



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CWP-13347-2000 (O&M)
Date of Decision : 21.08.2024

Devinder Kumar Jain

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr.R.K. Singla, Advocate
for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present petition, the grievance being raised by the petitioner is with regard to the promotion of respondent No.3 to the post of Junior Engineer (Civil) on the ground that respondent No.3 is junior to the petitioner and could not have been promoted as Junior Engineer in preference to the petitioner.

2. Learned counsel for the petitioner submits that as the post of Junior Engineers (Civil) were lying vacant with the respondents and the respondents were under obligation to fill all the posts especially, when the recommendations were made by the Superintending Engineer to the Chief Engineer then, only effecting promotion from one quota and depriving the



other quota is arbitrary in nature.

2. Upon notice of motion, the respondents have filed the reply, wherein the respondents have stated that the respondent No.3 has not been promoted in the quota in which the petitioner is seeking promotion to the post of Junior Engineer hence, the claim that respondent No.3 is junior to the petitioner is of no avail. Further, it has been mentioned in the affidavit filed that with regard to the claim of the petitioner that two employees namely, Jugal Kishore and Ashok Kumar, who have been promoted, were junior to him, is incorrect as, in the seniority list, copy of which has been appended as Annexure R-1 with the affidavit of Er. T.C. Bali, Chief Engineer (South), Punjab, Ashok Kumar is placed at Sr. No.2 in the seniority list and Jugal Kishore is placed at Sr. No.3 in the said seniority list and petitioner is at sr. No.4 in the seniority list hence, no employee junior to the petitioner has been promoted to the post of Junior Engineer so as to cause prejudice to the petitioner.

3. I have heard learned counsel for the parties and have gone through the record with their able assistance.

4. It is settled principle of law that nobody can claim promotion as a matter of right. Only the consideration for promotion is a right. Even if the posts are lying vacant, no employee can file a writ petition claiming promotion on the ground of eligibility and vacancy in the promotion cadre. The filling of the posts by way of promotion is within the jurisdiction of the employer and the Court has no role to play so as to direct the employer to fill a particular post. Hence, grievance of the petitioner that he was eligible



for promotion to the post of Junior Engineer (Civil) and the posts were lying vacant and even the recommendations were made by the Superintending Engineer to the competent authority i.e. the Chief Engineer, will be of no avail as nothing has come on record that any employee junior to the petitioner has been promoted in preference to the petitioner in the category in which the petitioner is claiming promotion.

5. With regard to the promotion of respondent No.3, it may be noticed that, in the rules governing the service i.e. PWD (B&R) Junior Engineers (Class-III) Service Rules 1993, the method of appointment and promotion, qualification etc. have been mentioned. The same is as under :-

“8. Method of appointment and qualifications:-

(1) All appointments to service shall be made in the following manner, namely :-

(A) in the case of Junior Engineers in the Civil Wing :-

(a) Seventy-five percent by direct appointment from amongst the candidates who possess a Diploma in Civil Engineering of a recognized Institution :-

(b) Twenty five percent by promotion as under:-

(i) fifteen percent from amongst the following categories of employees working under the control of the Chief Engineer and who possess qualifications specified in Sub-Clause (a) above in the following ratio, namely :-

(a) five percent out of Road Inspectors;

b) six percent out of Work Inspectors, Work Munshies/Mistries and Surveyors; and

(c) four percent out of Draftsmen and Tracers;

ii) Ten percent from amongst the following Categories of employees working under the control of the Chief Engineer, who have completed



ten years of service as such and who have passed the qualifying examination specified in rule 9 in the following ratio, namely :-

- (a) six percent out of Road Inspectors; and*
- (b) four percent out of Work Inspector, Work Munshies/Mistries and Surveyors”*

6. A bare perusal of the above would show that under Rule 8(1)(A)(a) out of 100% quota, 75% is to be filled up by way of direct recruitment of the candidates, who possess a Diploma in Civil Engineering from a recognized institution. The remaining 25% quota which is to be filled up by promotion is also bifurcated under Rule 8(1)(A)(b). 15% of the 25% to be filled up by promotion to be filled out of the Road Inspectors, Work Inspectors, Work Munshies/ Mistries and Surveyors and Draftsmen as well as Tracers, who possess the qualification required for direct appointment and the remaining 10% of 25% is to be filled up under Rule 8(1)(b)(ii) on the basis of seniority on completion of 10 years of service and after passing the qualifying examination. The petitioner belongs to Rule 8(1)(A)(b)(ii), whereas the respondent No.3 has been promoted under Rule 8(1)(A)(b)(i), once, the petitioner is not eligible to be considered under Rule 8(1)(A)(b)(i), the petitioner cannot raise any grievance with regard to the promotion of private respondents.

7. With regard to the claim that under Rule 8(1)(A)(b)(ii), two employees namely, Ashok Kumar and Jugal Kishore have been promoted in preference to the petitioner, the respondents are on record by way of an affidavit that as per the seniority list in the cadre showing eligibility for promotion to the post of Junior Engineer as on December 2001, the



petitioner is at seniority position no. 4 whereas Ashok Kumar is at Sr. No.2 and Jugal Kishore is at Sr. No.3, hence, the petitioner cannot claim preference of promotion in respect of his senior. No record has been shown by the petitioner that any of the junior employee, who is seeking promotion under 8(1)(A)(b)(ii), has been promoted in preference to the petitioner.

8. The last argument which has been raised by the learned counsel for the petitioner is that filling up of posts from one quota and depriving the other quota is arbitrary in nature.

9. Keeping in view the exigencies of service, it is for the employer to choose as to from which source the promotion is to be made. The Court cannot direct that the promotion should be made from a particular cadre / quota even if the posts are lying vacant. Hence, no ground is made out for any interference by this Court.

10. Dismissed.

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

21.08.2024

Satyawan

(HARSIMRAN SINGH SETHI)
JUDGE

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