

228.

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

CWP No.14205 of 2019

Date of Decision: 22.02.2023

Anand Singh Rath

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajesh Arora, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Hitesh Pandit, Advocate, for respondent No.3.

JAISHREE THAKUR.J

1. The instant writ petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of mandamus directing the respondents to promote the petitioner to the post of Executive Engineer from the date when he was put on Current Duty Charge, by contending that his juniors have been promoted to the said post, but he has not been promoted despite having all the necessary qualifications and experience.

2. In brief, the facts of the case are that the petitioner, having a qualification of Diploma in Civil Engineering, joined the respondent department as Building Inspector on 24.01.1989. The cadre of the petitioner was changed and he was posted as Junior Engineer on 13.02.1995. He was subsequently promoted as Municipal/Assistant Engineer, vide order dated 22.09.2010, and was given notional pay w.e.f. 20.05.2009 on the basis of his

qualification and experience. He remained posted as such at Panchkula till 15.03.2011 and, thereafter was transferred to Gurugram. He was granted extension in service from 55 years to 58 years. Thereafter, on the basis of his qualification and length of service, he was deputed on the post of Executive Engineer vide office order dated 11.10.2016 and was given Current Duty Charge vide order dated 14.10.2016, which was further extended from time to time vide orders dated 03.10.2017, 06.02.2018 and 20.01.2019. He kept approaching the authorities concerned for being promoted to the post of Executive Engineer having the necessary qualification, however, having wrongly been ignored, the present writ petition has been filed.

3. Learned counsel appearing on behalf of the petitioner would contend that though the name of the petitioner was recommended by the Municipal Commissioner, Gurugram for promotion to the post of Executive Engineer, but despite that he has not been promoted. It is submitted that there were no adverse entries against the work and conduct of the petitioner and, therefore, he was fully eligible for being promoted to the post of Executive Engineer, as would be evident that he was working on the said post as Current Duty Charge since 11.10.2016. It is contended that his juniors have long since been promoted as such. He relies upon the seniority list (Annexure P-9) wherein his name figures at serial No.21 and Shri Gopal Kalawat, who is at serial No.26 stands promoted. It is argued that the petitioner has been discriminated.

4. Learned counsel for the petitioner would also submit that as on the date when the post became available, the petitioner had the necessary

qualification for being promoted, as mentioned in Annexure P-10, which reads as under:-

- “(i) Degree in Civil or Mechanical or Electrical Engineering or its equivalent from any recognized University and Institution;*
- (ii) Eight years experience as Assistant Engineer (Civil), Assistant Engineer (Mechanical) or Assistant Engineer (Electrical).*

For transfer or Deputation:-

- (i) Bachelor Degree in Civil or Mechanical or Electrical Engineering from a recognized University or Institution;*
- (ii) Two year experience as Executive Engineer;*
- (iii) Knowledge of Hindi up to Metric Standard.”*

Learned counsel for the petitioner has relied upon notification dated 26.05.1977 (Annexure P-8) as issued by the Ministry of Education & Social Welfare (Department of Education Technical), New Delhi, vide which Government of India had decided to recognize a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate fields as equivalent to Degree in Engineering. On the basis of said notification, counsel has urged that with a Diploma in Engineering and more than 10 years of experience, the same is to be taken to be a Degree in Engineering and, therefore, having the said degree, the petitioner ought to have been considered for promotion.

5. *Per contra*, learned counsel appearing on behalf of the respondents would submit that to be promoted to the post of Executive Engineer, he has to have the necessary qualifications to do so. It is argued

that the recommendations made by the Municipal Commissioner would have no bearing in the light of the fact that he did not have the necessary qualification for promotion to the said post. It is submitted that Rules of 1998 have been amended for promotion to the post of Executive Engineer and the qualification for promotion stands increased from Diploma to Graduate Degree and, therefore, the petitioner, holding a diploma, would not be entitled to be appointed as Executive Engineer.

6. I have heard learned counsel for the petitioner as well as learned State counsel and with their assistance, have gone through the pleadings of the case.

7. Admittedly, the petitioner has a qualification of Diploma in Civil Engineering and joined as Building Inspector on 24.01.1989. Subsequently, he was given various promotions and posting on Current Duty Charge, however, he never improved his qualification and continued to hold the qualification of Diploma in Civil Engineering. With the amendment of the Rules, an Executive Engineer is to have the qualification of a Degree in Civil or Mechanical or Electrical Engineering or its equivalent from any recognized University and Institution, with 8 years experience as Assistant Engineer (Civil), Assistant Engineer (Mechanical) or Assistant Engineer (Electrical). The Rules regarding appointment pertain to 1998 and have been in place since then. Promotion has to be carried out in accordance with the Rules as they exist when the exercise for promotion is to be carried out. In this regard, reliance can be placed on the judgment of ***Union of India Versus Krishna Kumar (Civil Appeal @ SLP (c) No.26451 of 2014)***.

8. The argument of counsel for the petitioner that notification dated 26.05.1977 (Annexure P-8) allows a person holding Diploma in Engineering with 10 years technical experience in that field to be considered equivalent to holding a Degree in Engineering, (which diploma) the petitioner has, is without any merit since the Division Bench of this Court in LPA No.26 of 2018 arising out of CWP No.16224 of 2016, decided on 17.01.2023, has gone into the validity of said notification and held that the notification dated 26.05.1977 has not been issued by the Union of India and any relief on the said basis cannot be allowed. Therefore, once the said notification itself is doubtful, no benefit can be drawn from it.

9. In view of above, it is held that the petitioner herein does not have the necessary qualification for being appointed as an Executive Engineer as he does not have the Degree in Engineering. Consequently, the writ petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

22.02.2023

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No