

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COCP-1519-2023 (O&M)
Reserved on: 14.07.2023
Date of decision: 17.07.2023

Hemant Kumar and others
.....Petitioners
Versus
Anurag Rastogi and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Gurminder Singh, Sr. Advocate
with Mr. Jatinder Singh Gill, Advocate
for the petitioners.

Mr. Harsh Vardhan Shehrawat, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

The petitioners are alleging disobedience of the order dated 15.03.2023 passed in CWP No.18515 of 2012 and the connected writ petitions.

Learned senior counsel for the petitioners has argued that the challenge in the writ petition was to the legality and validity of absorption of four persons namely Pradeep Atri, Praveen Chaudhary, Pankaj Gaur and Arun Bhatia, who were originally appointed as a Sub-Divisional Engineer/Assistant Engineer (Civil), in the Haryana Public Works (Building & Road) Department as well as the seniority granted to them by the PWD (B&R) Department.

The writ petition i.e. CWP No.18515 of 2012 along with other connected cases, was disposed of on 15.03.2023, by passing the following order:-

“Though we are of the opinion that the very deputation and absorption of the private respondents in PWD (B&R) Department as Asst. Engineers is bad in law, it is brought to our notice that they do not have lien in their parent department i.e. the PR Department. Therefore, in the normal course we would have had to direct their termination from service. But since they had been in service since 2005, they would suffer hardship if their services are terminated now, 18 years later. Therefore taking a sympathetic view, we are not inclined to disturb their deputation and absorption as Asst. Engineers in PWD (B&R) Department at this stage, but they will not be allowed to have seniority contrary to the main part of Rule 12(5) or the conditions of their absorption i.e. they cannot be seniors to direct recruits appointed on 07.12.2007 or in 2009 /persons promoted against vacancies which arose before 1.7.2006 or in 2009 in the cadre of Asst. Engineers in PWD (B&R) Department. For the aforesaid reasons:

1) CWP-15083-2010 is dismissed;
2) CWP-7706-2011 is dismissed;
3) CWP-18075-2011, CWP-15685-2017, CWP-11848-2020, CWP12882-2020, and CWP-858-2021 are allowed;

4) the State of Haryana through its Principal Secretary, PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department are directed to count Sh.Praveen Chaudhary's seniority in the PWD (B&R) Department in the cadre of Asst. Engineer (Civil) only from 18.7.2007, the date of his absorption in the said department;

5) the State of Haryana through its Principal Secretary, PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department are directed to count the

seniority of Sh.Pankaj Gaur and Sh.Arun Bhatia in the PWD (B&R) Department in the cadre of Asst.Engineer (Civil) only from 23.10.2009, the date of their absorption in the said department;

6) the State of Haryana through its Principal Secretary, PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department are directed give notional seniority w.e.f. 29.11.2006 to the directly recruited Asst. Engineers (Civil) in the PWD (B&R) Department who were given appointment letters on 05.12.2007, to treat them as having been recruited in 2006, and to make them seniors to Sh. Pradeep Atri and Sh. Praveen Chaudhary in the Asst.Engineer (Civil) cadre in the PWD(B&R) department within 4 weeks from today;

7) the State of Haryana through its Principal Secretary, PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department are directed not to give Sh.Pradeep Atri and Sh. Praveen Chaudhary seniority over any direct recruit or promotee who had been appointed against vacancies which arose prior to 1.7.2006;

8) the State of Haryana through its Principal Secretary, PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department are directed to treat direct recruit or promotee Asst. Engineers who were appointed against vacancies which arose before 23.10.2009 in that department as seniors to Sh. Pankaj Gaur and Sh. Arun Bhatia;

9) the State of Haryana through its Principal Secretary, PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department are directed not to adjust Sh. Pradeep Atri, Sh. Praveen Chaudhary, Sh. Pankaj

Gaur and Sh. Arun Bhatia, against any direct recruit vacancy of the Asst. Engineers in PWD (B&R) Deptt;

10) the final seniority list of Asst. Engineers in PWD (B&R) Department dt.02.09.2011 in so far as it shows Sh. Pradeep Atri as senior to direct recruit Asst. Engineers appointed on 05.12.2007 is set aside;

11) order dt.01.10.2019 giving Sh. Praveen Chaudhary seniority as Asst. Engineer in PWD (B&R) Department from 02.05.2006, the order dt.17.07.2020 reiterating it are set aside;

12) the tentative seniority list dt.28.07.2020 of Executive Engineers in so far as Sh. Praveen Chaudhary is shown as senior to direct recruit Asst. Engineers in the said department appointed against vacancies which arose before 1.7.2006 is set aside;

13) order dt.01.05.2017 passed by the respondents granting seniority to Sh. Pankaj Gaur and Sh. Arun Bhatia from 05.01.2008 as Asst. Engineers in PWD (B&R) Department is set aside;

