

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

CWP No.5166 of 2021

Reserved on : December 09, 2024

Pronounced on : January 08, 2025

Rohtash Kumar Bansal and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. S.K. Malik, Advocate
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J. (Oral)

1. The petitioners have approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* seeking quashing of the order dated 01.03.2019 (Annexure P-12), vide which their claim for notional promotion on the post of 'Executive Engineer' w.e.f. 06.08.2014, has been rejected, and further a writ of *mandamus* has been sought to direct the respondents to notionally promote the petitioners to the post of 'Executive Engineers' from the said date, with all consequential benefits.

2. The brief facts, as have been pleaded in the petition, are that the petitioners, after joining their service in the year 1976, have improved their qualification by passing the degree in Civil Engineering or AMIE equivalent to B.E., while being in service, and were eligible for promotion to the post of SDO,

however, they were promoted first as ASDE and as a consequence thereof, their promotion as 'SDO (Civil)' has been delayed and they have been promoted as such on 13.08.2009, 18.08.2009, 01.10.2008, 15.08.2009 and 01.07.2008, respectively. The service conditions of the Engineers 'Group A', Irrigation Department, are governed by 'The Haryana Services of Engineers, Group A, Irrigation Department Act, 2010', which regulate their recruitment and conditions of service and as per Section 6 of the said Act, the petitioners were entitled to be promoted to the post of 'Executive Engineer' and accordingly their names were recommended by the DPC held on 06.08.2014 and thereafter, their names for promotion was sent by the Chief Engineer to the Government for further orders and posting, since 22 posts of promotional quota of respective categories were lying vacant, however, despite recommendations of the DPC and the petitioners being eligible for the said promotion, were not promoted by the Government. It has further been pleaded that the DPC has again recommended the names of the petitioners for their promotion as 'Executive Engineer' on 21.05.2015, when 41 posts of promotional quota were lying vacant, but the respondents delayed their promotion by not issuing the promotion orders on the said recommendation of the DPC, till their superannuation on the post of SDO. It has further been pleaded that the second recommendation dated 21.05.2015 of the DPC was given effect to after the retirement of the petitioners and resultantly, the persons junior to the petitioners, were promoted vide orders dated 02.11.2015. Thereafter, the petitioners served a legal notice dated 25.11.2017 upon the respondents but after finding no results, they approached this Court by way of filing CWP No.24056 of 2018, which was disposed of vide order dated 25.09.2018, with the directions to the respondents to consider and decide the claim of the petitioners, which has been rejected by the respondents, vide order dated 01.03.2019. Hence this petition.

3. In nutshell, the case of the petitioners is that though they were fully eligible for their promotion to the post of 'Executive Engineer' as per Section 6 of 'The Haryana Services of Engineers, Group A, Irrigation Department Act, 2010', but their promotion has not been made on the said post by the competent authority, despite recommendations of the DPC and availability of sufficient number of posts at that point of time, due to which they have suffered great loss.

4. On issuance of notice of motion, written statement on behalf of Respondent Nos.1 to 4 has been filed, wherein it has been stated that the none of the petitioners was eligible for promotion at the time of DPC recommendations dated 06.08.2014, since they have not completed 08 years of requisite service as Sub Divisional Officer (Group B), which is essential, as per Section 6 (b) of the Act of 2010, and at that point of time, the names of the petitioners were recommended for promotion and relaxation was sought from the Government for considering their names for promotion, which was not granted and even till their retirement, they have not completed 08 years of service as SDO, as per *ibid* Act.

5. Learned counsel for the petitioners submitted that the petitioners are entitled for their promotion on the post of 'Executive Engineer' from the date of recommendations of the DPC, since their names were fully recommended for promotion and action of the respondents in rejecting their claim for promotion, despite recommendations of the DPC, is illegal and arbitrary, therefore, the impugned order dated 01.03.2019 (Annexure P-12) be set aside and directions be issued to promote the petitioners as Executive Engineers.

6. On the other hand, learned State counsel while reiterating the averments made in the written statement submitted that the claim of the petitioners has rightly been rejected, since they were not eligible for promotion at the time of recommendations of DPC and even were not found suitable by the

competent authority for promotion.

7. I have heard learned counsel for the parties and perused the record.

8. The sole issue involved in the present *lis* is whether action of the State Government in rejecting the recommendations dated 06.08.2014 and 21.05.2015 of the Departmental Promotion Committee is legal and valid or not?

