2026:PHHC:186661

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-14092-2021

Sanjiv Kumar .....Petitioner

Versus

State of Punjab and another .....Respondents

1.	**Reserved on**	**:**	**07.10.2026**
2.	**Pronounced on**	**:**	**14.10.2026**
3.	**Uploaded on the website**	**:**	**14.10.2026**
4.	**Whether only operative part of the judgment is pronounced or full judgment is pronounced**	**:**	**Full**
5.	**The delay, if any, of the pronouncement of full judgment, and reasons thereof**	**:**	**Not applicable**

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by : Mr. Shreenath A. Khemka, Advocate
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

Mr. Aman Sharma, Advocate,
Mr. Chirag Suri, Advocate and
Mr. Aryan Katoch, Advocate
for respondent No.2.

****

NAMIT KUMAR, J.

1. The petitioner has invoked the writ jurisdiction of this Court by filing the instant petition under Article 226 of the Constitution of India for issuance of a writ of certiorari for quashing the order dated 02.07.2021 (Annexure P-10), whereby his claim for consideration for promotion to the post of Divisional Engineer, has been rejected. Further, a writ of mandamus has been sought for directing the respondents to promote the petitioner as Divisional Engineer with effect from 01.03.2020, with all consequential benefits, along with

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interest @ 12% per annum.

2. Briefly stated, the facts of the case are that the petitioner joined the respondent-Punjab Water Resources Management and Development Corporation Limited, Mohali (hereinafter referred to as 'Corporation') as Junior Engineer (JE) in the year 1984. Subsequently, keeping in view the departmental exigencies, he was given the additional charge of the post of Sub Divisional Engineer (SDE) on 04.10.2007. The said additional charge was withdrawn by the Corporation on 15.10.2012 (Annexure R-1) and was again entrusted to him on 03.03.2014 (Annexure R-2). Thereafter, on 30.10.2015, he was given regular promotion as Sub Divisional Engineer (Annexure P-3). Subsequently, vide order dated 23.07.2020 (Annexure P-8), the petitioner was given additional charge of the post of Divisional Engineer. He ultimately retired from service on attaining the age of superannuation on 31.07.2021 while holding the substantive post of Sub Divisional Engineer. The next channel of promotion from the post of Sub Divisional Engineer is to the post of Divisional Engineer, which is based on seniority-cum-merit and the same is governed by 'Punjab State Tubewell Corporation Employees Service bye-laws, 1977' and the eligibility criteria for promotion to the post of Divisional Engineer is as under:-

> *"From amongst the Sub-Divisional Engineers, who have an experience of working as such for a minimum period of eight years' service."*

3. As per seniority list, the petitioner was at Sr. No.4 in the seniority list of Sub Divisional Engineers with effect from 01.03.2020. The seniority position of the petitioner as on 01.03.2020 is as under:-

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SENIORITY AS ON 01.03.2020		
S.No.	Name	Date of Retirement
1.	R.P. SINGH	31.08.2028
XXXXXX		
2.	AVTAR SINGH	31.08.2021
XXXXXX		
3.	RAJESH KUMAR	31.03.2021
4.	**SANJIV KUMAR**	**31.07.2021**
XXXXXX		

4. It is the case of the petitioner that, in the year 2020, four posts of Divisional Engineer were lying vacant and he was fully eligible for promotion to the said post, having approximately 12 years experience of working as Sub Divisional Engineer, acquired partly on account of additional charge and thereafter on regular promotion. However, he was not given promotion to the post of Divisional Engineer. In the interregnum, an amendment was made on 04.03.2021 in the 'Punjab Irrigation Department (Group-A) Service Rules, 2004', whereby the mandate of eight years of experience was reduced to six years. Consequently, the petitioner submitted representation dated 24.03.2021 (Annexure P-9), seeking promotion to the post of Divisional Engineer, however, the said request was rejected by the respondent-Corporation, vide order dated 02.07.2021 (Annexure P-10), on the ground that the minimum experience required for promotion to the post of Divisional Engineer from Sub Divisional Engineer is six years, hence, the case of the petitioner cannot be considered for promotion due to insufficient experience on the post of regular Sub Divisional Engineer. Hence, the present petition.

5. Separate written statements have been filed by respondent No.1-State of Punjab and respondent No.2-Corporation. In the written

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statement filed by respondent No.2-Corporation, the aforesaid facts have not been disputed, however, it has been stated that so far as the amendment in the 'Punjab Irrigation Department (Group-A) Service Rules, 2004', issued by the Department of Water Resources, vide notification dated 04.03.2021 (Annexure P-6), wherein the period of experience of eight years has been reduced to six years is concerned, the said amendment has not been adopted by the respondent-Corporation and even the amended service rules do not advance the case of the petitioner in any manner, as he did not fulfil the requisite experience of six years. The petitioner retired from service on 31.07.2021 on attaining the age of superannuation and as on the date of his retirement, had only an experience of five years and nine months of regular service as Sub Divisional Engineer.

