



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

243+107

CWP-10291-2023 (O&M)
Date of decision : 21.11.2024

Sanjeev Batish

....Petitioner

V/S

State of Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Shreenath A. Khemka, Advocate and
Mr. Ashish Pundir, Advocate for the petitioner.

Mr. Ravi Dutt Sharma, D.A.G., Haryana.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the order dated 22.02.2023 (Annexure P-10), passed by respondent No.1, whereby the claim of the petitioner for promotion from the post of Sub Divisional Engineer to the post of Executive Engineer (Mechanical) has been rejected. Further, a writ of mandamus has been sought, directing the respondents to consider and promote the petitioner to the post of Executive Engineer (Mechanical) by counting his service rendered on Current Duty Charge (CDC) basis on the post of Sub Divisional Engineer, with all consequential benefits.

2. The brief facts of the case, as have been pleaded in the petition, are that initially the petitioner joined as Junior Engineer on 23.05.1996 in the Haryana Public Works (Building & Roads)

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Department and thereafter, he was transferred to Haryana Public Health Engineering Department on 15.07.2004 where he joined on 03.08.2004. Meanwhile, the Government of Haryana notified "*The Haryana Service of Engineers, Group A, Public Health Engineering Department Act, 2009*" (Annexure P-1) (herein after referred to as 'Act of 2009') which came into force on 20.03.2009 for regulating the recruitment and conditions of service of Group A Engineers in Public Health Engineering Department. As per the said Act, the next promotion from the post of Junior Engineer is to the post of Sub Divisional Engineer (Mechanical). The petitioner was assigned the Current Duty Charge of the post of Sub Divisional Engineer (Mechanical) vide order dated 19.08.2011 (Annexure P-2), having endorsement dated 23.08.2011. Accordingly, the petitioner joined on the said post on Current Duty Charge basis on 24.08.2011. Thereafter, he was promoted on regular basis as Sub Divisional Engineer (Mechanical), vide order dated 05.05.2020 (Annexure P-4). Post of Executive Engineer (Mechanical) is governed by the Act of 2009 and for promotion, 08 years experience is required as Sub Divisional Engineer and also passing of the departmental examination of Group B service is mandatory. It is the case of the petitioner that since he was eligible for promotion to the post of Executive Engineer (Mechanical) as he had passed the departmental examination and also completed 08 years service as Sub Divisional Engineer (Mechanical), therefore, he submitted representation dated 28.01.2022 (Annexure P-5) for considering his case for promotion to the post of Executive Engineer

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(Mechanical) by submitting that he was working as Sub Divisional Engineer (Mechanical) from 24.08.2011, when he was assigned Current Duty Charge of the said post and thereafter, he was promoted on regular basis on 05.05.2020. The said representation of the petitioner was rejected by the respondent-department, vide order dated 01.06.2022 (Annexures P-6) without assigning any reason. Thereafter, father-in-law of the petitioner submitted a representation dated nil to the respondent-department with a request to consider the case of the petitioner for promotion to the post of Executive Engineer (Mechanical), however, the said representation was filed by the respondent-department, vide order dated 28.10.2022 (Annexure P-8). Thereafter, for claiming promotion to the post of Executive Engineer (Mechanical), the petitioner approached this court by filing *CWP No.28258 of 2022* titled as '*Sanjeev Batish Vs. State of Haryana and others*' which was disposed of by this Court vide order dated 08.12.2022 (Annexure P-9) with a direction to the respondents to look into the pending representation of the petitioner and pass necessary orders. Pursuant to the order dated 08.12.2022, passed by this Court, the representation dated nil filed by father-in-law of the petitioner has been rejected by respondent No.1, vide order dated 22.02.2023 (Annexure P-10). Thereafter, the petitioner again approached this Court by filing *CWP No.9876 of 2023* titled as '*Sanjeev Batish Vs. State of Haryana and others*' claiming promotion to the post of Executive Engineer (Mechanical) but since the order dated 22.02.2023, passed by respondent No.1, was not challenged in the said writ petition, therefore,

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the same was withdrawn by the petitioner with liberty to file fresh one on the same cause vide order dated 08.05.2023 (Annexure P-17). Hence, the present petition impugning the order dated 22.02.2023 (Annexure P-10).

3. Written statement on behalf of the respondents has been filed, wherein it has been stated that the petitioner is not eligible for promotion to the post of Executive Engineer (Mechanical) as he does not have experience of 08 years service as Sub Divisional Engineer and the period for which the petitioner has served as Sub Divisional Engineer on Current Duty Charge is not countable while considering 08 years required service as Sub Divisional Engineer.

