

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-125-2014
Date of decision : 09.04.2024

Balraj Singh and othersPetitioners

V/S

State of Punjab and othersRespondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Sparsh Chhibber, Advocate for
Mr. Harish Sharma, Advocate for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Ms. Farheen Bajwa, Advocate for
Mr. Harsh Aggarwal, Advocate for respondent No.3.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India seeking a writ of mandamus directing the respondents to promote the petitioners as Junior Engineer (Civil) as per their seniority, within their own quota according to the seniority list (Annexure P-2) and to grant arrears thereof, along with interest.
2. It is the case of the petitioner that petitioner Nos.1 to 3 joined the Municipal Corporation, Ludhiana as Surveyors on 05.12.1995, 05.12.1995 and 05.02.1999, respectively and their service record is satisfactory as no departmental/vigilance inquiry is pending against any of the petitioners. The next promotion from the post of Surveyor is to the post of Junior Engineer (Civil), which is governed by the rules known as “Punjab Municipal Corporation Services

(Recruitment and Conditions of Service) Rules, 1978” which was amended in the year 1996 and the amended Rules reads as under :-

Punjab Services of Corporation Junior Engineers	From amongst the candidates	
Junior Engineer (Civil)	Who possesses and diploma in Civil Engineering of a recognized institution.	I. Fifteen per cent from amongst the following categories of employees working in the Municipal Corporation under the control of the Director, Local Government, Punjab, who possess qualifications prescribed for direct recruitment for the post of Junior Engineer (Civil), and who have an experience of working as such for a minimum period of eight years in the following ratio namely :- (a) Ten per cent out of work Supervisors; and (b) Five per cent out of Supervisors/Work Mistries.
		II. Thirty-five per cent from amongst the following categories of employees working in the Municipal Corporation as under the Control of Director, Local Government, Punjab, who are Matriculates or equivalent and who have an experience of working on the either of the above said post for <u>a minimum period of twelve years; and who have passed the departmental examination to be conducted by the Director, Local Government, Punjab, in the following ratio :-</u> (a) Ten per cent out of <u>Work Supervisors</u> ; and (b) Twenty-five per cent out of <u>Work Mistries/Surveyors</u> .

Thereafter, again amendment has been made in the Rules vide notification dated 06.01.2015, which reads as under :-

Punjab Services of Corporation Junior Engineers	From amongst the candidates	
Junior Engineer (Civil)	Should possess a Diploma in Civil Engineering from a recognized University or institution.	I. 30% of promotional posts- From amongst the Class-III employees of the Municipal Corporations in the State of Punjab, who possess qualifications prescribed for direct recruitment for the post, and have an experience of working as such for a minimum period of five years;
		II. 70% of promotional posts from among the a) <u>work supervisors,</u> b) <u>work munshies,</u> c) <u>work mistries,</u> d) <u>surveyors,</u> e) <u>junior draftsmen</u> f) <u>Motor mates</u> working in the Municipal Corporation under the control of the director, who- (a) <u>Are matriculates or its equivalent;</u> (b) <u>Have an experience of working on either or more of the said posts for a minimum period of ten years; and</u> (c) <u>Have passed departmental examination conducted by the director on the pattern of department of public works (building and roads branch), government of Punjab.</u>

3. It has further been pleaded in the petition that as per joint final seniority list dated 12.05.2005, petitioners Nos.1, 2 and 3 have been placed at Sr. No.2, 5 and 9, respectively and they are fully eligible for the post of Junior Engineer and various vacancies of Junior Engineer are available, therefore, the petitioners have submitted representations seeking promotion, however, they have not been promoted despite their cases for promotion were recommended by the Joint Commissioner, Municipal Corporation, Ludhiana to the Director, Local Government Department, Punjab, Chandigarh, vide letter dated 09.10.2009 (Annexure P-3).

4. Pursuant to issuance of notice of motion, separate written statement have been filed by respondents No.1 & 2 and No.3. In para 8 of the written statement filed by respondents No.1 and 2, it has been stated as under :-

“8. That with regard to the contents of para no.8 it is submitted that the petitioner no.1 and 2 have not been considered for promotion because they had not passed the departmental examination required under the rules. As per rules notified vide Notification dated 31.01.1996 (Ann. P-1), it is required that who have an experience of working for minimum period of 12 years and have passed the departmental examination shall be considered for promotion. The case of the petitioner no.3 was not considered because being Diploma holder though he is not required to pass the departmental examination but is to be considered against the five percent quota in which there is no vacancy being already exhausted. Thus, there is no

illegality for not promoting the petitioners to the post of Junior Engineer.”

