

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

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**CWP No.9525 of 2021
Date of Decision : 28.2.2024**

*Surender Singh**..... Petitioner**versus**Indira Gandhi University, Meerpur and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Brijesh Kumar, Advocate, for the petitioner

Ms. Samridhi, Advocate, for
Mr. Anil Mehta, Advocate, for the respondents

TRIBHUVAN DAHIYA J. (ORAL):

The petition has been filed, *inter alia*, seeking a writ of *certiorari* setting aside the committee's report dated 3.12.2020, Annexures P-28, and order dated 22.2.2021, Annexures P-29, whereby the petitioner has been reverted from the post of Sub-Divisional Engineer (Civil) (for short 'SDE') to Junior Engineer (Civil) (for short 'JE'). A writ of *mandamus* has also been sought directing the respondents to release the petitioner's salary for the service rendered by him on the post of SDE.

2. Succinctly, facts of the case are, the petitioner was appointed as JE, vide letter dated 11.6.2012, in the Indira Gandhi Post Graduate Regional Centre, Meerpur, Rewari. The Centre was later converted into the respondent University (for short 'the University') by an Act of State Legislature, namely, Indira Gandhi University, Meerpur Act, 2013 (Haryana Act No.29 of 2013). Accordingly, the petitioner became a University employee.

2.1. After gaining sufficient experience as JE and acquiring higher qualification of Bachelor of Technology (B.Tech.) (Civil), he represented to the University seeking promotion to the post of SDE on that basis. It was brought to the notice of the Vice Chancellor vide office note dated 6.3.2019, Annexure P-31, that as per Maharshi Dayanand University Service and Conduct Rules for Non-Teaching Employees (for short 'the University Rules'), being followed by the respondent University, JE can be promoted as SDE after ten years of service. And the petitioner lacked the requisite experience since he was appointed as JE on 11.6.2012. The Vice Chancellor, accordingly, constituted a committee of senior officers to look into the matter. The committee examined the petitioner's case for promotion and opined that he fulfilled academic qualification and experience, and was suitable as well as eligible for promotion to the post of SDE. It recommended his promotion to the vacant post as per the promotion policy which required seventy-five per cent of the posts to be filled-up by promotion.

2.2. Accepting the recommendations, the petitioner was promoted to the post of SDE by the Vice Chancellor in anticipation of approval by the Executive Council, vide order dated 7.3.2019, Annexure P-2. He joined on the promoted post the same day. Later, the Executive Council in his twentieth meeting, held on 30.3.2019, resolved to approve the promotion. Relevant part of the resolution reads as under:

vi Considered the action taken by the Vice-Chancellor in promoting Sh. Surender Singh, Junior Engineer on the post of SDE (Civil).

Resolved that the above action taken by the Vice Chancellor be approved.

As per conditions of promotion, he was to remain on probation for one year. During that period, in the event of any adverse report regarding work and conduct, he could be reverted to the substantive post of JE.

2.3. The petitioner completed one year probation satisfactorily on 6.3.2020; nothing adverse was conveyed to him, nor was the period extended. However, despite working on the promoted post he was not being paid salary in the pay scale meant for the post of SDE, and kept on drawing salary in the lower pay scale of JE. This is apparent from his salary details placed on record as Annexure P-7.

2.4. He represented against the injustice being done to him by paying lesser salary, vide representations dated 26.6.2019 and 3.9.2019. Instead of paying him salary on the post he was working against, the third respondent/Deputy Registrar (Establishment) vide office order dated 22.9.2020, Annexure P-10, extended the period of probation for one year, i.e., from 7.3.2020 to 6.3.2021.

2.5. Meanwhile, certain complaints were received against the petitioner levelling allegations that he had manipulated documents to oblige a supplier as the same were submitted without prior approval of the competent authority; was responsible for getting the file of cases relating to a private company mis-placed; did not furnish the requisite information despite the legal notice served upon the University regarding supply of material, etc. Therefore, a committee was constituted by the Vice Chancellor to look into the charges on 7.3.2019. The committee, vide its impugned report dated 3.12.2020, opined/recommended his reversion to the lower post of JE under Explanation (iv) to Rule 5 of the Rules.

Relevant part of the report reads as under:

Rule 5 Explanation IV, provides that if an employee during probation is considered as unsuitable for such higher service, grade or post or on administrative ground unconnected with the conduct, can be reverted to the lower post.

