

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

CWP No.11058 of 2016(O&M)

Reserved On:03.02.2023

Date of decision:23.02.2023

Manoj Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present Mr. Rajiv Atma Ram, Sr. Advocate
 with Mr. Mukul Aggarwal, Advocate
 Mr. Brijesh Khosla, Advocate
 Mr. Surinder Kumar Rohilla, Advocate
 Ms. Sanah Sahni, Advocate
 for the petitioners (in CWP-11058-2016).

Mr. V.K. Jindal, Sr. Advocate,
with Mr. Pankaj Gautam, Advocate
for the petitioners (in CWP-11058-2018).

Mr. Jaspal Singh Pannu, AAG, Haryana.

Mr. D.S. Nalwa, Advocate
for respondent No.2 to 6 (HVPNL).

Mr. Karamveer Singh Banyana, Advocate
for respondent No.30 to 33 (in CWP-11058 of 2016).

Mr. Vikas Chatrath, Advocate
Mr. Ujjwal Sharma, Advocate
Ms. Tanya Sehgal, Advocate
Mr. Abhishek Singla, Advocate
Mr. B.P.S. Thakur, Advocate
Mr. Nitin Kaushal, Advocate
for respondent No.34 and 35 (in CWP-11058 of 2016).

Mr. Ashwani Talwar, Advocate
Mr. Gandharv Malhotra, Advocate
for respondent No.24 to 29 (in CWP-11058-2016).

ANIL KSHETARPAL, J

1. The inter-se seniority dispute between the promotees and the direct recruits in a cadre of Assistant Engineers has come up for final disposal. The petitioners, who are promotees *inter-alia* pray for the issuance of a writ in the nature of certiorari to set aside the office order dated 12.04.2016 by which their seniority vis-a-vis the direct recruits has been finalized.

2. The learned counsels representing the parties have filed the synopsis while calling upon the court to adjudicate on the following questions:-

- “(I) Whether vacancies for promotion of the petitioners to the rank of Assistant Engineers were available in the year 1991, when persons junior to them were promoted?”*
- “(II) Whether the calculation of vacancies in the cadre of Assistant Engineers to be filled by promotion, as on 18.02.1988 and 19.02.1988, has been rightly done as per prevailing Regulation 9(1)(ii) i.e. dated 22.05.1979 (Annexure P-14 Pg 346)?”*
- “(III) Whether posts of Graduate Trainee Apprentices, which were merged in the cadre of Assistant Engineers on 14.10.1998 (Annexure P-21 Pg 360 & Annexure P-22 Pg 364), have to be counted in the cadre strength of Assistant Engineers for working out the promotion quota?”*
- “(IV) Whether in the absence of any valid notification u/s 79 of the Electricity (Supply) Act, 1948, Office Orders dated 19.02.1988 (Annexure P-19 Pg 357) and dated 13.02.1991, 12.04.1991, 21.05.1991, 05.03.1992, 07.12.1992, 12.10.1993 (Annexure P-27 Pg 398), can be taken into consideration while calculating the quota of the promotes?”*
- “(V) Whether the notification dated 19.04.2019 issued u/s 79 of the Electricity (Supply) Act, 1948, by which Regulation 9 has been substituted/ amended, which was subsequently given retrospective effect, is legally sustainable?”*

VI) *Whether posts of three Circles (Delhi, Chandigarh and Karnal) which have been left out by official Respondents are to be counted for the purpose of cadre strength?"*

3. The Haryana State Electricity Board (hereinafter referred to as 'HSEB') was, initially, bifurcated into two companies and subsequently, four independent companies have been incorporated.

