
(1998) 06 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 259 of 1997

Paramjit Rai

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 16

Citation : (1999) 1 ILR (P&H) 30 : (1998) 120 PLR 41

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : J.S. Khehar and N.S. Gill, for the Appellant; M.M. Kumar, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—The petitioner Shri Paramjit Rai was directly recruited as an Assistant Engineer in August, 1978 in the Punjab State Tubewell Corporation Limited (for short the corporation). He was promoted to the post of Divisional Engineer in November, 1986. He belongs to a Scheduled Caste but his promotion was not on the basis of reservation and he was promoted on his turn as per his seniority as Assistant Engineer. According to Bye-law 9.1 (a) read with Appendix "B" of the Punjab State Tubewell Corporation Employees Service Bye-laws, 1977 (hereinafter referred to as the Bye-law) a Divisional Engineer with seven years of service becomes eligible for promotion to the next higher post of Superintending Engineer. Since the petitioner was promoted to the post of Divisional Engineer in November, 1986 he became eligible for promotion to the post of Superintending Engineer in November, 1993 after he completed seven years of service as Divisional Engineer.

2. On the retirement of a Superintending Engineer on 28.2.1994 one post had fallen vacant which was filled up by the corporation by brining one Shri P.K. Sharma on deputation on 9.3.1994. It may be mentioned that method of appointment to the service of the corporation is given in Bye-law 8, according to

which, appointment can be made in the following manner :-

i) by direct appointment;

ii) by promotion,

iii) by transfer/deputation of an employee of the Government, Central Government or State/Central Undertakings and other statutory bodies;

iv) by absorption into service of the employees taken on deputation. Since the petitioner was eligible for promotion but his claim was not considered when Shri P.K. Sharma was brought on deputation the former represented to the corporation making a grievance that he ought to have been considered for promotion. He also claimed promotion on the basis of reservation in terms of the Government instructions issued in this regard from time to time. In the meantime, the State Government issued an order dated 26.9.1995 directing the corporation to follow and modify its Bye-laws/policy of promotion and recruitment so as to have 50% of the posts including those of the Superintending Engineers filled by taking officers on deputation from the Punjab Irrigation Department. The Chairman of the corporation considered the representation made by the petitioner favorably and addressed a communication to the State Government emphasising that the circular letter dated 26.9.1995 be withdrawn and that the State Government should send a panel of names of officers from the Irrigation Department so that the corporation could consider those officers alongwith the eligible officers of the corporation for making promotion to the posts of Divisional Engineer and above. He also brought to the notice of the State Government a decision of the Court in civil writ petition 2440 of 1989 filed by S.K. Gulati a Divisional Engineer whose claim had not been considered for promotion and the vacant post had been filled up by taking officers on deputation. It is worth while to mention that the case of Shri S.K. Gulati was similar to that of the petitioner herein and the writ petition filed by Shri Gulati was allowed by this Court holding that non consideration of his case for promotion and filling up the post by way of deputation was not only unfair and unreasonable but also violative of Articles 14 and 16 of the Constitution. This court in S.K. Gulati's case (supra) quashed the appointment of Shri R.K. Aggarwal Superintending Engineer who had been brought on deputation in preference to Shri Gulati who was a Divisional Engineer in the Corporation and the corporation was directed to consider the claim of Shri S.K. Gulati for promotion as Superintending Engineer. It is common case of the parties that in pursuance to the decision in S.K. Gulati's case Shri Gulati and one Sucha Singh who were both working as Divisional Engineers were considered and promoted as Superintending Engineers against the posts that had fallen vacant on the repatriation/retirement of Superintending Engineers on deputation. It is surprising to note that the corporation did not follow the directions of this court in S.K. Gulati's case in the case of the petitioner herein who is similarly situated like Sarvshri S.K. Gulati and Sucha Singh who have since been promoted on 30.7.1993 and brought Shri P.K. Sharma, on deputation. Shri P.K. Sharma

Engineer was retired from service on 31.10.1996. On his post falling vacant the corporation again did not consider the claim of the petitioner for promotion to the post of Superintending Engineer and instead brought Sh. D.R. Dingra on deputation on the pretext that out of the five posts of Superintending Engineers in the corporation three were held by promotees and, therefore, the vacancy caused on the retirement of Shri P.K. Sharma fell to the share of the deputationists in terms of the Government circular dated 26.9.1995. The representations filed by the petitioner were thereafter rejected by the corporation and the petitioner was informed as per communication dated 1.1.1997 that there was no vacancy of Superintending Engineer in the corporation and that the vacancy caused on the repatriation/retirement of one Shri S.L. Gupta, was to be filled by an incumbent on deputation from the Irrigation Department as per Government directions contained in circular letter dated 26.9.1995. The rejection of the representations filed by the petitioner and the appointment of Shri D.R. Dingra as Superintending Engineer on deputation have been challenged in this petition filed under Article 226 of the Constitution. The power of the State Government to issue directions like the one contained in circular letter dated 26.9.1995 has also been challenged and it is alleged that the said circular is illegal and unconstitutional.