6. Learned counsel for the petitioner submits that the petitioner had more than 12 years of experience of working as Sub Divisional Engineer, as he was given the additional charge of the post of Sub Divisional Engineer from 04.10.2007 to 15.10.2012 and then from 03.03.2014 to 30.10.2015 and thereafter worked from 30.10.2015 to 31.07.2021 on regular post of Sub Division Engineer and, therefore, he was fully eligible for promotion to the post of Divisional Engineer. He further submits that the experience gained by the petitioner while performing additional duties of the post of Sub Divisional Engineer is also required to be counted in view of the law laid down by a Division Bench of this Court in ***Chandigarh Administration v. Vipin Gupta and another : 2011(2) SCT 560***, and consequently, his claim for promotion to the post of Divisional Engineer has wrongly been rejected by the

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respondents and directions may be issued to reconsider his claim for promotion considering him to be eligible for the same.

7. *Per contra*, learned counsels for the respondents submit that firstly, only the regular experience gained by the petitioner was required to be considered for eligibility to the post of Divisional Engineer and secondly, the petitioner was at Sr. No.4 in the seniority list and even the other three senior Sub Divisional Engineers were not promoted to the post of Divisional Engineer and mere eligibility or availability of vacancy does not confer any right of promotion to the employee and, therefore, the petitioner is not entitled for promotion to the post of Divisional Engineer.

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

9. The facts are not in dispute that the petitioner joined the respondent-Corporation as Junior Engineer (JE) in the year 1984 and was given the additional charge of the post of Sub Divisional Engineer (SDE) for different periods, till he was given the regular promotion as Sub Divisional Engineer on 30.10.2015 (Annexure P-3). The next channel of promotion from the post of Sub Divisional Engineer is to the post of Divisional Engineer. The petitioner submitted representations dated 01.07.2020 and 24.03.2021 (Annexure P-9), seeking promotion to the said post, however, the same were rejected by the respondent-Corporation, vide order dated 02.07.2021 (Annexure P-10), on the ground that the minimum experience required for promotion to the post of Divisional Engineer from Sub Divisional Engineer is six years, hence, the case of the petitioner cannot be considered for promotion

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due to insufficient experience on the post of regular Sub Divisional Engineer.

10. A Division Bench of this Court in ***Vipin Gupta's case (supra)*** has held that the period of service rendered on adhoc basis/CDC is reckonable for eligibility for further promotion and the relevant portion from the said judgment reads thus:-

> *"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*

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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*

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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 rules 6)

S.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

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> *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."*

11. In view of the law laid down in the aforesaid judgment, it can safely be held that the petitioner was eligible for promotion to the post of Divisional Engineer.

12. However, now the question arises for consideration before this Court is as to whether the petitioner, who was at Sr. No.4 in the seniority list of Sub Divisional Engineers, can claim promotion merely on account of his eligibility and availability of vacancy?

13. The law on the said issue is well settled that an employee cannot seek promotion from the date of occurrence of vacancy or on account of acquiring eligibility on the promotional post. The Hon'ble Supreme Court in ***Bihar State Electricity Board and others Vs. Dharamdeo Das : 2024 SCC Online SC 1768***, has held that promotion is effective from the date it is actually granted and not from the date

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when a vacancy occurs on the subject post or when the post is created. Promotion becomes effective only upon the actual assumption of duties, rather than the date of occurrence of vacancy or recommendation. While employees have a right to be considered for promotion, they have no fundamental right to promotion itself, nor to retrospective promotion. The relevant paragraphs of the said judgment are thus :-

> *"18. It is no longer res integra that a promotion is effective from the date it is granted and not from the date when a vacancy occurs on the subject post or when the post itself is created. No doubt, a right to be considered for promotion has been treated by courts not just as a statutory right but as a fundamental right, at the same time, there is no fundamental right to promotion itself. In this context, we may profitably cite a recent decision in* ***Ajay Kumar Shukla vs. Arvind Rai (2022) 12 SCC 579*** *where, citing earlier precedents in* **Director, Lift Irrigation Corporation Ltd. vs. Pravat Kiran Mohanty and Others (1991) 2 SCC 295** and **Ajit Singh and Others vs. State of Punjab and Others (1999) 7 SCC 209***, a three Judge Bench observed thus:*
>
> > *41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in* ***Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty and Others*** *in para 4 of the report which is reproduced below:*
> >
> > > *"4.....There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.*
>
> *xx xx xx xx xx"*
>
> *21. In* ***Nani Sha and Others vs. State of Arunachal Pradesh and Others : (2007) 15 SCC 406****, it was observed that mere existence of a vacancy is not sufficient for an employee to claim seniority and the date of actual appointment has to be in accordance with the prescribed*

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procedure. In Dinesh Kumar Sharma (supra), the following pertinent observations were made :