4. Before proceeding further, it is necessary to take notice of the relevant provisions of the Electricity (Supply) Act, 1948 (hereinafter referred to as 'the 1948 Act'), the Punjab Re-organization Act, 1966 (hereinafter referred to as 'the 1966 Act') and the Punjab State Electricity Board Service of Engineers (Electrical) Recruitment Regulations, 1965 (hereinafter referred to as 'the 1965 Regulations'), as amended from time to time, which are extracted as under:-

The Electricity (Supply) Act, 1948

79. Power to make regulations.—1.The Board may by notification in the Official Gazette, make regulations] not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely:-

(a) *the administration of the funds and other property of the Board, and the maintenance of its accounts;*

(b) *the summoning and holding of meetings of the Board, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;*

(c) *the duties of 2[officers and other employees] of the Board, and their salaries, allowances and other conditions of service;*

(d) *all matters necessary or expedient for regulating the operations of the Board under section 20;*

(e) *the making of advances to licensees by the Board under section 23 and the manner of repayment of such advances;*

(f) *the making of contributions by the Board under section 24;*

(g) *the procedure to be followed by the Board in inviting, considering and accepting tenders;*

(h) *principles governing the fixing of Grid Tariffs;*

(i) principles governing the making of arrangements with licensees under section 47;

(j) principles governing the supply of electricity by the Board to persons other than licensees under section 49; 3[(jj) expending sum not included in statement submitted under sub-section (1) or sub-section (5) of section 61, under sub-section (2) of section 62;]

(k) any other matter arising out of the Board's functions under this Act for which it is necessary or expedient to make regulations: Provided that regulations under clauses (a) 4[, (d) and (jj)] shall be made only with the previous approval of the State Government and regulations under clauses (h) and (i) shall be made with the concurrence of the Authority.

The Punjab Reorganisation Act, 1966

Section 82. Provisions relating to other Services.

(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Punjab shall, on and from that day, provisionally continue to serve in connection with the affairs of the State of Punjab unless he is required, by general or special order of the Central Government, to serve provisionally in connection with the affairs of any other successor State.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub- section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub- section (2) to a successor State shall, if he is not already serving therein, be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

(4) The Central Government may, by order, establish one or more advisory committees for the purpose of assisting it in regard to--

(a) the division and integration of the services among the successor States; and (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

(5) The foregoing provisions of this section shall not apply in relation to any person to whom the provisions of

section 81 apply.

(6) Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State: Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub- section (1) or sub- section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

The Punjab State Electricity Board Service of Engineers (Electrical Engineer) Recruitment Regulations, 1965

6. Recruitment to the Service shall be made by any of the methods indicated below as the Board may determine in each case-

(a) In case of posts of Assistant Engineers

(i) By direct appointment.

(ii) By promotion as provided in Regulation-9

(iii) By transfer of an officer already in the service of a Government or any other State Electricity Board or an Undertaking of Government.

Provided further that-

Candidates who have obtained at least second or equivalent class in degree, Diploma or a Certificate mentioned in Appendix B but who do not ha the conditions regarding Practical training or experience may be appointed as Graduate technical Apprentices for a period of one year on basic pay of Rs 750 fixed per mensem.

These Graduate Technical Apprentices shall be appointed as Assistant Engineers on satisfactory completion of one year training which may be upto a maximum of three years by the Board. The Board may terminate the services of a Technical Apprentice if his work and/or conduct during the period of apprenticeship is not satisfactory.”

“9. APPOINTMENT AS ASSISTANT ENGINEER BY PROMOTION

(1) (i) Upto 35% (Thirty five percent) of the total number of cadre posts of Assistant Engineers, may be filled up by promotion,

calculating this quota in the manner given in Clause (ii) of this Sub-Regulations, out of various types of Engineering Subordinate under the Board. The share of various categories in this 35% quote would be as follows:

(a) Engineering Subordinate possessing minimum academic qualification of Matriculation or its equivalent and with not less than 10 years total service as Junior Engineers, Line Superintendent Sub Station Operator, Control Room Operator or on such other posts, as may be declared by the Board to be equivalent to these posts and having not less than one year's service as Junior Engineer to the extent of 10% (Ten percent).

(b) Engineering Subordinate holding diploma of all types in Electrical and Mechanical Engineering of recognized institute, with 5 years service in the Board out of which one year must be as Junior Engineer... to the extent of 14% (Fourteen Percent).

(c) Drawing Establishment (whether Diploma holders or non diploma holders) holding the posts of Chief Draftsmen and with one year experience as such to the extent of 4% (Four percent).

(d) Engineering Subordinates who are Bachelor of Engineering or AMIE during the service of the Board.. to the extent of 7% (Seven Percent) of calculated quota posts.