3. In the written statement, filed on behalf of the corporation, it is averred that according to Bye-law 8 appointment to the service of the corporation can be made by direct appointment, by promotion, by transfer/deputation and by absorption into service of the employees taken on deputation and that the corporation has the option to choose any of the methods so provided. The appointment of respondent 3 on deputation is sought to be justified on the ground that when the vacancy arose the corporation decided to fill up the same by bringing an officer on deputation. It is further averred that no legal right of the petitioner has been infringed by the action of the corporation in bringing Shri Dingra on deputation from the Government. It is also pleaded that the State Government was competent to issue directions under Article 133 of the Memorandum of Articles of Association of the corporation where under by a circular letter dated 26.9.1995, it directed the corporation to fill 50% of the posts of Superintending Engineers by taking officers on deputation from the Punjab Irrigation, Department. It is also pleaded that in November, 1996 when Shri Dingra was taken on deputation the officers of the corporation were already holding posts more than 50% in the cadre and the persons working on deputation were less than their 50% quota and that the vacancy that had fallen had to be filled by bringing an officer on deputation.

4. Shri Harjit Singh, Under Secretary in the Department of Irrigation and Power, Punjab has also filed a short reply on behalf of the State of Punjab justifying its power to issue directions to the corporation and reference in this regard has been made to Article 133 of the Articles of Association of the corporation whereunder the Government could issue directions to the corporation in matters of broad policy. It is stated on behalf of the State Government that the directions were

issued in the larger public interest and not to harm the rights of any officer/employee, of the corporation.

5. I have heard counsel for the parties.

6. The first argument of Shri J.S. Khehar, learned Senior Advocate is that the petitioner was entitled to be considered for promotion in March, 1994 when Shri P.K. Sharma was brought on deputation and that non-consideration of his claim for promotion violated the provisions of Articles 14 and 16 of the Constitution. It is contended that in terms of Bye-law 9 the petitioner was eligible for promotion as he had completed seven years of service as Divisional Engineer and that he was possessing the requisite educational qualifications as well. He has placed reliance on the judgment of this court in *S.K. Gulati v. Punjab State Financial Tubewell Corporation Limited and Anr.*, Civil Writ Petition 2440 of 1989 decided on 9.7.1991. Shri M.M. Kumar learned counsel for the corporation, on the other hand, contended that Shri P.K. Sharma was brought on deputation on 2.3.1994 and if the petitioner felt aggrieved by his appointment he should have challenged the same in the year 1994. According to the learned counsel the writ petition was filed in the year 1997 after more than three years had elapsed and, therefore, deserves to be dismissed on the ground of laches. On merits, it is contended that in terms of Bye-law 8 of the Bye-laws the corporation had the choice of making appointments either by way of promotion or by bringing officers on deputation and that having exercised that option it is not open to the petitioner to challenge the same and that no legal right of the petitioner can be said to have been infringed. It is also contended on behalf of the corporation that in view of the Government circular letter dated 26.9.1995 the corporation had been directed to fill 50% of the posts of Superintending Engineers by bringing officers on deputation from the Punjab Irrigation Department and since these directions were binding, the petitioner could not be considered for promotion when Shri Dingra respondent 3 was brought on deputation in November, 1996. According to the corporation the cadre of Superintending Engineers consists of five officers and in November, 1996 three of them were officers of the corporation who had been promoted and, therefore, the quota of the officers of the corporation had been exhausted and the vacancy had to be filled by deputation.

7. Having given my thoughtful consideration to the rival contentions of the parties, I find force in what is contended on behalf of the petitioner. It is not in dispute that a post of a Superintending Engineer had fallen vacant on 1.3.1994 on the retirement of one Shri S.L. Jain. In order to fill up this vacancy the corporation could promote a Divisional Engineer or else bring an officer on deputation. It is also not in dispute and as noticed by this Court in *S.K. Gulati's* case (*supra*) the corporation was following a policy of bringing the officers on deputation without considering the claims of its own officers for promotion. No doubt under bye-law 8 the Corporation has the option to choose any of the modes of appointment and fill up the vacancies but does it mean that the corporation can exclusively resort to one method to the exclusion of the others.