4. Learned counsel for the petitioner submits that the petitioner is fully eligible to be considered for promotion to the post of Executive Engineer (Mechanical) and the period spent on Current Duty Charge is also required to be considered for counting the 08 years service. He further submits that the Legal Remembrancer and Administrative Secretary, Law & Legislative Department of the Government of Haryana has already opined vide their legal advice dated 05.08.2019 that the service rendered on Current Duty Charge basis is countable for determining the eligibility for promotion to the post of Executive Engineer. He has further placed reliance upon the Division Bench judgments of this Court in ***CWP No.16062 of 2017 titled as Union Territory, Chandigarh and others Vs. Central Administrative Tribunal, Chandigarh and others, decided on 16.01.2019*** and ***Chandigarh Administration Vs. Vipin Gupta and another : 2011(2)***



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S.C.T. 560 which has been upheld in ***Special Leave to Appeal (Civil) No.2680 of 2011 titled as ‘Chandigarh Administration Vs. Vipin Gupta and another’ decided on 06.02.2013.***

5. Per contra, learned State counsel submits that the petitioner is not eligible for promotion to the post of Executive Engineer (Mechanical) as the service rendered by him as Sub Divisional Engineer on Current Duty Charge is not countable for assessing eligibility of the petitioner. Therefore, his claim for promotion has rightly been rejected.

6. I have heard learned counsel for the parties and perused the relevant documents with their able assistance.

7. The only question which arises in the present petition is as to whether the service rendered by the petitioner on Current Duty Charge on the post of Sub Divisional Engineer is countable for considering the eligibility of the petitioner for promotion to the post of Executive Engineer (Mechanical).

8. Before proceeding further, it would be necessary to make reference to the relevant provisions of the Act of 2009 which governs the service of the petitioner. The relevant portion from the said Act is as under :-

“6. No person shall be appointed to the Service on or after the date of publication of this Act in the Official Gazette, unless he, -

(a) xx xx xx xx xx

(b) in case of an appointment by promotion from Group B Service, has, in addition to the qualifications provided in clause (a), eight years completed service and passed the departmental examination of Group B Service;



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Provided that the Government may relax the conditions of eight years service in the case of an officer who has completed five years service and in such case, the officer shall earn the first increment as an Executive Engineer on the completion of nine years service.

xx xx xx xx xx”

9. The said issue is not res integra as the same has already been considered by a Division Bench of this Court in **Vipin Gupta’s case (supra)**, wherein after considering the similar rule, it has been held that the period of Current Duty Charge can be treated as experience in determining the eligibility for promotion.

“11. Having heard learned counsel for the parties and perusing the record with their able assistance we find that the discussion can be conveniently divided by framing the following two substantive questions of law.

(A) Whether the expression 'working experience' used in Rule 6 read with Appendix 'B' providing for promotion to the post of Executive Engineer would include the experience gained while working on current duty charge on the post of Sub Divisional Engineer or it is only that experience which is gained while discharging duties as a substantive holder of that post on regular basis?

(B) What is the effect of order dated 1.10.2008 (A-13) passed by Competent Authority granting approval for reckoning of service rendered on CDC basis from 6.11.2001 to 30.1.2003 towards qualifying service for determining eligibility for promotion to the post of Executive Engineer (Civil)?



RE: QUESTION - A

12. The question No. 1 has cropped up for consideration of this Court earlier also. As long as the expression 'working experience' is used in the statutory Rules, the law laid down by this Court would continue to apply. In somewhat similar circumstances the expression 'working experience' came up for interpretation before a learned Single Judge of this Court in the case of **Dr. Ravinder Pal Kaur v. State of Punjab and others, 1979 (2) SLR 645**. In the aforesaid case, the statutory rules required teaching experience as Assistant Professor in the specialty concerned for five years. The petitioner in that case was appointed as Assistant Professor Radiology on ad hoc basis. Her appointment was regularized three years later. The question before the Court was whether the experience gained by her while working on ad hoc basis could be treated as 'experience' in terms of the requirement of the rules. The learned Single Judge of this Court has taken the view that there was hardly any difference so far as the teaching experience is concerned whether it is gained on ad hoc appointment or on regular appointment. It was held that the teaching experience envisaged by the statutory rules was not limited to the one gained while holding appointment on regular basis under the statutory rules. Therefore, the teaching experience gained by her in the Medical Colleges while working on ad hoc basis is valid for the purpose of counting the requisite experience for direct appointment as Professor. Such experience could not be ignored. It is, thus, patent that it was a case of direct appointment yet the ratio of the judgment is concerning counting of experience gained while working on ad hoc basis. The aforesaid view has also been followed and applied in the cases of promotion by this Court in the case