(ii) The number of vacancies in the cadre of Assistant Engineers to be filled by promotion from amongst the Engineering Subordinates will be determined in the following manner-

a) Posts of Assistant Engineers are to be so reserved to be filled in by promotion of Engineering Subordinates that they constitute 35% of the total sanctioned strength of posts of Assistant Engineers in the Board plus 35% of (80% of the sanctioned posts of Assistant Executive Engineers minus the number of Engineering Subordinate who stand promoted as Assistant Executive Engineers)."

5. The inter-se quota of various engineering subordinates for promotion to the posts of Assistant Engineer has underwent changes from time to time, however, the overall quota between the direct recruits (i.e. 65%) and the promotees (35%) remained static. Though, in this writ petition, the various changes made from time to time in the inter-se quota of promotees from various sources to the cadre of Assistant Engineer is not relevant, however, their enforceability has been fundamentally questioned, hence, they required to be noticed in detail.

6. First of all, on 09.08.1974, the quota for various Engineering

Subordinates for promotion to the post of Assistant Engineer was changed in the following manner:-

- | | |
|--|-----|
| i) Direct Recruitment | 65% |
| ii) Promotion from amongst Diploma Holder with Electrical/Mechanical Qualification+ 5 yrs service in board | 20% |
| iii) A.M.I.Es (full) | 5% |
| iv) Drawing staff, Non-diploma holders, others on merit on the basis of the recommendations of the T.M. (Technical Member) | 10% |

7. Thereafter, on 22.01.1979, the following changes were made:-

“9(1) Regulation 9 of the Punjab State Electricity Board Service of Engineers (Electrical) Recruitment Regulations, 1965 shall stand substituted as follows:-

Upto 35% of the total number of cadre posts of Assistant Engineers, may be filled up by promotion, calculating the quota on the total sanctioned strength of Assistant Engineers plus 80% posts of Assistant Executive Engineers, out of Engineering Subordinates under the Board, possessing the following qualification

(a) Engineering Subordinates possessing minimum Academic qualifications of Matriculation or its equivalent and with not less than 10 years service as Junior Engineer, Line Superintendent, Sub-Station Operator, Control-room-operator or on such other posts as may be declared by the Board to be equivalent to these posts to the extent of 10% of the calculated quota posts.

(b) The Engineering Subordinates holding diploma of all types in Electrical and Mechanical Engineering of recognized Institute, with five years service in the Board out of which one year must be as Junior Engineer to the extent of 14% of the calculated quota posts.

(c) Subordinates from Drawing establishment (whether diploma holders or non-diploma holders) holding the posts of Circle Head draftsmen and above and with five years experience as such to the extent of 6% of calculated quota posts.

(d) Engineering subordinates who are Bachelor of Engineering or AMIE to the extent of 5% of calculated quota posts.”

8. Within a period of 4 months from the aforesaid changes, the quota of Engineering Subordinates for promotion to the post of Assistant Engineer underwent further change, which is extracted as under:-

“Regulation 9(1)(i)

Upto 35% (Thirty five percent) of the total number of cadre posts of Assistant Engineers, may be filled up by promotion, calculating this quote in the manner given in Clause () of this Sub-Regulation, out of various types of Engineering Subordinates under the Board. The share of various categories in this 35% quota would be as follows:-

(a) Engineering Subordinates possessing minimum academic qualifications of Matriculation or its equivalent and with not less than 10 years total service as Junior Engineers, Line Supdt., Sub-Station Operation, Control Room Operator or on such other posts, as may be declared by the Board to be equivalent to these posts and having not less than one year's service as Junior Engineer... to the extent of 10% (Ten percent).

(b) Engineering Subordinates holding diploma of all types in Electrical and Mechanical Engineering of recognized institute, with five years service in the Board out of which one year must be as Junior Engineer...to the extent of 14% (Fourteen percent).

(c) Drawing Establishment (Whether Diploma holders or non-diploma holders) holding the posts of Chief Draftsman and with one year experience es such... to the extent of 4% (four percent). (d) Engineering Subordinates who are Bachelor of Engineering or AMIE or above... to the extent of 7% (seven percent)."