In other words, could the corporation choose to fill up the vacancies only by way of deputation ignoring who are waiting for promotion to the post of Superintending Engineer. Such a course, in my opinion, would be most unfair and unreasonable and would violate the protection of equality of opportunity guaranteed by Article 16 in the matter of employment/appointment to any office under the State. There can be no two opinions that the corporation which is a Public Sector Undertaking falls within the definition of State as given in Article 12 of the Constitution. It will, therefore, have to act fairly and reasonably and not deny to its officers the right to be considered for promotion if they are otherwise eligible in terms of the Bye-laws. The present is a case where different sources of recruitment have been prescribed but the bye-laws do not lay down any quota for each of the sources. In such a situation, an employer may choose to fill up the posts from one of the prescribed sources and if it excludes altogether the other sources completely it would be unfair. To seek advancement in one's professional career is a natural human aspiration and if such an opportunity is denied it is bound to affect the institution adversely and also bring down the morale of its officers who would cease to take interest in it. It was, therefore, necessary for the corporation to have considered the claim of its eligible officers who were waiting for promotion to the post of Superintending Engineer. Admittedly, this has not been done. The action of the Corporation in bringing Shri P.K. Sharma on deputation cannot, therefore, be sustained. However, he has retired and no useful purpose would be served in setting aside his appointment. On the vacancy being created on his retirement the same was again filled up by bringing respondent 3 on deputation without considering the claim of the petitioners and other eligible officers for promotion. This action is again violation of Articles 14 and 16 of the Constitution and cannot, therefore, be sustained. The petitioner, in my opinion, was entitled to be considered for promotion in March, 1994 when Shri P.K. Sharma was brought on deputation. The view that I have taken finds support from the decision of this court in S.K. Gulati's case (supra) wherein the same Bye-laws were under consideration and it was observed that the action of the corporation and in filling up the posts of Superintending Engineers by bringing officers on deputation without considering its eligible officers for promotion was unconstitutional. It is surprising that when the direction given by this court in S.K. Gulati's case (supra) was implemented the corporation promoted Shri Gulati and Shri Sucha Singh to the post of Superintending Engineer but it did not consider the claim of the petitioner for promotion in March, 1994 when Shri P.K. Sharma was brought on deputation. The case of the petitioner is identical to that of Shri Gulati. It appears that there was a deliberate attempt on the part of some one in the corporation not to allow the petitioners to be promoted.

8. Mr. Kumar then contended that Shri P.K. Sharma was brought on deputation in March, 1994, whereas the petition has been filed in the year 1997 and the same should be dismissed on the ground of delay. There is no merit in this contention. The petitioner made a detailed representation when Shri Sharma was brought on

deputation and while it was still pending the State Government issued circular letter dated 26.9.1995 whereby it directed the Corporation to fill 50% of the posts of Superintending Engineers by bringing officers on deputation from the Punjab Irrigation Department. The Chairman of the corporation considered the representation of the petitioner and that of another officers favorably and requested the State Government to withdraw the circular letter so that the claim of the petitioner and another could be considered for promotion to the post of Superintending Engineer. In spite of this the State Government does not seem to have withdrawn the circular and the corporation feeling bound by the same rejected and the representation of the petitioner somewhere in the end of 1996 and the decision was communicated to the petitioner on 1.1.1997. Soon thereafter the present petition was filed. There is thus no delay on the part of the petitioner in approaching this Court.

9. Shri Kumar then referred to the Government circular letter dated 26.9.1995 and contended that in November, 1996, when respondent 3 was brought on deputation the quota of the officers of the corporation had already been exhausted. Since, three of the five posts in the cadre were being manned by them, therefore, the vacancy which then existed had to be filled up by bringing an officer on deputation. This contention is equally devoid of merit. Shri P.K. Sharma was brought on deputation on 2.3.1994, when circular letter of the State Government did not exist and therefore, the same cannot be made applicable in the case of the petitioner and he has a right to be considered for promotion with effect from 1.3.1994, when the post had fallen vacant.

10. Learned counsel for the petitioner also challenged the validity of the circular letter of the State Government dated 26.9.1995 and contended that the Government had no power to issue such directions under Article 133 of the Articles of Association of the Corporation. Another, argument raised was that the petitioner was entitled to promotion even on the basis of reservation. He referred to the various circular letters of the State Government providing for reservation in favour of Scheduled Castes in the matter of promotion to various posts. It was contended that all the circulars of the State Government had been adopted by the corporation mutatis mutandis and that the corporation is bound to give promotion to the petitioner in terms of those circulars. As I have already held that the petitioner is entitled to be considered for promotion with effect from 1.3.1994 when Shri P.K. Sharma was taken on deputation, it is not necessary for me to decide the other contentions raised by Shri Khehar.

11. In the result, the writ petition is allowed and the impugned order dated 20.11.1996 (Annexure P.11 with the writ petition) passed by the State Government appointing respondent No. 3 as Superintending Engineer on deputation with the corporation quashed. The corporation is directed to consider the claim of the petitioner alongwith the claim of any other eligible officer of the corporation, if any, for promotion to the post of Superintending Engineer with effect from 1.3.1994. In case the petitioner is found suitable for promotion, he

will be entitled to all consequential benefits that will flow from the order of promotion. The petitioner will have his costs which are assessed at Rs. 5,000/-.