



CWP-9674-2000

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-9674-2000

Date of Decision: 08.07.2024

SUDARSHAN SAINI

...Petitioner(s)

Versus

THE BOARD OF SCHOOL EDUCATION, HARYANA, BHIWANI
AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Sandeep K. Sharma, Advocate
for the petitioner.

Mr. R. K. Malik, Senior Advocate with
Mr. Anshul Labana, Advocate
for respondent No.1.

Mr. Anil Ghanghas, Advocate
for respondent No.2.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the promotion granted to the second respondent as Sub Divisional Engineer (SDE) vide office order dated 27.12.2000, Annexure P-4, and also decisions taken by the respondent-Board dated 17.05.2000, Annexure P-2 and Annexure P-3, respectively, to fill up the post from mechanical trade.

2. The facts of the case in brief are, the petitioner was appointed Junior Engineer/JE (Civil) in the respondent-Board of School Education on 11.05.1988; the second respondent had been appointed Junior Engineer/JE (Mechanical) on 25.03.1988 and was, accordingly, senior to the petitioner.

The second respondent submitted a representation dated 27.10.1999,



Annexure P-1, to Secretary of Board seeking promotion to the post of SDE (Mechanical). He pleaded that technical staff deputed in the Board had been suffering due to lack of promotional avenues, whereas overwhelming majority of employees gained promotion within three to four years of service. To avoid stagnation, he prayed that the post of JE (Mechanical) may be upgraded to the scale of SDE (Mechanical). Later, the second respondent was promoted as SDE vide the impugned order, leading to filing of the instant petition.

3. It has been contended by learned counsel for the petitioner that the Board accepted the representation given by the second respondent only because he was to be favoured, and a post of SDE (Civil) was created for him. Actually, the post was that of SDE, as apparent from the 'Schedule of Establishment in Annual Budget for the year 1997-98', which was to be filled up by way of promotion from the post of JE (Mechanical) on fulfilling the requisite educational qualifications and experience as per seniority. This channel of promotion was deviated, and the second respondent was promoted as SDE vide impugned order dated 27.12.2000, despite not being entitled to the same on account of being from the mechanical trade.

4. Learned senior counsel for the Board as well as learned counsel for the second respondent have submitted that the petitioner was entitled to be promoted in accordance with rules, considering his seniority and service record. A reference has been made to the written statement filed on behalf of the Board that nomenclature of the post was SDE, as apparent from the 'Sanctioned Schedule of Establishment' for the years 1996-97, 1997-98, 1998-99, 1999-00 and 2000-01, Annexures R-1 to R-5, respectively. Besides, as per Appendix-A to the Board of School Education, Haryana, Bhiwani (Employees' Service) Regulations, 1990 (for short, 'the Regulations'),

nomenclature of the post is SDE and mode of appointment, by deputation or direct recruitment. These Regulations were amended vide order dated 28.11.2000, Annexure R-7, prescribing that the post can be filled by promotion also, apart from the earlier prescribed modes of deputation and direct recruitment. Appendix-A is as under:

45.	Sub Divisional Engineer	By promotion/deputation First, the post be filled by promotion who fulfills the qualifications second, if no candidate fulfills the qualification then the post be filled up by taking an officer on deputation.	---	As per Haryana Government
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5. Therefore, it is contended by learned counsel for the respondents that promotion granted to the second respondent is as per the Regulations, and cannot be faulted with. It has further been stated in the written statement that promotion to the post of SDE is to be made on basis of seniority-cum-merit. Undisputedly, the second respondent was senior to the petitioner; besides, the petitioner did not fulfill the criteria for promotion also as his Annual Confidential Reports (ACRs) were not upto the mark. As per the criteria, an employee was required to possess seventy per cent good service record. Averments to that effect in the written statement are, *‘The promotion has to be made on seniority-cum-merit basis and undisputedly in the seniority list of Junior Engineers, petitioner is at no.2 in the seniority list. Moreover the ACR of the petitioner at the time of promotion was not upto the mark i.e. 60%, which is below the criteria for consideration of promotion i.e. 70% while respondent No.2 stands on No.1 in the said seniority list and the ACR of respondent No.2 was 100% at the time of promotion.’* Since these factual



averments have not been disputed by the petitioner by filing counter-affidavit or placing any document on record, the promotion in question cannot be challenged. Finally, it has been contended that both, the petitioner as well as the second respondent, have already retired from service; the petitioner on 30.08.2018 and the second respondent on 31.01.2020.

6. Heard.

7. As per undisputed facts on record, the second respondent was senior to the petitioner and had better service record as well; the former, accordingly, fulfilled criteria for promotion as SDE and was entitled to be considered for the purpose. As per the Regulations, nomenclature of the post in question is SDE and not SDO/SDE (Civil), as has been averred by the petitioner. Merely because the post has once been recorded as SDO (Civil) in the Revised Budget Estimates 1993-94 and Budget Estimates 1994-95, no benefit can be drawn from the same as it will not amount to change of nomenclature, nor will it change the mode of appointment or the channel of promotion. As per the Regulations, the mode of appointment to the post initially was deputation and direct recruitment, which was later amended to include promotion as well. Meaning thereby, it has always been open to fill the post either from the civil or the mechanical trades. Accordingly, there is no substance in the contention of learned counsel for the petitioner that the decision to fill the post from the mechanical cadre was taken only to favour the second respondent, who was working as JE (Mechanical). In fact, the petitioner, who was working as JE (Civil), was also eligible for promotion as per the Regulations, he was duly considered for the purpose also but could not make the grade.

8. In view of the discussions, there is no merit in the petition and it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

08.07.2024
Ad

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>