9. Again, on 19.02.1988, the quota for Engineering Subordinates for promotion to the post of Assistant Engineers underwent a change. The promotion quota of 35% in the cadre of Assistant Engineers was further divided into two sub-cadres, namely, 'General cadre' and 'Generation'. The procedure for calculation of quota was also amended to the effect that it is to be made only on the basis of sanctioned strength of Assistant Engineers.

The relevant amended provision is extracted as under:-

“(A) Sub-Regulation (g) of Regulation-2 shall be substituted as under-

(g) (i) For General Cadre (Transmission and Distribution).

(i) "Engineering subordinate" means Junior Engineers, Field/Sub-Station/Test/Carrier or Junior Engineers Grade- Field/Sub-Station/Test/Career, who possesses at least 3 years Diploma in Electrical or Mechanical or Electronics Engineering.

(ii) For Generation Cadre consisting of Thermals/Hydel/BBMB etc.

"Engineering subordinate" means Junior Engineers (Thermal) controllers; Master Foreman and Senior Supervisor having at least 3 years Diploma in Electrical/Mechanical or Electronics Engineering.

(B) Clause (i) of Sub-Regulation (c) of Regulation-6, shall be substituted as under:-

(i) By promotion from amongst Assistant Executive Engineers as provided in Regulation-9.

(C) Clause (i) of Sub-Regulation (d) of Regulation-6, shall be substituted as under..

(i) By selection from amongst the Executive Engineers as provided in Regulation-9.

(D) Regulation-9 shall be substituted as under-

(9) (1) Recruitment to the post of Assistant Engineers shall be made:-

(a) By Direct Recruitment. 65%
(b) By promotion for General Cadre in the manner as under:-

<i>(i) From amongst Engineering subordinates as defined for General Cadre under Regulation 2(g) (i) with 5 year4s service as</i>	<i>22.½%</i>	<i>Share quota of 35% of posts of AEs shall be calculated on the sanctioned strength of posts of AEs in General Cadre of the Board excluding the posts of AEs in</i>
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Junior Engineer-I		Generation Cadre viz Thermals/Hydel/BBM B etc.
(ii) From amongst Engineering subordinates of General Cadre possessing AMIE/BE Qualification and having 5 years service as such	12.½%	
(c) By Promotion for Generation Cadre in the manner as under:-		
(i) From amongst Engineering Subordinates of Generation cAdre as defined in Regulation 2(g)(ii) with 5 years servifce as Controller/Master Foreman and Senior Supervisors	22.½%	Share quota of 35% of posts of AEs meant for Engineering Subordinates in the Generation Cadre shall be calculated on the sanctioned strength of posts of AEs in Generation Cadre viz Thermals/Hydel/BBM B etc.
(ii) From amongst Engineering subordinates of Generation Cadre possessing AMIE/BE Qualification and having 5 years service as such	12.½%	

10. Vide yet another amendment, on 12.10.1993, the 1965 regulations were amended to the following effect:-

“D. Regulation shall be substituted as under:-

(9) (i) Recruitment to the post of

Assistant Engineers shall be made

(a) By direct recruitment 65%

(b) By promotion for General Cadre in 35%
the manner as under:-

(i) From amongst Engineering subordinates 22½% as defined for General Cadre under Regulation 2010 with 5 years service as Junior Engineer-I.

(ii) From amongst Engineering subordinates 12½% of General Cadre possessing AMIE/DE qualification and having 5 years service as such

(c) By promotion from Generation Cadre in the manner as under

(i)From amongst Engineering subordinates 22½% of Generation Cadre as defined in Regulation-2(g)(ii) with 5 years service as JE-I/Boiler Controllers

(ii) From amongst Engineering subordinates of Generation Cadre possessing AMIE/BE qualification and having 5 years service as such. 12½%

Provided further that share quota posts of AE's shall be calculated on Vacancies which have arisen other by new creation, retirement, promotion etc.

Provided further, if qualified candidates from (b) (ii) and (c)(ii) above, are not available, their vacancies may be filled up by promotion of excess number from the category (b)(i) and (c)(i) respectively on the availability of qualified persons and vice versa.”