In view of the observations cited above, the Committee is of the opinion that Sh. Surender Singh, SDE may be reverted to the lower post of JE (Civil).

2.6. The matter was, accordingly, taken to the Executive Council in its twenty-seventh meeting, held on 8.2.2021. The EC resolved to approve recommendations of the committee to revert the petitioner to the post of JE; at the same time, the Vice Chancellor was authorised to constitute a committee to review the petitioner's fitness for promotion as SDE. Relevant part of the resolution reads as under:

Resolved that the recommendations of the Committee be approved and Sh. Surender Singh, SDE be reverted back to the post of J.E. (Civil). However, Vice-Chancellor is authorized to constitute a Committee to review the fitness of promotion at appropriate time.

In terms thereof, the petitioner was reverted to the post of JE (Civil) with immediate effect, vide impugned office order dated 22.2.2021, passed by the Registrar.

2.7. He challenged the reversion by filing the instant petition. During its pendency, the University vide letter dated 2.6.2023, Annexure P-33, conveyed to the petitioner that charge-sheet issued to him, vide memo dated 31.3.2022, has been dropped. He was simply warned to be more vigilant in future and follow the law.

3. Learned counsel for the petitioner contends that the University's action in reverting the petitioner is not sustainable since he was duly promoted to the post of SDE keeping in view the higher qualification and

experience of eight years and nine months. He did not conceal any fact, and was promoted by relaxing the requirement of ten years experience. He remained on probation for one year up to 6.3.2020, and nothing adverse was conveyed to him. It has further been contended that there was no occasion for the University to re-examine the issue of petitioner's eligibility after he had been duly appointed, and completed the period of probation as well. All the charges that were looked into by the committee before recommending reversion vide the impugned report, have also been dropped by the University on 2.6.2023. Besides, Explanation (iv) to Rule 5 of the University Rules has no application to the facts of the petitioner's case. Therefore, there was no basis to revert him, and the order needs to be set aside. Still further, it has been contended that the respondents were clearly at fault in not paying salary to the petitioner on the post of SDE, on which he kept on working for over two years, i.e., from 7.3.2019 till reversion on 22.2.2021.

4. Learned counsel for the University, on the contrary, contends that the petitioner was not eligible for promotion as per the University Rules for want of requisite ten years experience as Junior Engineer, and was wrongly promoted. The University was within its rights to withdraw the promotion on that account and revert him to the substantive post. Besides, there were serious charges against him and the committee rightly recommended his reversion in the light of those charges which was rightly accepted by the Executive Council. She, however, does not dispute that the petitioner's probation period on the post of SDE expired on 6.3.2020, as also the fact that all the charges against him stand dropped by the University. But contends that at the time of reversion, the charges were

there and any subsequent dropping of the same will not have any effect on the impugned order of reversion that was earlier passed.

5. The submissions made by learned counsel for the parties have been considered.

6. There is no dispute on facts of the case, that the petitioner was appointed as JE after due selection, vide appointment letter dated 11.6.2012. Before promoting him to the post of SDE against seventy-five per cent promotional quota of posts, the committee took into account his higher qualification of B.Tech. (Civil) as well as experience of eight years nine months, which was short of the requisite ten years experience. Accepting the committee's recommendations, he was promoted as SDE on 7.3.2019 which was duly approved by the Executive Council on 30.3.2019. He continued working on the post, and completed one year probation on 6.3.2020, before being reverted. It is also not disputed that he was not paid salary on the promoted post on the plea that his pay as SDE could not be fixed. The impugned reversion and denial of salary is bad in law for following reasons.

7. Firstly, the petitioner could not have been considered a probationer by extending the period of probation. He was given promotion by the Vice Chancellor with the approval of Executive Council on 7.3.2019, while placing him on probation for one year. SDE being a Class-B post, Vice Chancellor is the appointing authority in terms of Statute 23 (3) (i) of the University Statutes, which reads as under;

Appointments

23. (1) & (2) xxx xxx xxx

(3) (i) Appointments to post of Class-B shall be made by the Vice-Chancellor after complying with the due procedure laid down

in the rules or order.

(ii) Appointments on daily wages in respect of Class-C and D employees shall be made by the Registrar after complying with the due procedure laid down in the rules or orders.

