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

**CM-2804-2023 in/and
CWP-24868-2017
Date of decision : 15.02.2023**

Jaswant Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. A.S. Walia, Advocate
for the petitioner.

Mr. Rajesh Mehta, Addl. A.G., Punjab.

Mr. Shreenath A. Khemka, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

CM-2804-CWP-2023

Prayer in the present application is for placing on record
Annexures P-24 and P-25.

In view of the averments made in the applications, same is
allowed. Annexures P-24 & P-25, are taken on record subject to all just
exceptions.

CWP-24868-2017

Petitioner seeks writ in the nature of certiorari impugning
the seniority list/selection list dated 13.09.2012 and the amended list
dated 11.02.2016 (Annexures P-12 and P-15) and the order of promotion
of his alleged juniors to the post of Junior Engineer (Annexures P-16 and
P-17).

Petitioner joined the services of Punjab Irrigation Department as Tubewell Operator on 01.07.1981. Owing to a decision by the State, the Tubewells of the State were transferred to the Punjab State Tubewell Corporation Ltd. and the services of the Tubewell Operators were also taken into service of the Punjab State Tubewell Corporation Ltd. The Rights of the petitioners/employees who were transferred and taken into service of the respondent-corporation are governed by the orders passed by the Apex Court, which reads as under:-

“For the reasons discussed above, we declare that the appellants will be entitled to add their service in the Government to their length of service in the Corporation for purposes of computation of their Salary, length of service and retirement benefits.”

It is relevant to submit that during the pendency of the Civil Appeal in the Hon'ble Supreme Court, the Government of Punjab issued fresh notification transferring the tubewells of the Irrigation Branch to the Punjab State Tubewell Corporation Limited, Chandigarh with effect from 1st September, 1983 vide No.12/12/85-IPPJ(20/17911 Dated 29th August, 86 and the earlier Notification dated 8.12.82 was cancelled”.

Seniority list (Annexure P-12) was issued on 13.09.2012, whereby the petitioner was shown at Sr. No.19. Private respondents, namely, Pardeep Singh S/o Rattan Chand, Naresh Kumar S/o Dasaundhi Ram and Malkit Singh S/o Bhajan Singh, were placed at Sr. Nos.1, 2 and 13 in the said list.

Admittedly the petitioner never raised any grievance against the said seniority list.

Relying upon the aforesaid seniority list, private respondents stand promoted as Junior Engineers vide orders dated 22.10.2012 and that dated 12.11.2014, Thereafter, amended seniority list was published in the year 2016.

Learned counsel for the petitioner while impugning the seniority list Annexures P-12 and P-15, and the promotional orders Annexures P-16 & P-17, submits that the respondents erred in drawing the seniority list of the employees based upon the date on which they passed ITI certificate course. It has been submitted that the experience as per the Rule, is with respect to service in Corporation and the seniority has to be determined as per the Rule in accordance with Rule 10(d). It has been contended that the date of passing of the ITI diploma brings an employee within the consideration zone and the same has nothing to do with the experience of service with the Corporation.

Per contra, learned counsel for respondent No.2 submits that as per the amended Rule the seniority has to be determined from the date, the employee acquires the requisite qualification as prior thereto an employee being ineligible is not within the consideration zone.

I have heard learned counsel for the parties and have gone through the records of the case file.

For the decision of the issue in hand, it is apt to peruse the rule governing the promotion. The same reads as under;-

1. 90% Direct recruitment of 3 year Diploma in Elect Civil/Mech Engg.
2. 5% by promotion from in service employees Engg. With 5 year experience of service in P.S.T.C.
3. 5% by promotion from in service Matric with Punjabi & 2 years ITI Diploma in Electrician/Fitter/Surveyor Trades with 20 years experience in the Corporation at all levels.

However, overall sanctioned strength of the Junior Engineers in P.S.T.C. Will remain unaltered. The inter-se seniority will be governed by Rule 10(d) of PSTC Bye Laws and the names of the eligible persons will be considered from the date of acquiring eligibility i.e. fulfilling requisite qualifications & experience as mentioned above.

Rule 10 of P.S.T.C. Bye laws reads as under:-

“Seniority and Promotion of Members of Service

10. The seniority inter-se of members of the service shall be determined by the length of continuous service on the post in the service.

Provided that where there are two or more different cadres in a service the seniority shall be determined separately for each cadre.

Provided further that in the case of members recruited by direct appointment the order of merit determined by the Standing Committee/Staff Selection Committee or other recruiting authority as the case may be, shall not be disturbed in fixing the seniority.

Provided further that in the case of two members appointed on the same date, their seniority shall be determined as follows:-

a) A person appointed to the post by promotion from the service of corporation, shall be senior to the direct appointee.

(b) A member appointed by promotion shall be senior to a member appointed by transfer.

(c) In the case of members appointed by promotion or transfer seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) In the case of members appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his/her previous appointment and if the rate of pay drawn are also the same then by their length of service in those appointments and if the length of service is also the same

then older member shall be senior to a younger member.

Note:-1. Seniority of members appointed on purely provisional basis, shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment.

Note:-2. All those persons joining P.S.T.C. (Now PWRM&DC) selected at one time, the seniority shall not be by date of joining but in accordance with the select list prepared before issuing their respective appointment letter.

(e) All promotion to posts under the corporation shall be made on the basis of merit-cum-seniority and no person shall have a right to be promoted to any post on basis of seniority alone.

NOTE:- 2 added in sub Rule 10(d) as per decision of B. O. D. taken vide item No. 92.7 held on 05-4-1989”

Learned counsel for the respondent would not dispute that even as per the amended rule, the inter se seniority is governed by Rule 10(d) of the PSTC bye laws. The manner in which the respondent-Corporation is interpreting the rule, cannot be sustained. The moment an employee acquires eligibility i.e. fulfills requisite qualification and experience, he becomes eligible for consideration for the promotion. Thus, the petitioner having acquired the minimum required qualification in the year 2006, definitely became eligible to be considered for promotion as Junior Engineer.

However, keeping in view the fact that the petitioner remained dormant *qua* his rights from 2012 till 2017, his claim to seek parity with the private respondents, namely, Pardeep Singh and Naresh Kumar, who were ordered to be promoted on 22.10.2012 is held to be time barred. However, the petitioner would be entitled for parity with Malkiat Singh, who was promoted vide order dated 12.11.2014.

As a sequel of the discussion held hereinabove, the present writ petition is allowed in part. Petitioner is held entitled for promotion w.e.f 12.11.2014 i.e. when his Junior, Malkiat Singh was promoted and all consequential benefits arising therefrom.

Respondents are directed to grant promotion and consequential benefits to the petitioner, within a period of 12 weeks from the date of receipt of certified copy of this order.

Ordered accordingly.

15.02.2023
ps-I

(PANKAJ JAIN)
JUDGE

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