
(2000) 02 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16543 of 1998

Shingara Chand and Others

APPELLANT

Vs

Punjab Water Supply and Sewarage Board and Others

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2000) 125 PLR 570

Hon'ble Judges : G.S. Singhvi, J;Bakhshish Kaur, J

Bench : Division Bench

Advocate : B.R. Mahajan, for the Appellant; Harsh Aggarwal, for Respondent Nos. 1 and 2 and Gurnam Singh, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Whether a public authority like the Punjab Water Supply and Sewarage Board (for short "the Board") can adopt the policy of pick and choose while giving current-duty charge of the post of Sub-Divisional Engineer to a Junior Engineer is the question which arises for consideration and determination in this petition.

2. The petitioners joined service as Junior Engineers in the Punjab PWD Public Health Department on 12.11.1970, 26.10.1972 and 4.8.1976 respectively. Likewise, respondents No.3 and 4 joined service as Junior Engineers in the said Department on 12.2.1973 and 6.7.1976 respectively. Their services were placed at the disposal of the Board with effect from 1.1.1977 and presently they are holding substantive appointments as Junior Engineer in the service of the Board. Respondent No.5, who was initially appointed in the service of the Board on 28.1.1977, is also holding substantive appointment in the cadre of Junior Engineers. In the seniority list of letter Annexure-P1 dated 29.8.1995, the petitioners are shown at serial Nos.35, 38 and 47 respectively and respondents No.3 to 5 are shown at serial Nos.40, 45 and 46 respectively. The grievance of the petitioners is that even though the non-official respondents junior to them in

the cadre of Junior Engineers, the official respondents have promoted them as Sub Divisional Engineers in the garb of giving current-duty charge and while doing so, their cases were altogether overlooked. According to the petitioners, the decision of the Board to give current-duty charge to the non-official respondents ignoring the claim of senior persons like them is violative of their fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution of India.

3. In the written statement filed on behalf of respondents No.1 and 2, it has been averred that the mechanism of giving current-duty charge of the post of Sub Divisional Engineer to the existing Junior Engineers had to be adopted because suitable candidates were not available for appointment against the posts meant to be filled up by direct recruitment. This is borne out from paragraphs 6 and 7 of the written statement, the relevant extract of which is reproduced below:-

Paras 6 and 7 of the written statement:

"As per the service regulations/Act of the Board the vacant posts of Sub Divisional Engineers for direct recruitment can be filled up by the answering respondent only after seeking permission from the Government to fill up those posts. However, in the meantime in the public interest and harmonious working of the Board, the Board has decided to fill up those posts by giving current duty charge to Jr. Engineers/Circle Head Draftsmen in their own pay scale. Since it is a temporary arrangement, therefore, a further condition is imposed that those officers who have been given current duty charge would not be conferred with any right/benefit to claim promotion to the post of Sub Divisional Engineers. It is pertinent to mention here that respondents No.3 to 5 have been given current duty charge only and as such they are not promoted. It is further mentioned that the case of petitioners No. 1 and 2 was duly considered by the screening committee for giving them current duty charge of the post of Sub Divisional Engineer but these petitioners were not found fit for the same. So far as the petitioner No.3 Sh. Harbhag Singh is concerned he was not considered for , giving current duty charge of the post of Sub Divisional Engineer for the reasons that in claim No.8 of the seniority list circulated on 29.8.95 it was mentioned against his name that he has been adjusted in O and M Cell, thereby presuming that petitioner No.3 was no more in the service of the Board. Moreover, the petitioner No.3 has not made not considering him for giving current duty charge of the post of Sub Divisional Engineer. The Board detected the any representation before the competent authority for not considering him for giving current duty charge of the post of Sub Divisional Engineer. The Board detected the Clerical mistake in the seniority list on the receipt of the summons of this writ petition only. To rectify the mistake, the case of the-petitioner No.3 is now being placed before the Screening Committee in its next meeting for considering his name for giving him current duty charge of the post of Sub Divisional Engineer."

4. Respondents, No.1 and 2 have further averred that the simple giving of

current-duty charge of the post of Sub Divisional Engineer cannot be equated with promotion and, therefore, the petitioners cannot complain of the violation of their fundamental right to equality.

5. In their written statement, respondents No.3 to 5 have also tried to justify the action of respondents No. 1 and 2 by stating that the giving of current-duty charge of the junior persons does not involve promotion from the post of Junior Engineer to that of Sub-Divisional Engineer.

6. In the replication filed by them to the written statement of respondents No. 1 and 2, the petitioners have not only reiterated their assertion about the violation of equality clause contained in the Constitution but they have also placed on record Annexure-P.5 to P.10 to show that there is nothing adverse in their service record which could justify the decision of the official respondents to ignore them while giving current-duty charge to junior persons.

7. We have heard learned counsel for the parties. It is not in dispute that the petitioners are senior to respondents No.3 to 5 in the cadre of Junior Engineers. It is also not in dispute that at the time of giving current-duty charge of the posts of Sub Divisional Engineers to respondents No.3 to 5, the petitioners were not considered despite the fact that they are senior, in the lower cadre. Notwithstanding this, the official respondents have made a feeble attempt to justify their action by stating that the giving of current-duty charge to junior persons cannot be equated with promotion and, therefore, the petitioners cannot seek invalidation of the impugned orders by invoking the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. However, we have not felt persuaded to accept their stand that the giving of current-duty charge of the higher post to junior persons is inconsequential. A person, who is given current-duty charge of the higher post, not only enjoys the higher status but also exercises greater powers. Therefore, it cannot be said that the orders passed by the official respondents to give current-duty charge to respondents No.3 to 5 ignoring the prior claims of the petitioners do not affect them. One may not take serious exception to the giving of current-duty charge to a junior person for a few days or weeks in order to tide over the crisis situation, but, the practice of giving current-duty charge of the higher post to the juniors for months and years together cannot be legally justified or approved. We are further of the opinion that giving of current-duty charge for a long period cannot be justified by treating it as something like giving additional charge of the higher post and in the garb of giving current-duty charge, a senior person cannot be denied his legitimate right to hold the higher post.

8. In the present case, the current-duty charge of the post of Sub Divisional Engineers was given to non-official respondents vide orders dated 16.10.1998 and 22.10.1998 and even now, they are enjoying the status and are exercising powers as Sub Divisional Engineers. Therefore, we do not find any valid ground to sustain the action of the official respondents to deprive the petitioners of their legitimate right or atleast legitimate expectation of holding the higher post of

Sub Divisional Engineers.

9. Hence, the writ petition is allowed with the direction that within fifteen days from the date of submission of certified copy of this order, respondents No.1 and 2 should pass orders for giving current-duty charge of the posts of Sub Divisional Engineer to the petitioners. For this purpose, they may withdraw the current-duty charge from the non-official respondents if becomes necessary to do so due to the non-availability of adequate number of posts in the cadre of Sub Divisional Engineers.