

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7533 OF 2013
(Arising out of SLP (C) No. 11001 of 2013)

Dishant Salwan ... Appellant

Versus

State of Punjab & Ors. ... Respondents

O R D E R

Leave granted.

2. Calling in question the legal propriety of the judgment and order dated January 29, 2013 passed by the High Court of Punjab and Haryana at Chandigarh in L.P.A. No. 179 of 2013 (O & M) affirming the judgment and order dated 8.1.2013 passed by the learned Single Judge in C.W.P. No. 14876 of 2010, the appellant has preferred the present appeal by special leave.

3. The 4th respondent, Manjit Singh, challenged the appointment of the appellant to the post of Junior Engineer (Civil) on the ground that despite he being more meritorious than the selected candidates, his case had been ignored and respondent No. 4 had been conferred the benefit of appointment. The learned Single Judge adverted to the facts of the case and came to hold that the petitioner therein was more meritorious and accordingly quashed the appointment of 4th respondent, the appellant herein. The Division Bench in L.P.A. concurred with the view expressed by the learned Single Judge.

4. Regard being had to the subsequent events that have taken place during the pendency of this appeal, the facts need not be dwelled upon in detail.

5. An affidavit has been filed by the Chief Engineer (North) Water Supply and Sanitation Department, The Mall, Patiala stating, inter alia, thus:-

"2. That Sh. Dishant Salwan was appointed in this department in Ex-Serviceman quota, but in compliance with the orders of the Hon'ble High Court in C.W.P. No. 14876 of 2010, Sh. Dishant Salwan was terminated vide this office Order No. WSS/ENG (5) 20105, Dated 22.4.2013 and against his post, the petitioner of CWP No. 14876 of 2010 namely Sh. Manjit Singh was appointed vide this office Memo No. 20112, Dated 22.4.2013.

3. That according to Section 5 of the appointment letter of Manjit Singh, he has to join upto 06.05.2013 in the office of the Superintending Engineer, Water Supply and Sanitation Circle, Patiala, but till today he has not joined his service.

4. That there is only one post in this category, therefore, only

one candidate can be appointed against this post in accordance with the orders of this Hon'ble Court."

6. Respondent No. 4 has filed an affidavit stating thus:-

"That the issue of adjustment of Petitioner, is an issue arising between the Petitioner and respondent Nos. 1 to 3. The answering respondent has no concern with the same. It is humbly submitted that when the answering respondent filed the writ petition before the Hon'ble High Court he was totally unemployed. During the pendency of the case, the respondent has secured an appointment to the post of Junior Engineer in the Punjab Mandi Board. The answering respondent is satisfied with his present job with the Punjab Mandi Board. Pursuant to the order of the Hon'ble High Court, the department issued appointment letter to the answering respondent but to which the answering respondent has replied stating that he is not interested in joining the job as he has already secured an appointment with Punjabi Mandi Board."

From the aforesaid factual scenario, it is clear that one post has fallen vacant and that the appellant can be appointed on the said post. There is no cavil over the same. However, Mr. Patwalia, learned senior counsel would urge that his appointment could not at all been cancelled and hence, he should be given continuity of service and seniority from the date of quashment of his appointment. The said submission has been feebly opposed by the learned counsel for the State.

7. Mr. Patwalia has drawn our attention to the select list of Junior Engineers (Civil) which has been brought on record as Annexure P-3. The name of the appellant finds place at Sl. No. 59 under the category "Ex-Servicemen (General Category)". Respondent No. 4 was considered against Ex-Servicemen (SC Category). It is urged by him that on his appointment by the decision of the High Court, Gauravdeep Singh, who was selected against the post of SC ex-servicemen, should have faced with termination. Thus, submits Mr. Patwalia, that the categories being different, anyone who was appointed from that quota was to leave. We find the submission to be absolutely correct. Hence, we direct that the appellant shall be reinstated in service with continuity of service and seniority without any back wages.

8. In the result, the appeal is allowed. The orders passed by the Division Bench as well as by the learned Single Judge are hereby set aside. There shall be no order as to costs.

.....J.
[Anil R. Dave]

.....J.
[Dipak Misra]

New Delhi;
September 02, 2013.
ITEM NO.48

COURT NO.13

SECTION IVB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s). 11001/2013

DISHANT SALWAN

Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

(With appln(s) for permission to place addl. documents on record and prayer

for interim relief and office report)

Date: 02/09/2013 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ANIL R. DAVE
HON'BLE MR. JUSTICE DIPAK MISRA

For Appellant(s) Mr. P.S. Patwalia, Sr. Adv.
Mr. Tushar Bakshi, Adv.
Ms. Sunita Sharma, Adv.

For Respondent(s) Mr. Kuldip Singh, Adv.
(for State of Punjab)

Mr. K. Krishna Kumar, Adv.
Mr. M.A. Krishna Moorthy, Adv.
(For Respondent No. 4)

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The Civil Appeal is allowed in terms of the signed order.

| (Jayant Kumar Arora) | | (Sneh Bala Mehra) |
| Sr. P.A. | | Court Master |

(Signed order is placed on the file)
