

LPA-863-2023 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****LPA-863-2023 (O&M)****Date of decision: 02.08.2023****Tarsem Lal Garg****...Appellant.****Versus****State of Punjab and others****...Respondents.***********CORAM: HON'BLE MS. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR****.....****Present:** Mr. Puneet Gupta, Advocate for the appellant.

Ms. Deepali Puri, Addl. A.G., Punjab.

Mr. Parminder Singh, Advocate for respondents No.2 and 3.

Mr. Gurminder Singh, Sr. Advocate with
Mr. J.S. Gill, Advocate for respondents No. 4 and 5.*********SUKHVINDER KAUR, J.**

This Intra Court Appeal has been preferred against the order dated 29.03.2023 passed by a learned Single Judge of this Court, whereby CWP-385-2015 filed by the appellant has been dismissed.

2. The brief facts of the case are that on 06.09.1982, the appellant was appointed as a Draftsman in the respondent-Punjab State Agricultural Marketing Board (hereinafter referred to as, 'the Board'). While in service, on 04.10.1989, he acquired the qualification of Associate Member of Institution of Engineers (India) (AMIE). Through order dated 07.12.1989, he was promoted as an Assistant Engineer (Civil) [re-designated as Sub Divisional Officer (Civil)]. After having acquired the required five years working experience, he earned promotion as an Executive Engineer (Civil).

Such promotion was through order dated 12.08.1999 but w.e.f. 11.12.1998.

Through order dated 05.07.2010, he was further promoted as Superintending Engineer (SE). When he had served as a Superintending Engineer for about 4½ years, through order dated 08.01.2015, he was ordered to be reverted to the post of Executive Engineer (Civil). He challenged the said order before this Court. Through order dated 29.03.2023, the said writ petition was dismissed by the learned Single Judge. Hence, the present Intra Court Appeal.

3. Learned counsel for the appellant has contended that on 01.07.2010 the appellant was considered for promotion as a Superintending Engineer by a duly constituted Department Promotional Committee and only because he fulfilled the requisite qualifications and experience, he was recommended and consequently promoted as a Superintending Engineer vide order dated 05.07.2010. He has further argued that the qualification possessed by the appellant is from Associate Member of Institute of Mechanical Engineers (India) which qualification, in the case of **Kartar Singh Vs. State of Punjab**, 2012(4), S.C.T., 741, has been declared equivalent to a degree course for the purposes of promotion. He has also urged that the Government of India vide letters dated 06.08.1978 and dated 11.09.1964 has already held AMIE Certificate to be equivalent to a Degree and the Rules also recognized the same and therefore, the appellant cannot be said to be unqualified for holding the post of Superintending Engineer. He has also referred to Rule 2 of Punjab State Agricultural Marketing Board (Class 1) Service Rules, 1988 (for short, '1988 Rules') which defines recognized University or Institute to contend that the Institute from where the appellant has attained the qualification being a recognized Institute, the qualification of the appellant is to be considered to be recognized by the

respondent-Board. It has also been submitted that before the promotion of the appellant and even thereafter, several incumbents possessing AMIE qualification have been promoted treating them to be qualified to hold the post of Superintending Engineer. It has been further submitted that prior to the passing of the impugned reversion order dated 08.01.2015, the appellant had been serving as a Superintending Engineer for the last 4½ years, without any blemish and that his work and conduct had also been excellent. There was no concealment or fraud or misrepresentation by the appellant at any stage and therefore, on this ground as well the impugned order was liable to be set aside.

4. In support of his afore submissions, learned counsel for the appellant placed reliance upon the following judgments of this Court/ Supreme Court:-

- (i) ***Dhan Raj Singh Vs. State of Haryana, 1994(2), S.C.T., 205;***
- (ii) ***Rajesh Kumar Vs. State of Haryana and another, 1995(4) R.S.J., 877;***
- (iii) ***Ajit Sen Vs. State of Haryana in CWP-1681-2002;***
- (iv) ***Dhananjay Malik and others Vs. State of Uttranchal and others, (2008) 4 SCC, 171;***
- (v) ***Municipal Corporation of Delhi Vs. Gurnam Kaur (1989)1 SCC 101;***
- (vi) ***State of U.P. And another Vs. Synthetics and Chemicals Ltd. and another (1991) 4 SCC 139;***
- (vii) ***Parbhu Ram Vs. State of Haryana and others 2012(1) ILR (Punjab) 339; and***
- (viii) ***Rabindra Nath Bose and others Vs. Union of India and others (1970) 1 SCC 84.***

5. Learned counsel for the parties have been heard and with their assistance the records of the case have also been perused.