of Balbir Singh Yadav and others v. State of Haryana and others, 1984 (1) SLR 466 and by a Division Bench of this Court in the case of Dharam Singh v. State of Punjab and others, 1985 (1) SLR 358. Therefore, the principle which emerges from the aforesaid case law is that once an employee has gained experience of working on ad hoc or regular basis then the requirement of the rule stands satisfied. As long as a person has earned the experience of working on teaching post like Lecturer or Senior Lecturer then such an experience cannot be ignored and on that basis the petitioner could not have been non-suited from consideration for promotion to the post of the Head of the Department. A similar question arose in a matter concerning promotion before a Division Bench of this Court, of which one of us (M.M. Kumar, J.) was a member. In C.W.P. No. 21663 of 2008, decided on 3.7.2009 (Geeta Devi v. State of Haryana and others) this question has been answered in favour of that petitioner by reckoning the period of service rendered on ad hoc basis towards determining his eligibility condition of experience and the other argument was rejected.

13. When the aforesaid principles are applied to the facts of the present case it becomes obvious that the applicant-respondent in the present case is governed by the statutory Rules. At this stage it would be pertinent to read Rule 6 read with Appendix 'B', which reads as under:-

"6. Method of appointment, qualifications and experience. -

(1) Appointment to the Service shall be made in the manner specified in Appendix 'B':

Provided that if, no suitable candidate is available for appointment to the Service by promotion and by direct appointment, then appointment to the Service



shall be made by transfer of a person holding a similar or an identical post under a State Government or Government of India.

(2) No person shall be appointed to a post in the Service, unless he possesses the qualifications and experience as specified against that post in Appendix 'B'.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis, but no person shall have any right to claim promotion on the basis of seniority alone:

Provided that promotion to the post of Chief Engineer, being Head of the Department, shall be made on merit-cum-seniority basis."

Appendix 'B'
(See rule 6)

Sr. No.	Designation of the Post	Percentage for appointment by		Method, qualifications and experience for appointment by	
		Promotion	Direct Appointment	Promotion	Direct Appointment
1 & 2	xxx	xxx	xxx	xxx	xxx
3	Executive Engineer	Hundred per cent	...	From amongst the Sub-Divisional Engineers	Who have an experience of working as such for a minimum period of eight years."

14. A perusal of Rule 6(1) makes it patent that appointment to the service must be made as prescribed in Appendix 'B'. Sub-rule (2) of Rule 6 makes it further clear that no person could be appointed to a post in the Service unless he possesses the qualification and experience as specified against that post in Appendix 'B'. A further perusal concerning requirement given in Appendix 'B' shows that for becoming eligible for promotion to the post



of Executive Engineer, a Sub Divisional Engineer must have experience of working for minimum period of eight years. The Rule provides for filling up the post of Executive Engineer from that of Sub Divisional Engineer by hundred percent promotion. Therefore, as long as a person has working experience of eight years a Sub Divisional Engineer becomes eligible for promotion to the post of Executive Engineer. The expression 'working experience' cannot be construed to mean that he must have gained the experience while working on a permanent substantive post on which he has been appointed on regular basis. In other words, long term regular promotion would not be necessary to gain experience of working because whether a person works on a post in his capacity as ad hoc/current duty charge holder/ temporarily his nature of duties continues to be the same which any regularly promoted person would require to discharge. Therefore, it follows that the applicant-respondent No. 1 was entitled to count his experience for the purposes of eligibility from 6.11.2001 to 30.1.2003 towards qualifying period of eight years for determining eligibility for promotion to the post of Executive Engineer.

15. In the present case, it is significant to notice that the applicant- respondent No. 1 is in any case senior most and by counting the aforesaid period of about more than 2 years he is not going to overrule any of his senior. Therefore, the argument raised by Mr. Kaushal that such a rule could work to the detriment of a senior resulting in his suppression would not arise. Therefore, we leave the question concerning application of the principle open, namely, whether experience gained on ad hoc/CDC basis could be counted for determining eligibility to the detriment and suppression of a senior employee in the



cadre. On the aforesaid interpretation and rationale the conclusion reached by the Tribunal does not deserve to be interfered.