9. Admittedly, The service conditions of the Engineers 'Group A', Irrigation Department, are governed by 'The Haryana Services of Engineers, Group A, Irrigation Department Act, 2010', which regulate their recruitment and conditions of service. Section 6 of the said Act, prescribes the qualification criteria for considering cases of the Sub Divisional Officers (Group B Service) for their promotion as 'Executive Engineer', which reads as under : -

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“6. Qualification :- No person shall be promoted on or after the date of publication of this Act in the Official Gazette, unless he:-

- (a) possesses one of the degrees as regular full time student from a university; or possesses degree of the Associate Membership Examination of the Institute of the Engineers (India); and***
- (b) has rendered eight years service as Sub-Divisional Officer (Group B Service) and passed the departmental examination of Group B Service;***

Provided that the Government may relax the condition of eight years service in the case of an officer who has completed five years service;

- (c) has not more than one wife living or, in the case of a women, is not married to a person already having a wife living;***

Provided that the Government may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this condition. ”

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10. The petitioners were appointed as Junior Engineers in the Irrigation & Water Resources Department of the Government of Haryana from 24.12.1976 to 31.12.1976 and were promoted on the post of Sub Divisional Officer during the year 2008 and 2009. Both the recommendations in question for their promotion as 'Executive Engineer' were made by the Departmental Promotion Committee in its meeting(s) held on 06.08.2014 and 21.05.2015. The earlier writ petition i.e. CWP No.24056 of 2018, filed by the petitioners, was disposed of vide order dated 25.09.2018 with the directions to the respondents to look into the grievance unfolded by the petitioners in the legal notice dated 25.11.2017 and take a conscious decision. After considering the claim of the petitioners, their claim for promotion as 'Executive Engineer' was rejected by the competent authority vide impugned order dated 01.03.2019.

It is an admitted fact that at the time of recommendations of the DPC dated 06.08.2014, neither the petitioners were having the requisite experience of 08 years of service as SDO (Group B) nor relaxation was granted to them in the requisite length of service, for promotion as 'Executive Engineer', as per the mandate of Section 6 of the Act of 2010, and even till the date of their retirement, none of the petitioner was eligible *qua* requisite length of 08 years' service. The chart showing respective length of service of the petitioners on the date of DPC recommendations dated 06.08.2014, is as under:-

Sr.	Name of petitioner in order of Memo of Parties	Date of Promotion as SDO	Length of Service on 06.08.2014 i.e. date of DPC recommendations
1.	Rohtash Kumar Bansal	13.08.2009	Less than 05 years
2.	Lehna Singh	18.08.2009	Less than 05 years
3.	Rajender Kumar Sharma	18.08.2009	Less than 05 years
4.	Raj Kumar	01.10.2008	Less than 08 years
5.	Mahinder Singh Rohilla	18.08.2009	Less than 05 years
6.	Devender Kumar Jain	30.10.2008	Less than 08 years

From the above chart, it is conspicuous that petitioner Nos.1 to 3 & 5 were not having even 05 years length of service as SDO, whereas length of service of petitioner Nos.4 & 6, as SDO, was less than 08 years, therefore, it is crystal clear that none of the petitioners were eligible for promotion as Executive Engineer on the date of DPC recommendations dated 06.08.2014 and all the petitioners were under requirement of relaxation, to be granted by the competent authority of the State Government, which has not been granted, after considering their claim for promotion, at that point of time.

It is a settled proposition of law that promotion cannot be claimed as a matter of right, as neither the petitioners were eligible for promotion nor were they found suitable by the competent authority, after considering the recommendation of the DPC, since granting relaxation is an administrative power of the competent authority. Recommendations of the Departmental Promotion Committee are only a procedural mechanism for assisting the competent authority to reach at a conclusion regarding suitability of the available candidates.

11. Recently, the Hon'ble Supreme Court in '**Ravikumar Dhansukhlal Maheta & Anr. v/s High Court of Gujarat & Ors.**' 2024 AIR (SC) 3256 while dealing with the issue of 'Government Servants' right to promotion', as involved in the instant petition, has held that "government employees cannot demand promotion as a matter of right because the Constitution does not prescribe criteria for filling seats in promotional posts and that the Court's intervention in promotion policies should only be limited when there is a violation of the equality principle under Article 16 of the Constitution." It has further been held that the courts cannot sit in review to decide whether the policy adopted for promotion is suited to select the 'best candidates', unless on the limited ground, where it violates the principle of equal opportunity under Article 16 of the Constitution.

The relevant portion of the abvoesaid judgement is as under:-

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“ 81. However, in India, no government servant can claim promotion as their right because the Constitution does not prescribe criteria for filling seats in promotional posts. The Legislature or the executive may decide the method for filling vacancies to promotional posts based on the nature of employment and the functions that the candidate will be expected to discharge. The courts cannot sit in review to decide whether the policy adopted for promotion is suited to select the `best candidates', unless on the limited ground where it violates the principle of equal opportunity under Article 16 of the Constitution.”