14) revised tentative seniority list dt. 29.09.2017 and also the final seniority list dt.4.4.2018 of Asst. Engineers in PWD (B&R) Department insofar as they are inconsistent with the above directions are set aside;

15) CWP-18515-2012 is partly allowed and the action of the State of Haryana through its Principal Secretary, PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department insofar they gave Sh. Pradeep Atri seniority over the direct recruits appointed on 05.12.2007 is set aside. The claim in the said writ petition as regards regarding absorption of the private respondents is however rejected;

16) CWP-5465-2018 is partly allowed and the action of the State of Haryana through its Principal Secretary,

PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department insofar as they granted seniority to Sh. Pankaj Gaur and Sh. Arun Bhatia in the PWD (B&R) Department w.e.f. 05.01.2008 and the revised seniority list dt. 29.09.2017 of Asst. Engineers in PWD (B&R) Department to the said extent, are set aside. The claim in the said writ petition as regards absorption of the private respondents is however rejected;

17) the State of Haryana through its Principal Secretary, PWD (B&R) Department and the Engineer-in-Chief, PWD (B&R) Department are directed to review on the above basis the seniority assigned to the private respondents in all cadres higher than Asst. Engineers (Civil) cadre in the PWD (B&R) Deptt. within 4 weeks and if necessary even revert them to a lower post on such review;

18) No costs.”

Learned senior counsel for the petitioner has argued that despite a time bound direction given by the Writ Court, the respondents have not complied with the directions.

Reply by way of affidavit of the Engineer-in-Chief, PWD (B&R) Department, is filed in the Court.

After verification of the facts as given in the affidavit, it is stated that the petitioner No.1 Hemant Kumar and others have filed SLP No.15281 of 2023, along with other SLPs filed by the aggrieved persons i.e. the aforesaid four persons, against whom the directions were issued. It is also submitted that similarly situated other petitioners have also filed the SLPs, the number of which are given in Para 4 to 6 of the affidavit.

It is submitted that all the SLPs are attached with SLP No.15281 of 2023, titled as “Hemant Kumar & Ors. vs State of Haryana & Ors.”, and on 01.05.2023, the Hon’ble Supreme Court has passed the following order:-

“Permission to file the special leave petition(s) is granted.

There is a dispute between those who are directly recruited in the Public Works Department vis-a-vis those who were initially inducted in the Panchayat Raj Department and then brought on deputation in the Public Works Department and thereafter absorbed in the latter Department.

The special leave petitions are filed both by the direct recruits as well as the deputationists. The grievance of the direct recruits is that the deputationists were undeservingly brought into the Public Works Department although they were appointed in the Panchayat Raj Department. The other grievance of the direct recruits is that although they should have been appointed immediately upon their selection in the year 2006, their appointments were delayed because of pending litigation. Therefore in seniority list they cannot be placed below the deputationists who could not have been brought in to the Public Works Department and steal a march on seniority over the direct recruits.

The grievance of the other group is that seniority can be counted only after a person enters the cadre.

Issue notice, returnable within eight weeks.

Let notice be served upon standing counsel for the respondent-State of Haryana. Notice shall also be served upon the remaining unrepresented respondents. Dasti, in addition, is also permitted.

In the meantime, reversion should not be made in pursuance to the impugned order. Promotions, if made in the interregnum, is subject to the result of these proceedings.”

Counsel for the State has argued that even the State of Haryana has filed SLP, challenging the aforesaid judgment passed by the Writ Court and the same is also likely to be tagged with the main SLP No.12581 of 2023. It is further submitted that in view of the fact that the matter is *sub judice* before the Hon’ble Supreme Court where not only the petitioners but the private respondents (in the writ petitions) have challenged the judgment dated 15.03.2023 but the State has also filed an SLP and therefore, till the time the SLP is decided, this contempt petition is not maintainable.

In reply, learned senior counsel for the petitioners has submitted that a perusal of the order dated 01.05.2023, passed by the Hon’ble Court would reflect that the Hon’ble Supreme Court has only stayed the reversion in pursuance to the order dated 15.03.2023 and with a further direction that promotion, if any, will be subject to the result of final decision. It is also submitted that there is no stay with regard to the other directions like re-fixation of seniority, etc.

After hearing the counsel for the parties, I feel that at this stage, no willful disobedience of the direction dated 15.03.2023 is made out as admittedly, all the parties have filed separate SLPs which are tagged with SLP No.15281 of 2023 filed by petitioner No.1. It is also admitted case that even the State of Haryana has now filed SLP and therefore, the argument raised by learned senior counsel for the

petitioner that the stay is only with regard to some part of the order and not with regard to refixation of seniority cannot be accepted as the matter is *sub judice* before the Hon’ble Supreme Court and till the time, the SLPs are decided, it cannot be said that the respondents are in willful disobedience of the order dated 15.03.2023.

In view of the above, this contempt petition is dismissed, at this stage.

(ARVIND SINGH SANGWAN)
JUDGE

17.07.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No