RE: QUESTION - B

16. It is also pertinent to notice that order dated 1.10.2008 passed by the Competent Authority (A-13) has granted approval for counting of service rendered by the applicant-respondent No. 1 as Sub Divisional Engineer (Civil) on CDC basis from 6.11.2001 to 30.1.2003 towards qualifying service for the purpose of eligibility for further promotion to the post of Executive Engineer subject to various conditions. This order has not been withdrawn till today. In any case, the decision passed by the Competent Authority does not suffer from any legal infirmity and, in fact, has a substantial support in the precedents of this Court. Therefore, on that account also the writ petition is liable to be dismissed.

17. As a sequel to the above discussion and the answer given to the both the questions we are of the considered view that the writ petition does not merit admission and is hereby dismissed. The applicant-respondent No. 1 is held entitled to reckon service rendered by him on CDC basis from 6.11.2001 to 30.1.2003 towards qualifying service for determining eligibility for promotion to the post of Executive Engineer (Civil). The needful shall now be done within a period of three months from the date of receipt of a copy of this order.”

The said judgment has been upheld by the ***Hon’ble Supreme Court in Special Leave to Appeal (Civil) No.2680 of 2011 titled as ‘Chandigarh Administration Vs. Vipin Gupta and another’ decided on 06.02.2013.***



10. The judgment in ***Vipin Gupta's case (supra)*** has been followed by Division Bench of this Court in ***Chief Engineer, Union Territory, Chandigarh Vs. Ram Sarup Walia and others : 2012(3) S.C.T. 157***, wherein it has been held as under :-

"8. Undisputedly, the service conditions, including the right of consideration of promotion of the applicants/respondents are governed by the Service Rules of 2005. Rule 6 of the said Rules provides for method of appointment, qualifications and experience for making appointment to the service, which reads as under:-

"6. Method of appointment, qualifications and experience. -

(1) Appointment to the Service shall be made in the manner specified in Appendix 'B':

Provided that if, no suitable candidate is available for appointment to the Service by promotion and by direct appointment, then appointment to the Service shall be made by transfer of a person holding a similar or an identical post under a State Government or Government of India.

(2) No person shall be appointed to a post in the Service, unless he possesses the qualifications and experience as specified against that post in Appendix 'B'.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis, but no person shall have any right to claim promotion on the basis of seniority alone:

Provided that promotion to the post of Chief Engineer, being Head of the Department, shall be made on merit-cum-seniority basis."



Appendix ‘B’
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Sr. No.	Designation of the Post	Percentage for appointment by		Method, qualifications and experience for appointment by	
		Promotion	Direct Appointment	Promotion	Direct Appointment
1 & 2	xxx	xxx	xxx	xxx	xxx
3	Executive Engineer	Hundred per cent	...	From amongst the Sub-Divisional Engineer who have an experience of working as such for a minimum period of eight years.”	

9. A perusal of Appendix ‘B’ reveals that promotion to the post of Executive Engineer is to be made amongst the Sub Divisional Engineers who have minimum ‘**eight years working experience**’ on the post of Sub Divisional Engineer. In this Appendix, the word "regular" has not been used, but only it has been provided that a Sub Divisional Engineer must have experience of working for minimum eight years. Therefore, as long as a person has working experience of eight years on the post of Sub Divisional Engineer, he becomes eligible for promotion to the post of Executive Engineer (Civil). In our view, ‘**the working experience**’ cannot be construed to mean that he must have gained the regular experience while working on a permanent substantive post on which he has been appointed on regular basis. The Supreme Court in **State of Madhya Pradesh and another Vs. Laxmishankar Mishra (supra)**, while considering Rule 3(b) enacted under the Madhya Pradesh Local Authorities School Teachers (Absorption in Government Service) Act, 1963, which



*provides that for absorption on the post of Head Master/Principal of a High/Higher Secondary School, the person concerned should possess the post-graduate degree and should have worked on the post for a minimum period of 7 years in the same institution and should have 10 years' teaching experience in any recognised institution of Madhya Pradesh, has held that the working experience of the Head Master/Principal on the post on current duty charge is to be taken as working experience on the said post. It has been observed that the person incharge of the post also works and discharges the duties and functions of the post of which he has taken charge. Even an officiating incumbent of the post does discharge the functions and duties of the post. Therefore, the working experience on the post of Head Master/Principal on current duty charge has to be taken into account by the State Government for computing the period of seven years. In that judgment, the Supreme Court has relied upon its another decision in **S.B. Patwardhan Vs. State of Maharashtra, (1977) 3 SCC 399**, wherein it has been observed that the officiating Deputy Engineers discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments. A confirmed holder of a substantive post would be discharging the functions attached to the post and when some one is placed in that very post in an officiating capacity or directed to hold charge of the post, he would be required to perform the duties and discharge the functions of the post rendering identical service.*