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12. The Hon'ble Supreme Court in 'Union of India & Ors. v/s Mualidhara Menon & Anr.' 2009 (4) SCT 135' while dealing with the issue of 'Government Servants' right to seek relaxation in service conditions', as involved in the instant petition, has held that “ if relaxation has been granted in case of one employee on the basis of material available before Board, the same by itself may not be treated to be a binding precedent”. The relevant portion of the abvoesaid judgement is as under:-

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“ 14. Article 14 of the Constitution of India providing for the equality clause is a positive concept in terms whereof, the equals, subject to certain exceptions, are to be treated equally and unequals cannot be treated equally. If a relaxation has been granted in case of one employee on the basis of the materials available before the Board, the same by itself may not be treated to be a binding precedent so as to enable the Tribunal or High Court to issue a writ of or in the nature of mandamus. Our attention has not been drawn to any provision under the aforementioned circular or otherwise that

the Chief Commissioner of Income Tax had any power of relaxation. If there are no vacancies, orders of transfer could not be made. Even if no vacancy existed in respect of the direct recruit quota, the respondents could not have been transferred. In absence of any power of relaxation, the respondents could not have been accommodated on the post of UDCs and they could be transferred only on the post of LDCs which were vacant at the relevant time. In our opinion, relying on or on the basis of the case of Sri Nair only, the impugned judgment could not have been passed.”

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13. To the same effect is the Judgement of Hon'ble Supreme Court in **'Suresh Chand Gautam V/s State of Uttar Pradesh & Ors.'**, 2016 (2) SCT 331 while dealing with the same question of relaxation has held that “no mandamus can be issued either to provide reservation or for relaxation” and “the State is not bound to make reservation in promotion”. The relevant portion of the abovesaid judgement is as under:-

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*“ 42. In the case at hand, we are concerned with the enabling power as engrafted under Articles 16, 16(4-A) and 16(4-B). The said Articles being enabling provisions, there is no power coupled with duty. In Ajit Singh (II) (supra), it has been held that no mandamus can be issued either to provide for reservation or for relaxation. Recently, in **Chairman & Managing Director, Central Bank of India & Ors. v. Central Bank of India SC/ST Employees Welfare Association & Ors., 2015(2) S.C.T. 54 : 2015 (1) SCALE 169** it has been held thus:-*

"In the first instance, we make it clear that there is no dispute about the constitutional position envisaged in Articles 15 and 16, insofar as these provisions empower the State to take affirmative action in favour of SC/ST category persons by making reservations for them in the employment in the Union

or the State (or for that matter, public sector/authorities which are treated as State under Article 12 of the Constitution). The laudable objective underlying these provisions is also to be kept in mind while undertaking any exercise pertaining to the issues touching upon the reservation of such SC/ST employees. Further, such a reservation can not only be made at the entry level but is permissible in the matters of promotions as wells. At the same time, it is also to be borne in mind that Clauses 4 and 4 A of Article 16 of the Constitution are only the enabling provisions which permit the State to make provision for reservation of these category of persons. Insofar as making of provisions for reservation in matters of promotion to any class or classes of post is concerned, such a provision can be made in favour of SC/ST Civil Appeal No. of 2015 & Ors. (arising out of SLP (C) No. 4385 of 2010 & Ors.) category employees if, in the opinion of the State, they are not adequately represented in services under the State. Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise."

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14. Since, the petitioners cannot claim either “promotion as a matter of right” or “relaxation in the service conditions” in view of the law laid down in 'Ravikumar Dhansukhlal Maheta & Anr.' and 'Mualidhara Menon & Anr.' *cases (Supra)*, the action of the competent authority of the State Government, in not promoting the petitioners, cannot be held to be illegal or arbitrary and moreover, granting relaxation is an administrative power of the competent authority and the recommendations of the Departmental Promotion Committee are only a procedural mechanism for assisting the competent authority to reach at a conclusion regarding suitability of the available candidates and, therefore, the recommendations dated 06.08.2014 and 21.05.2015 of the DPC were not acceded to by the competent authority of the State Government and further the Courts while invoking jurisdiction under Articles 226/227 of the Constitution of India cannot sit in review to decide the suitability to select the 'best candidates', unless on the limited ground where it violates the principle of equal opportunity under Article 16 of the Constitution.

15. In this view of the matter, no case is made out to interfere in the impugned order dated 01.03.2019, while invoking jurisdiction under Articles 226/227 of the Constitution of India and consequently, the present petition is hereby dismissed, with no orders as to costs.

January 08, 2025

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No