11. As already noticed, on 19.02.1988, two promotion channels i.e. 10% Non Diploma Holders (NDH) and 4% Drawing Staff were abolished for promotion to the post of Assistant Engineers. The promotion channel to the post of Assistant Engineer was also bifurcated into general sub-cadre(field) and generation sub-cadre. The aforesaid position can be depicted in the following table:-

Assistant Engineer (after 19.02.1988)		
Direct @ 65%	General Cadre (Field)	Generation Cadre
	Promotion @35% of the sanctioned strength in General Cadre	Promotion @35% of the sanctioned strength in Generation Cadre

65% sanctioned strength	of	22.5% (Diploma holder eng. Subordinates from filed having 5 years service as such)	12.5% (AMIE/BE holder eng. Subordinates from filed having 5 years service as such)	22.5% (Diploma holder eng. Subordinates from Gen. having 5 years service as such)	12.5% (AMIE/BE holder eng. Subordinates from Gen. having 5 years service as such)
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12. Prior to 19.02.1988, bifurcation of the promotion channel to the cadre of Assistant Engineer in terms of Regulation dated 22.05.1979 was as under:-

Assistant Engineer (up to 18.02.1988)					
Direct 65%		Promotion @ 35%			
65% sanctioned strength of AE/Class-II	of	14% (Diploma holder eng. Subordinates having 5 years service as such)	10% (Non-Diploma holder eng. Subordinates having 10 years service as such)	7% (AMIE/BE degree holder eng. Subordinates)	4% (drawing staff/Draftsman etc.

13. At this stage, it would be appropriate to notice a brief background of the case. As per the provisions of the Electricity Supply Act, 1948, every State may constitute an Electricity Board. Pursuant thereto, the Punjab State Electricity Board (for short referred to as 'PSEB') was constituted for the entire area of Joint Punjab which included the area of the States of Punjab, Haryana, Himachal Pradesh and the NCT of Delhi. On 18.09.1966, the Punjab Re-organization Act, 1966 received the assent of the President of India. As per Section 2(b), the first day of November, 1966 was declared as 'the appointed day'. As per Section 67 of the Punjab Re-organization Act, 1966, on re-organization of the States, the PSEB was bifurcated and the State of Haryana constituted its own Board, namely, HSEB. At the relevant time, 1965 regulations were applicable to the services of the employees of the PSEB constituted for joint Punjab. After

bifurcation, these regulations continue to apply to the employees of the HSEB, though, from time to time, the various amendments have been made.

14. Both the parties have filed voluminous record in order to prove their assertions. The petitioners are the promotees, whereas, the private respondents are the direct recruits. Their respective quota in the cadre of Assistant Engineer i.e. 65:35 has not undergone any change and has always remained static.

15. Previously, an inter-se dispute between the promotees Assistant Engineers posted in the generation wing and the field wing was brought before this Court in Civil Writ Petition No.6557 of 1993 (**Rajinder Singh Redu and another vs. Haryana State Electricity Board and others**), wherein, the learned Single Judge quashed the promotion of Junior Engineers to the post of Assistant Engineers while directing the Board to consider the claim of the writ petitioners, who were posted in the generation wing for promotion on those posts which, in appeal, was upheld by the Division Bench in **Haryana State Electricity Board vs. Rajinder Singh Redu and others** (LPA No.657 of 1997, decided on 17.12.2004). As already noticed in **Redu's case (supra)**, the Court has decided the dispute inter-se between the promotees Assistant Engineers of two different wings. It is also evident that certain promotions were made on adhoc basis, over and above the quota of the promotees. On reading of Clause-III of the promotion order reproduced in the judgment, it is clearly provided that these promotions were on adhoc basis which shall not confer upon the promotees any right of seniority and regular promotions in the capacity of Assistant Engineers and they shall not be entitled to claim any right of seniority over those who may

otherwise be senior to them.