> *"34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-1996, he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in* ***Jagdish Ch. Patnaik v. State of Orissa : (1998) 4 SCC 456.****"*

xx xx xx xx xx

> *30. Given the above legal position, in our view, the Division Bench of the High Court ought to have refrained from interfering with the findings returned by the learned Single Judge who has rightly held that merely because the respondent had completed the Kal Awadhi for promotion from the post of Under Secretary to Joint Secretary, would not necessarily entitle him for appointment from the date the post fell vacant. This is not a case where the respondent has been deprived of promotion to the next higher post, nor is it a case where the action of the Board was guided by any malafides or colourable exercise of power. As noted above, the action of the Board was purely guided by administrative exigencies. The Resolution of the Board dated 26th December, 1991 for fixing the Kal Awadhi was only directory in nature and cannot be treated as statutory for the respondent to have claimed an entitlement to promotion reckoned from 29th July, 1997, instead of 5th March, 2003. Such a view is in consonance with the settled legal position and cannot be faulted."*

14. The Hon'ble Supreme Court in ***Nirmal Chandra Sinha v. Union of India & Ors., 2008(2) SCT 675*** has held that a promotion takes effect from the date it is granted, and not from the date the vacancy occurs or the post is created. The operative part of the said judgment, reads as follows:-

> *"7. It has been held in a series of decisions of this Court*

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> *that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide* ***Union of India and others v. K.K. Vadera and others, 1989 Supp (2) SCC 625, State of Uttaranchal and another v. Dinesh Kumar Sharma, 2007(1) SCT 393 : 2007(1) SCC 683, K.V. Subba Rao v. Government of Andhra Pradesh, 1988(2) SCC 201, Sanjay K. Sinha & others v. State of Bihar and others, 2004(3) SCT 512 : 2004(10) SCC 734*** *etc."*

15. To the same effect is the judgment of Division Bench of this Court in ***Union Territory, Chandigarh Administration and Others v. Tarlochan Singh and Others, 2014(3) SCT 330***, wherein it has been held as follows:-

> *"19. In view of the various judgments referred to above, we find that a person is not entitled to seek promotion from the day vacancies arises. It is for the employer to initiate the process of promotion and to fill up the posts, keeping in view its requirements. The employee has no right to claim promotion from a particular date or for a direction that the vacancy in the promotional post should be filled up. However, if the decision of the employer is to fill up the promotional post is actuated by the considerations other than administrative, such action or inaction can be subjected to the judicial review, but there cannot be any direction to grant promotion from the date the vacancy arises. However, in case, an Officer is given Current Duty Charge or promoted on adhoc basis, he shall be entitled to the pay of the promoted post as has been held in Arindam Chattopadhyays case (supra) and* ***State of Haryana v. P.K. Grover, (1983) 4 SCC 291 : AIR 1983 Supreme Court 1060.****"*

16. Lastly, the Hon'ble Supreme Court in ***I.Chuba Jamir and others Vs. The State of Nagaland and others, 2010(1) SCT 183***, held that mere eligibility does not confer any right for promotion. Para 19 of the said judgment reads thus:-

> *"19. We may also add here that the validity and legality of the Government Order and the Notification effecting the encadrement of the post held by respondent no.3 in the PWD and Housing Department with the E and S Service does not seem to have been squarely challenged before the High Court. One can understand that the Court, on scrutiny, might find that the encadrement was wrong and illegal. In that case the Court would undoubtedly strike*

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> *down the encadrement resulting in the posting of respondent No. 3 as Assistant Director in the E & S Service notwithstanding the fact that the decision was taken at the highest level in the government and the notification was issued with the approval of the highest government functionary. But the learned Single Judge accepted the validity of the encadrement and yet proceeded to direct the deemed promotion of the appellants-writ petitioners as Assistant Directors from a date prior to the appointment of respondent no.3 as Assistant Director. The only ground for passing such extra ordinary order was that when vacancies arose in the post of Assistant Director the appellants-writ petitioners were eligible for promotion. It is elementary and well settled that mere eligibility does not confer any right for promotion. The direction of the learned Single Judge, viewed from any angle was unsustainable. The Division Bench was perfectly right in setting aside the order of the learned Single Judge."*

17. Admittedly, the petitioner stood at Sr. No.4 in the seniority list and the other three Sub Divisional Engineers, who are senior to him, had not been promoted to the post of Divisional Engineer prior to him. The petitioner retired from service on 31.07.2021, on attaining the age of superannuation while holding the post of Sub Divisional Engineer. Further, no fault can be found in the action of the respondent-Corporation, as it is not the case of the petitioner that the meeting of Departmental Promotion Committee was held for considering promotion to the post of Divisional Engineer during the relevant period or that the petitioner was ignored for promotion on account of his ineligibility of non-acquiring the required experience and any person junior to him was promoted prior to him. The representations dated 01.07.2020 and 24.03.2021 (Annexure P-9) submitted by the petitioner, were duly considered and replied by the respondent-Corporation, vide letter dated 02.07.2021 (Annexure P-10). Thus, no arbitrariness, illegality or violation of petitioner's right to consideration for promotion is made out, as mere acquiring eligibility or existence of

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vacancy does not confer an indefeasible right to promotion.

18. Keeping in view the facts and circumstances as enumerated hereinabove and the settled position of law, the present petition is hereby dismissed, with no order as to costs.

14.10.2026 (**NAMIT KUMAR**)
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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