Committee which has already been constituted, shall make recommendation for promotion in accordance with the list. In any case, the arguments of the learned counsel representing the petitioners, on his insistence, are required to be examined.

16. It is evident from the reading of Appendix 'B' that the quota of promotees has been divided into three different sub-categories. 33% of the promotions are to be made from amongst the Junior Engineers, who possess Diploma in Civil Engineering, whereas, 15% are to be made from amongst the Junior Engineers who possess a Degree in Engineering in Civil or a Degree of AMI from a recognized University or Institution. 2% of the promotions are to be made from amongst the Circle Head Draftsman or Divisional Head Draftsman. In this case, the dispute is amongst the promotees with regard to the category representing 15% quota of promotion. On a careful reading of the relevant provision, it is evident that the Junior Engineers possessing a Degree in Engineering and having an experience of working as such for a period of 3 years, after obtaining the aforesaid degree, are eligible to be considered. There is no distinction between the Junior Engineers who were possessing Degree in Engineering at the time of entering into the service or the Junior Engineers who have enhanced their qualification during their service career. The argument of the learned counsel representing the petitioners that such Junior Engineers, who possessed Degree in Engineering at the time of entering into service, should be considered only under category No.(i) has no substance because the service rules do not make a distinction between the Junior Engineers who

possessed the Degree in Engineering at the time of entering into service or the Junior Engineers who upgraded their qualification during the period of their service. Such a distinction does not exist in the service rules. Hence, this court does not consider it rational to issue any direction in this regard.

17. The learned counsel representing the petitioners relies upon the Division Bench judgment passed in **Baljinder Singh and others vs. State of Punjab and others, (Civil Writ Petition No.2539 of 2012, decided on 10.02.2012)**. On a careful reading thereof, it is evident that while analyzing the rule, the Bench held that a candidate becomes eligible for being considered for promotion only after gaining the requisite experience and acquisition of the degree. The operative part of the order reads as under:-

“The petitioners are not disputing their seniority in the cadre and the promotion of the private respondents on the basis of seniority-cum-merit basis. Their only contention is that since they have acquired the requisite Degree of Engineering prior to the private respondents, therefore, they should be treated senior to the private respondents. In our opinion, this contention cannot be accepted. The seniority in the cadre has nothing to do with the acquiring of a particular Degree. Acquisition of such a Degree makes a candidate eligible for being considered for promotion only after having the requisite experience after the acquiring of the Degree.

So for as the "Punjab State Electricity Board

Service of Engineers (Civil) Recruitment Regulations, 1965" referred by learned counsel for the petitioners are concerned, we are of the opinion that it will not give right to the petitioners to have similar Rules in the respondent department. It is the prerogative of the rule-making authority to frame a Rule with regard to eligibility and method of recruitment. The only condition is that such Rule should not be violative of the provisions of the Constitution of India. In the present case, the Service Rules of 2005, in our opinion, are valid and there is no ambiguity or arbitrariness in the same.

In view of the above, we do not find any arbitrariness in Rule 6 of the Service Rules of 2005. The seniority lists (Annexures P-1 and P-2) prepared by the respondent department as well as promotion of the private respondents made on the basis of these seniority lists on the principle of seniority -cum- merit are found to be legal and valid."

18. With highest respect, it is nowhere held that the Junior Engineers who were possessing Degree in Engineering at the time of entering into service are required to be considered only in the category No.(i) of Appendix 'B'.

19. The second argument of the learned counsel representing the petitioners is with regard to the date from which the seniority is to be

counted. In the present case, there is no challenge to the seniority list dated 31.08.2016. Moreover, for the purpose of promotion to the post of Sub Divisional Engineer under category No.(ii), the minimum benchmark is an Engineering Degree with 3 years of working experience after obtaining the degree. Hence, a Junior Engineer becomes eligible for consideration under this category only if he possesses an Engineering degree and 3 years of experience subsequent to the obtaining of the said degree. Hence, manifestly, the minimum benchmark to be considered for promotion is a degree with 3 years working experience after obtaining the degree.

20. Since the correctness of the seniority list prepared on 31.08.2016 has not been challenged, hence, this court does not find it appropriate to finally opine on the respective argument of the learned counsel representing the petitioners.

21. In Civil Writ Petition No.12144 of 2020, the petitioners' names have been included in the tentative seniority list prepared in the years 2019 and 2020 and not in the seniority list prepared in the year 2016 because earlier they were only probationers who were not eligible to be considered for promotion at that time.

22. Though, the learned counsel representing the petitioners made sincere attempts, however, this court expresses its inability to redress the grievance of the petitioners. The petitioners in Civil Writ Petition No.12144 of 2020, are members of the cadre of Junior Engineers. Their names have been included in the tentative seniority list prepared in the years 2019 and 2020, respectively. The petitioners do not claim that they are not members

of the cadre of Junior Engineers. Hence, the prayer made in the writ petition is wholly misconceived.

23. Consequently, finding no merit, both the writ petitions are dismissed.

24. All the pending miscellaneous applications, if any, are also disposed of.

March 14, 2023
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(ANIL KSHETARPAL)
JUDGE

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