16. After the aforesaid judgment was passed, efforts were made to settle the inter-se seniority dispute in various other sources of engineering subordinates. In **O.P.Anand and others vs. Haryana State Electricity Board (Civil Writ Peition No.10534 of 1995, decided on 10.12.2008)** , the inter-se dispute between the Diploma Holders and AMIE was decided. The Court refused to interfere in the seniority list after a period of 13 years. In **Parveen Arora and others vs. Haryana Board Generation Corporation Limtied and others (CWP No.16330 of 2005)** the Division Bench was called upon to decide the claim of the direct recruits viz.a.viz. the promotees in cadre of Assistant Engineers. On 23.10.2006, while admitting the writ petition for regular hearing, the following order was passed:-

“Heard. Admitted to D.B.

As large number of persons are likely to be effected, the Registry is directed to list this petition for final hearing with in six months.

We have heard the learned council for the parties at some length and prima facie find that the private respondents have been promoted against posts meant for direct recruits. There are some dispute between the private respondents and other promotees which culminated into the filing of CWP No. 6557 of 1993 decided on 29.7.1997. Even the LPA. No. 657 of 1997 against the view taken by learned Single Judge was dismissed. However, the petitioners who were direct recruits have claimed that the posts against which the respondents have rendered service were admittedly meant for direct recruits. The afore-mentioned fact has not been disputed by the learned council for the private respondents. It is well settled that the service rendered by the promotees against the direct quota post would not qualify for seniority as they would be deemed to be hanging outside service. Such promotees could reckon their service for the purpose of seniority from the date the post in their own quota becomes available and they are adjusted against the same. As the seniority list

(Annexure P. 1) dated 15.9.2005 grant the benefit of service rendered by the respondents even against the posts meant for direct recruit, we are of the view that the implementation of the afore-mentioned seniority list deserved to be stayed.

Accordingly, we issue interim directions directing the respondents to stay the implementation of the seniority list dated 15.9.2005 qua the respondents.

The records of LPA No.657 of 1997 and CWP No.6557 of 1993 (Annexure P.7 and P.8) shall be tagged with the instant petition.”

17. On 09.01.2014, the writ petition was disposed of on the basis of the proposal dated 17.05.2012 placed on record by the management of the Board/various Companies undertaking to re-visit the entire dispute in order to find out some workable as well as legally sustainable solution which is extracted as under:-

“Matter discussed today i.e. On 15.5.2012 in the chamber of Chairman of Haryana Power Utility wherein all M.Ds were also present. As per the discussion held only workable solution which is also legally sustainable is that the quota post of promotees be calculated as per availability of quota in terms of policy in vogue and they may be re-assigned seniority from the date their quota post is available. The above will settle grouse of direct recruits who were otherwise appointed in the year 1993 i.e. much after date of promotions/deemed dates given in 1991 to Rajinder Singh Redu and others. Even otherwise as per the settled law a direct recruit will get seniority from the date he is borne on the cadre while a promotee will get seniority from the date quota post is available.

Re-fixation of seniority may entail reversion of promotions carried out in excess of quota or non-availability of quota and consequently re-fixation of pay. The Standing counsel may be apprised of the above stand of utilities by way of short affidavit in order to comply with the directions contained in order dated 9.5.2012.”

18. The writ petition was accordingly disposed of by directing the authorities to complete the proposed exercise within a period of 5 months from the relevant date. In continuation thereof, as already noticed, a detailed

order has been passed on 12.04.2016, which is the main subject matter of challenge in the writ petition.

19. Let's first proceed to discuss question no. IV and V as provided in para 2 of the judgment.

20. On a careful reading of Section 79 of the 1948 Act, it is evident that the word used by the Legislature is 'may' and not 'shall'. Hence, it would not be appropriate to interpret it as 'shall'. The intention of the legislature is also clear from reading of proviso to Section 79 of the 1948 Act. On the one hand, the regulations made under Clauses-(a), (d) and (jj) of Section 79 shall be made only with the prior approval of the State Government and regulations under Clauses- (h) and (i) shall be made with the concurrence of the concerned Authority. On the other hand, the regulations made under Clause-(c) of Section 79 of the 1948 Act are not required to be notified either with the prior approval of the State Government or the concurrence of the concerned Authority.