6. The relevant portion of Appendix 'B' of the 1988 Rules is reproduced below for ready reference:-

Sr. No.	Designation of the post	Method of recruitment	By direct appointment	By promotion	By transfer on deputation	Remarks
1	2	3	4	5	6	7
3	Sub Divisional Officer (Civil/ Design/ Planning)			1) From amongst the Junior Engineer working in the Board who possess Degree in Engineer (C) of a recognised University or Institute and who have an experience of working as such for a minimum period of three years. 2) From amongst the Junior Engineer (C) working in the board who possess Diploma in Engineer (C) of a recognised University or Institute and who have an Experience of working as such for a minimum period of ten years. 3) From amongst the Draughtsman working in the Board who possess Diploma in Engineer (Draftsman) and who have an experience of working as such for a minimum period of ten years; and 4) From amongst the Junior Engineers and Draftsman working in the Board who possess Associates Members of Institute of Engineering of recognised University or Institute and have an experience of working as such for a minimum of five years.		
4	Chief Engineer	(i) By promotion; or (ii) By transfer on deputation;		From amongst the Superintending Engineers working in the State Agricultural Market Board, who have an experience of working as such for a minimum period of three years.	From amongst the regular Superintending Engineers (Civil) in the Departments of the Government of Punjab who have an experience of working as such for a minimum period of ** [three years]	

5	Superintending Engineer	(i) By promotion; or (ii) By transfer on deputation		Degree in Engineering and should have an experience of working as an Executive Engineer in the Board for a minimum period of ‡[Seven years.]	From amongst the regular Superintending Engineers (Civil) ‡ [Working in the Departments of the Government of Punjab or in the State Government Undertaking] who have an experience of working as such for a minimum period of * [one] year.	
11	Executive Engineer (Civil)	‡[(i) By promotion; and (ii) By transfer on deputation]		‡[(i) Twenty-five percent of the posts from amongst the SubDivisional Officers (Civil) and Assistant Engineers (Civil) who possess degree in Civil Engineering of a recognised University of its equivalent qualifications and who have an experience of working on either of] these posts for a minimum period of † [Eight years]; and (ii) Twenty-five percent from amongst the SubDivisional Officers (Civil) and Assistant Engineers (Civil) who possess diploma in Civil Engineering and who have an experience of working on either of these posts for a minimum period of † [Eight years.]	From amongst the regular Executive Engineers (Civil) in the Departments of the Government of Punjab ‡[or on the State Government Undertakings] who have an experience of working as such for a minimum period of two years.	

7. An Analysis of the qualifications prescribed in the 1988 Rules in question leads to the irresistible inference that at the time of laying down of qualifications for the various posts covered under the 1988 Rules, the Rule Making Authority was fully aware with regard to the distinction between AMIE Certificate and a Degree in Engineering as AMIE has been provided as a qualification for promotion to the post of Sub Divisional Officer from amongst the Junior Engineers and Draftsmen. For the post of Executive Engineer also, a Degree in Engineering or its equivalent qualification is recognized but for the next promotional post of Superintending Engineer, the prescribed qualification is only a Degree in Engineering and at this stage reference to AMIE and/ or a qualification

which is equivalent to a Degree has been consciously excluded.

8. From a further perusal of afore quoted Appendix 'B' it is also clear that for promotion to the post of Superintending Engineer, the prescribed qualification is “Degree in Engineering” and that these Rules do not recognize any other equivalent qualification. It is not disputed by the learned counsel for the appellant that AMIE Certificate is not a Degree. Thus, it has rightly been held by the learned Single Judge that from “the Scheme of Rules is clear that at the stage of SDO level an AMIE Certificate holder has been made eligible for appointment by way of promotion. On to the next step in the hierarchical system i.e. Executive Engineer they have been equated to Degree holders as the Rule prescribes Degree in Civil Engineering or its equivalent qualification. At this stage diploma holders have been weeded out. For the next step i.e. for Superintending Engineer, the Rule prescribes only a degree-holder, consciously a person possessing equivalent qualification has been left out”.

9. The learned Single Judge has further rightly held that once there is an express exclusion of an equivalent qualification and the Rule is unambiguous, then the equivalent qualification cannot be read into the Rule by implied inclusion, as the law, in this regard is well settled that till the Court finds a provision to be ambiguous, it cannot read into the same and in this context has rightly placed reliance upon the decision of Hon'ble Supreme Court in *State of Jammu & Kashmir vs. Shri Triloki Nath Khosa and others*, (1974) 1 SCC 19.

10. It appears that regarding the senior post of Superintending Engineer, the Rule Making Authority in its wisdom chose to provide the required educational qualification of only Degree in Engineering (Serial

No.5 of Appendix 'B') with the purpose to permit only formally qualified Degree holders in Engineering to occupy such post. When the requisite Rules regarding promotion clearly prescribe for a specific qualification of holding a Degree in Engineering and do not recognize any equivalent qualification then only the prescribed eligibility condition is required to be strictly adhered to especially when there is no challenge to the vires of the Rules.

11. In the light of the above, the learned Single Judge is found to have considered the matter in the right perspective and that there is no illegality or perversity in the impugned judgment warranting any interference.

12. Dismissed.

All pending applications, if any, also stand disposed of accordingly.

(DEEPAK SIBAL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

02.08.2023

Komal

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