10. Similarly the Division Bench of this Court in **D.P. Mehta (Dr.) Vs. P.G.I. and its Governing Body, (supra)**, while considering the issue of promotion from amongst



Deputy Medical Superintendents to the post of Joint Medical Superintendent, has observed as under:-

"An extract from the rules has been produced as Annexure P.3 with the writ petition. In case of recruitment by promotion, the post of Joint Medical Superintendent can be filled up "from amongst Deputy Medical Superintendents having five years experience". The rule does not postulate that the incumbent should have worked on the post for five years on regular basis. It only requires that he should have an experience as a Deputy Medical Superintendent. In ordinary parlance, experience means "an actual living through something and coming to know it first hand rather than through hearsay or report". According to Webster 3rd New International Dictionary, 'experience' means "being engaged in a particular activity; direct observation of or participation in events, encountering, undergoing or living through things in general as take place in the course of time." Since the petitioner has performed the duties of the post of Deputy Medical Superintendent, he has directly participated in the events. He has encountered the pitfalls and lived through the job requirements. He has personally acquired the necessary knowledge about the job. He has experience of the post of Deputy Medical Superintendent. The plea raised on behalf of the respondents that he is not eligible, cannot, thus, be sustained."

11. xx xx xx xx xx

12. *Though against this judgment, the SLP has been filed in which the operation of the impugned order has been stayed by the Supreme Court, but we are, prima-facie,*



of the view that even if an appeal against the judgment of the High Court has been admitted and the operation of the order has been suspended during the pendency of the appeal, it does not have the effect of rendering the said judgment non-est till the disposal of the appeal. As discussed above, there are other several precedents where it has been held that current duty charge has to be treated as part of the qualifying experience for promotion to the next higher post. We are further of the opinion that when there are sufficient number of eligible Sub Divisional Engineers (B&R) available in the feeder cadre for promotion to the post of Executive Engineer (Civil), then the petitioner should not have initiated the process of filling up of the available vacancies of Executive Engineer (Civil) by way of appointing suitable officers on deputation basis from the States of Punjab and Haryana. In case suitable officers from other States/Departments are appointed on deputation basis, there is likelihood of heart burning to the U.T. employees, who have a prior right to hold the cadre posts.

13. Keeping in view the above discussion, we do not find any merit in the writ petition and the same is hereby dismissed.”

11. A similar view has been taken by another Division Bench of this Court in ***Union Territory, Chandigarh and others case (supra)***, wherein it has been held as under :-

“The next channel of promotion from the post of Sub Divisional Engineer is to the post of Executive Engineer. This promotion is governed by the Punjab Water Supply and Sanitation (Engineering Wing) Group-A Service Rules, 2007, which prescribe the following requirement for promotion to the post of Executive Engineer:-



“From amongst the Sub Divisional Engineers, who have an experience of working as such for a minimum period of eight years.”

Respondent No.2 represented to the Authorities on 14.7.2016 to consider and promote him to the post of Executive Engineer (Public Health) by including and considering as experience the period from 4.8.2008 to 26.12.2011 when he held the additional charge of the post of Sub Divisional Engineer. The said representation having been rejected on 15.9.2016, he filed the Original Application.

The sole question before the Tribunal was, whether the period when respondent No.2 held additional charge of the post of Sub Divisional Engineer from 4.8.2008 to 26.12.2011 could be considered as experience of working as Sub Divisional Engineer for the purpose of promotion to the post of Executive Engineer.

*The learned Tribunal noted that the additional charge was given to respondent No.2 on account of his seniority and efficiency. It was not the case of the Administration that while discharging the additional responsibility of Sub Divisional Engineer, his functioning as such was curtailed in any manner in terms of authority and powers of Sub Divisional Engineer. In other words, his working on the additional charge was as good as regular charge. The Tribunal further noted that the applicable Rule does not rule out an interpretation that an additional charge or current duty charge could not be taken as experience for promotion. Reliance was placed on **D.P.Mehta (Dr.) vs. PGI and its Governing Body RSJ 1997(1) 503**, wherein, this Court directed that the experience gained by the petitioner therein who was given additional charge of Deputy Medical Superintendent be taken into consideration for promotion to the post of Joint*



Medical Superintendent. It was held that where the rule does not specifically postulate the requirement of experience of having worked on regular basis consideration could not be denied only on the ground that the incumbent only had additional charge of the post. Accordingly, the Original Application was allowed.

*Apart from the decision referred to by the Tribunal, learned counsel for respondent No.2 has referred to various other decisions i.e. **Chandigarh Administration vs. Vipin Gupta and another 2011(2) SCT 560** and **Chief Engineer, Union Territory Chandigarh vs. Ram Sarup Walia and others 2012(3) SCT 157**, etc. wherein it has been held that in the absence of a specific rule limiting the experience to that gained while holding appointment on regular basis, the experience gained by working on the post whether on adhoc/current duty charge basis would necessarily have to be included. It has been emphasised that it is the performance of duties and discharging of functions assigned to the post, which is relevant and not the capacity in which the post is held.*

Accordingly, there is no merit in this petition and the same is dismissed.”

12. All the above judgments have further been followed by a Coordinate Bench of this Court in **Anil Sharma Vs. State of Punjab and another : 2021(3) S.C.T. 661**, wherein it has been held as under :-

*“9. This Court in a Division Bench view, in a similar proposition in the case bearing **CWP No.77 of 2012** titled as ‘**Chief Engineer, Union Territory, Chandigarh versus Ram Sarup Walia and others**’ has clearly held Current Duty Charge (CDC) is to be treated as a part of experience for promotion to the next higher post as it is an experience gained on a post and has nothing to do with to the claim of*



*seniority as the very Rules governing the Department lays down only requirement of experience and which admittedly, the petitioner has gained during his tenure on Current Duty Charge (CDC) from 24.05.2018. It could not be claimed or is the case of the respondent-State that the petitioner did not gain experience and when admittedly, he worked on that post for which qualifying need is of experience, he has certainly gained that. Since, the petitioner has gained experience while working on Current Duty Charge (CDC) then to the mind of this Court, he clearly fulfills the requirement of the Rules and, therefore, qualifies to be considered to the promotion of post of Chief Conservator of Soils and the claim that he has not gained experience on the substantive post does not impress the Court much for which reliance is placed on the ratio laid down by this Court in the case of '**Ashok Kumar, Clerk versus state of Haryana', 2003 (5) SLR 773**, thus, it is clearly held that the petitioner has gained required experience substantive period of 02 years as Conservator of Soils entitling him to be considered for promotion to the post of Chief Conservator of Soils. It needs to be distinguished between the word "service" and "experience" and it is not by virtue of seniority he is claiming so, but claiming that he has gained sufficient experience for being considered to that post. The taking on and carrying with the deputation of then respondent No.2 as Chief Conservator of Soils, Punjab and its continuation is more pregnated with political and bureaucratic convenience than of administrative needs, especially, when the deputationist was from another field of "Forests" and the requirement was of in the field of "Soil". Thus, it cannot be taken that the deputationist was having better experience or could be to the advantage of Department and rather when the Department could have availed of the experience of*



petitioner in the field of “Soils” is another distressing feature in the case of respondents. The instructions cited and relied by the respondents, thus, pales into insignificance. Since, the petitioner had gained sufficient experience of 02 years as Conservator of Soils and has qualified to be considered to the post of Chief Conservator of Soils in the State. Therefore, any deputationist from other Department would be mala fide illegal and purely to defeat the right of the petitioner that has crystallized by way of his claim to the said post.

10. In light of the above discussions, discussed and detailed above, the instant petition stands allowed and impugned orders/letter Annexures P-13, P-19 and P-21, are hereby set aside and quashed.”

13. Coming back to the facts of the present case, it may be noticed that Clause 6 of the Act of 2009 provides that 08 years of completed service as Sub Divisional Engineer and passing of departmental examination is required for promotion to the next post. However, it does not provide that regular 08 years service is required for promotion.

14. In view of the foregoing discussion and abovesaid authoritative enunciation of law by this Court, the present petition is allowed and impugned order dated 22.02.2023 (Annexure P-10) is set aside. The respondents are directed to consider the case of the petitioner for promotion to the post of Executive Engineer (Mechanical) by counting the service rendered by him as Sub Divisional Engineer on Current Duty Charge basis, within a period of 03 months from the date of receipt of certified copy of this judgment, with all consequential benefits.

21.11.2024

kothiyal

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No