21. This aspect can be examined from yet another perspective. The purpose of publication of the amended regulations made under Clause (c) is to provide for an authenticated copy of such amended regulations and give them wide publicity. It is not the case of the petitioners that the amendments in the regulations were not given wide publicity. In such circumstances, it would not be appropriate to hold that the failure to publish the amended regulations in the official gazette, at the time of its issuance, would result in rendering them as unenforceable or non-applicable. It is important to note here that the petitioners themselves are the beneficiaries of the amended regulations. Moreover, the Government has already rectified the mistake,

if any, by publishing the said regulations with retrospective effect. Such decision does not take away the vested right of the employees. By amending the regulations, only the ratio of the various channels of promotion, inter-se the various groups of promotees, has been changed. It is the stand of the Board that the petitioners themselves are the beneficiaries of the aforesaid amendments. It has further been asserted that the petitioners, after having taken the benefit of the aforesaid amendments in the regulations, cannot, now, be permitted to take a U-turn and challenge the applicability of the amended regulations. Moreover, in the exercise of the executive powers conferred upon the State under Article 162 of the Constitution of India, it is empowered to make the regulations enforceable from a date which is preceding the date of the notification. The executive powers of the State Government under Article 162 of the Constitution of India extend to the matters with respect to which the legislature of that State has the power to make laws subject to the provisions of the Constitution.

22. The next facet of the argument of the learned senior counsel representing the petitioners is in the context of repeal of the Electricity Act, 1948 in the year 2003. The learned senior counsel contends that once the 1948 Act has been repealed, the State has no jurisdiction to make regulations under the repealed Act.

23. It may be noted here that the 1948 Act was substituted by the Electricity Act, 2003. As per Section 185 (2) (e) of the 2003 Act, it is provided that all the directives issued before the commencement of this Act by the State Government shall continue to operate on the matters for which such directions were issued by the State Government. It may be noted here

that the power to ratify a decision in order to correct an inadvertent error, if any, which does not result in taking away the vested rights of any party, can always be exercised by the Government, in public interest.

24. This matter can be examined from yet another perspective. In these writ petitions, the question in this writ petition is not with respect to the correctness or enforceability of the changes brought in by amending the regulations. The quota of promotees and direct recruits for appointment to the cadre of Assistant Engineers remained the same. The changes brought in by the various amendments are with respect to the inter-se quota of those who belong to various cadres of engineering subordinate, drawing establishment etc. In such circumstances, the effect of notification publishing the amendment in the regulations is not the real issue which requires detailed deliberation. In this batch of cases, the main question to be decided is “Whether the promotees were promoted in excess of their quota of 35%?”

25. It is to be noted here that the Punjab State Electricity Board notified its PSEB business regulations in the year 1960 in the exercise of powers under Clause-(k) of Section 79 of the Electricity (Supply) Act, 1948. The aforesaid business regulations were adopted by the Haryana State Electricity Board vide order dated 10.05.1967 and thus, were made applicable to the HSEB. It is evident from Clause-5 of the first schedule of the aforesaid business regulations that the HSEB was empowered to amend such regulations.

26. Now, the Court proceeds to discuss question no-(V).

27. The allegation of the petitioners is that while calculating the

cadre strength of Assistant Engineers in three circles Delhi, Chandigarh and Karnal have been left out. It may be noted here that the official-respondents have filed a short submission by way of an affidavit of Chief Engineer/Administration, HPGCL while explaining that the posts of Assistant Engineers in all the three circles viz. Delhi, Chandigarh and Karnal have been included while counting the sanctioned strength of Assistant Engineers. A reference has been made to the Annual Financial Statement of the year 1970-1971, a copy whereof is annexed as Annexure R-11. A perusal thereof shows that there is no substance in this argument of the learned counsel representing the petitioners.