Accordingly, the period of probation could only have been extended by the Vice Chancellor, that too prior to its completion. In the petitioner’s case it was extended by the Registrar on 22.9.2020, i.e., after the probation was over on 6.3.2020. Besides, the Registrar not being the appointing authority, had no jurisdiction to extend the period of probation even prior to its completion. The order is, therefore, illegal and without jurisdiction.

8. Secondly, the impugned report of committee, dated 3.12.2020, accepted by the Executive Council on 8.2.2021, is not sustainable being in violation of law and based upon no evidence/material. It recommended the petitioner’s reversion to the post of JE under Explanation (iv) to Rule 5 of the University Rules after considering the charges pending against him. Explanation reads as under:

PENALTIES

5. The following penalties may, for good and sufficient reasons, and as hereinafter provided be imposed on a University employee

Minor Penalties

xxx	xxx	xxx	xxx
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Major Penalties

xxx	xxx	xxx	xxx
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Explanation- The following shall not amount to a penalty within the meaning of this rule:

(i) to (iii)	xxx	xxx	xxx
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(iv) reversion to a lower service, grade or post of an employee officiating in a higher service, grade or post on the ground that he is considered after trial to be unsuitable for such higher service, grade

or post or on administrative grounds unconnected with this conduct.

The Explanation stipulates that an employee who is '*officiating in a higher service, grade or post*' can be reverted to a lower post or grade on the ground that he was considered not suitable for the higher post after trial, or on administrative grounds not connected with this conduct; this will not amount to penalty within the meaning of the Rule 5. The Rule has no application to the petitioner's case, as he was not officiating as SDE; instead, he was given regular promotion by the competent authority, and had successfully completed the period of probation as well. Therefore, his reversion as JE by invoking the Rule was *mala fide* and arbitrary. Further, the charges, which were taken into account by the committee to recommend reversion, were never established even *prima facie*, nor does the impugned report or the order refer to any finding by any authority against the petitioner. Indisputably, the charges were dropped by the University on its own on 2.6.2023. Although it was subsequent to the committee's recommendation dated 3.12.2020, the fact remains that no substance was found in the charges. This means the charges were false and/or did not constitute any misconduct on the petitioner's part at any stage. Consequently, the same could not have been taken into account by the committee to recommend reversion, nor could such a report have been accepted by the Executive Council.

9. Thirdly, the petitioner's reversion by considering him ineligible for the post of SDE, is also not sustainable. He was duly promoted vide order dated 7.3.2019 passed by the competent authority, Vice Chancellor, with the approval of Executive Council. Whereas, the impugned order of reversion, dated 22.2.2021, has been passed by the Registrar, in

compliance of the Executive Council resolution dated 8.2.2021. The Council relied upon the impugned report, dated 3.12.2020, which had no material against the petitioner and recommended reversion with reference to Explanation (iv) to Rule 5, though it had no application to the case as discussed hereinabove. Besides, the Registrar, who passed the impugned reversion order, is not the competent authority and has no jurisdiction to do so. The petitioner's promotion order, dated 7.3.2019, has not been revoked or withdrawn by the Vice-Chancellor. Also, once the petitioner was appointed by considering the experience he had, though short by about a year, and worked satisfactorily on the promoted post for close to two years, lack of requisite experience at the time of appointment cannot be a ground to revert him to the lower post. No Rule or Statute permits that, nor has any been cited by the University.

10. Fourthly, concededly, the petitioner worked on the promoted post of SDE without getting salary in the pay scale meant for the post. He was being paid in the lower pay scale of Junior Engineer on the specious plea that his salary on the promoted post could not be fixed. This is hardly any justification; rather, it shows high-handedness and arbitrary functioning of the University. The petitioner is entitled to salary for the period he worked on the promoted post of SDE.

11. For the reasons recorded above, the petition is allowed. The committee's report dated 3.12.2020, the Executive Council resolution dated 8.2.2021 and the order dated 22.2.2021 are hereby set-aside, directing the University to allow the petitioner to re-join as SDE (Civil) forthwith. He shall be entitled to all the consequential benefits from the date of his promotion as SDE, i.e., 7.3.2019, including salary for the

period he was illegally prevented from working, i.e., from the date of reversion to the date of re-joining. The due arrears of salary shall be released within four weeks from the date of receiving a certified copy of this order.

(TRIBHUVAN DAHIYA)
JUDGE

28.2.2024
Ashwani

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