5. During the pendency of the present petition, all the petitioners have been promoted after passing the departmental examination. Petitioners No.1 and 2 have been promoted in August, 2020 and petitioner No.3 has been promoted in September, 2019.

6. The matter was heard by the Coordinate Bench of this Court on 06.02.2023 and the following order was passed :-

“Learned counsel for the petitioners submits that though the petitioners have been promoted yet their claim to seek promotion w.e.f. retrospective date i.e. 09.10.2009 when their claim was forwarded has not yet been considered.

Learned State counsel prays for time to seek instructions.

Adjourned to 22.02.2023.”

7. In pursuance to the above-said order, additional affidavit of Harpreet Singh Atwal, Deputy Secretary to the Government of Punjab, Department of the Local Government, Punjab, Chandigarh, on behalf of respondents No.1 and 2 has been filed, wherein it has been averred as under :-

*“6. That it is for the due consideration of this Hon'ble Court that the petitioner who was appointed as a surveyor at Municipal Corporation, Ludhiana and as per the above-mentioned Notification dated 31.01.1996 two conditions were mandatory for petitioner in order to be promoted as Junior Engineer (civil) i.e., **experience of working on the either of the above said post for a minimum period of***

twelve 12 years and have passed the department examination. The same was in the case of Notification dated 06-01-2015 i.e. for promotion as Junior Engineer (civil) experience of working on the either of the above said post for a minimum period of 10 years and have passed the department examination was essential. Since, petitioner passed the said departmental examination on 24-08-2020 itself then petitioner cannot claim the said promotion retrospectively from 09.10.2009 i.e., when he had not cleared the second condition as per rules, required for the purpose of promotion as Junior Engineer (civil). The claim of the petitioner is not reasonable as it does not fulfill the basic conditions as stated in the notifications. In addition to the above, a perusal of relevant notifications would show that the provision of passing the departmental exams was there in the requirement to be promoted as Junior Engineers. This condition was never waived off or relaxed by the Answering Respondent at any stage. So, the petitioners were required to pass the departmental exams in order to be promoted as Junior Engineers on a regular basis.

7. That speaking order No. S1-DLG-MS-C-2023/80 dated 07.03.2023 to the said effect have already been passed by the answering respondent reiterating the said factual matrix and dismissing the claim of retrospective promotion raised by the present petitioner. Copy of the speaking order dated 07.03.2023 is attached herewith as Annexure R-1/T.”

8. From the above facts it is clear that passing of departmental examination is one of the mandatory eligibility condition for promotion to the post of Junior Engineer as per rules and since the petitioners did

not pass the departmental examination earlier, therefore, they were not promoted and after they passed the departmental examination, they have been promoted to the post of Junior Engineer in the year 2019, 2020 and therefore, they cannot claim promotion on notional basis w.e.f. 09.10.2009.

9. It is a well settled proposition of law that no mandamus can be issued against the provisions of the Act/Rules. The Hon'ble Supreme Court in ***Union of India and others Vs. S.K. Saigal and others : 2007(1) S.C.T. 286***, has held as under :-

“5. The core question posed for determination is as to whether the particular Rules governing service conditions could be brushed aside without challenging the Rules and the mandate of the Rules could be ignored in the absence of a challenge and without striking them down?”

*11. It was, therefore, clearly an admitted case of the respondents by themselves that they had not worked for 5 years as Scientists 'B', which is the mandate of the Rules and, therefore, the Tribunal transgressed its jurisdiction granting the relief to the respondents dehors the mandate of the Rules. It is now settled principle of law that no mandamus can be issued which would be contrary to the Act and the Rules. See ***Union of India v. Association for Democratic Reforms and Anr. 2002(2) RCR (Civil) 640 (SC) : (2002) 5 SCC 294***.*

10. To the same effect is the judgment of Hon'ble Supreme Court in ***State of Haryana and others Vs. Sumitra Devi and others : 2004(1) S.C.T. 309***.

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11. In view of the above, nothing survives in the present petition and the same is hereby dismissed, with no order as to costs.

09.04.2024
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No