28. Now, the Court proceeds to examine Question No.(I), (II) and (III) provided in para 2 of the judgment.

29. It may be noted here that the petitioners claim that out of 370 Assistant Engineers working in the erstwhile Punjab State Electricity Board, 151 Assistant Engineers were allocated to HSEB in terms of the Punjab Re-organization Act, 1966. Hence, they claim that 151 Assistant Engineers should be treated as the sanctioned strength on the date HSEB came into existence after separation from PSEB. They rely upon Annexure P-3 which only provides for the organizational set up plan for the headquarter of PSEB. The aforesaid document does not help the Court to assess the cadre strength. They also rely upon Annexure P-4 and P-5. The document Annexure P-4 is again an organizational set up plan of the headquarters of HSEB, whereas Annexure P-5 is an annual administration report for the year 1966-67. The aforesaid annual administration report does not prove that the sanctioned strength for the cadre of Assistant Engineers in HSEB, on

01.04.1967 was 151. The next document relied upon by the petitioners is Annexure P-7 which is, again, a seniority/gradation list issued by the HSEB. The aforesaid documents are not the documents to prove the sanctioned strength of the cadre of Assistant Engineers. Further, the petitioners also rely upon Annexure P-8, the seniority list issued by the HSEB as on 31.12.1970. The petitioners, further rely upon Annexure P-51 i.e. the report dated 28.10.1915 of the Committee to support their argument. On a careful reading of the said report, it is evident that the Committee erred in assuming that on the unbundling of PSEB, the sanctioned cadre strength of Assistant Engineers (Electrical) for HSEB was 151. Thus, the argument suffers from basic fallacy. Before the sanction or modification of the strength of the cadre, the Board is required to take a conscious and explicit decision. The attention of the Court has not been drawn to any such conscious decision to the effect that 151 Assistant Engineers, which were allegedly allocated to HSEB, constituted the sanctioned strength of HSEB on the date of bifurcation of the erstwhile PSEB. The report dated 26.10.2015 places reliance on the seniority list of Assistant Engineers as on 31.12.1970, whereas 372 Assistant Engineers were not, in fact, working as on the said date i.e. 31.12.1970. Moreover, it is evident that the officers stated to be working as Assistant Engineers were actually working as Assistant Executive Engineer (AE Class-I). Thus, the seniority list based upon the report dated 28.12.2015 is prepared on incorrect facts. Moreover, the Committee, at the time of giving its recommendation, had specifically requested to take the administrative decision based on the legal advise on the report while considering the final sanctioned strength. Thus, the report is

not the final word for assessing the sanctioned strength but merely an advisory document.

30. The petitioners further rely upon the seniority list dated 17.02.1995 while contending that as per the aforesaid seniority list, 643 Assistant Engineers (Electrical) were working as on 31.07.1984. It may be noted that the HSEB on 06.03.1984, revised the tentative seniority list of Assistant Executive Engineers as it stood on 31.07.1984 which is a promotional post from the cadre of Assistant Engineers. Moreover, the attempt made to present the seniority list of Assistant Executive Engineers to portray the cadre strength of the Assistant Engineers in the year 1988-89 is wrong and misleading. The cadre strength to any given post can only be determined by examining the various orders passed with respect to the sanction or modification of the cadre strength and not on the basis of a seniority list.

31. It may be noted here that the Committee has calculated the sanctioned strength on the basis of the orders passed by the competent authority, from time to time, for the purpose of sanctioning, modifying or amending the strength of the cadre as and when required.

32. As regards the arguments of the learned senior counsel with respect to question no.(III), it is evident that the post of Graduate Trainee Apprentice (GTA) and/or Assistant Engineers-Trainees are distinct from the post of Assistant Engineers/Electrical Class-II posts. Their posts are not a part of the additional sanctioned cadre strength of the Assistant Engineers. At one point of time, the post of GTA/AE-Trainee was a mode of direct recruitment from which they were further appointed or regularised on the

post of Assistant Engineers Class-II. The posts of GTA which were converted to the posts of Assistant Engineers-Trainee have been considered as one of the modes of recruitment to the post of Assistant Engineers. Moreover, the post of GTA cannot be considered as substantive post because they were only trainee apprentices. Furthermore, the share quota for promotion to the post of Assistant Engineer Electrical Class-II cannot be given from a distinct cadre post of GTA and/or Assistant Engineer-Trainee. Hence, there is no substance in the argument of the learned counsel with respect to question No.(III).

33. Thus, it is evident that when the petitioners were promoted to the rank of Assistant Engineers in the year 1991, the vacancies in their quota were not available.

34. Consequently, finding no merit, the writ petition is dismissed.

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

23rd February, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO