

Before G.S. Sandhawalia, J.

R. K. VERMA—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.6527 of 2017

August 23, 2017

Constitution of India, 1950—Art.14—Haryana Civil Services (General) Rules, 2016— Rls. 8(26), (73) and 143 – Punjab Civil Services Rules, Vol-1, Part-1—Rls. 3.26 and 7.17—Haryana Civil Services Rules, 2016—RI.23—Extension in service beyond the date of superannuation—Absence of public interest and merit—Retirement age of the Government servant being 48 years—Held, as per Rule 143, the retirement is to fall at the age of 48 years and extension in service is not permissible after the age of superannuation—If allowed, it would block promotional rights of next eligible employee who should be considered for the post as per seniority—The right of an employee to earn promotion to a higher post is one right that the employee waits for being well aware of his seniority and the seniority of his co-employees—Any extension beyond retirement should be in public interest and in exceptional circumstances with the approval of the Council of Ministers—In the preset case, even the Chief Secretary had been kept out of the loop and only ex post facto sanction had been obtained—In the absence of an outstanding merit, re-employment cannot be given at the mere asking of the retiring employee.

Held that, the core question which arises for consideration is whether in the absence of any public interest and in the absence of any outstanding merit, recorded at the time of granting of re-employment to a public servant, whether the same is permissible at the asking, in view of the specific bar in the statutory rules that the Government servant is to retire at the age of 58 years.

(Para 2)

Further held that, the case of the petitioners is that re-employment is only to be done in case where there is public interest and due to existence of exceptional circumstances and only if no competent person is available to take over the charge of the said post.

(Para 5)

Further held that, the issue now remains is as to whether there is any public interest which would be the underlined purpose or whether re-employment is to be granted to a public servant at the asking, as admittedly, as per Rule 143, the retirement is to fall at the age of 58 years and retention in service is not permissible after attaining the age of superannuation.

(Para 22)

Further held that, retention, if any, as noticed, would only mean to be in public interest and in exceptional circumstances and with the approval of the Council of Ministers. From a perusal of the file, it apparently shows that it is case of re-employment.

(Para 23)

Further held that, thus, apparent that petitioner No.1 has been shortchanged on account of respondent No.4 and is losing out of his right to be considered for the post of Chief Engineer despite his seniority. The right of the employee to earn promotion to the higher post is one right which the employee waits for being well aware of his seniority and the seniority of his co-employees. Merely because respondent No.4 has been able to promote himself on his own achievements which even the State did not consider at that stage to be of any extraordinary or exceptional capabilities which would be clear from the decision making process, as has been discussed. This would also be clear from the stand taken in the written statement, as such and any subsequent improvement which has now taken place after 11.07.2017, after the filing of the written statement, was to take place at the initial stage. It is also settled principle that if the orders do not speak of the reasons, the same cannot be done, subsequently, by filing an affidavit to that extent, as has now been done, to improve the case qua respondent No.4.

(Para 30)

Further held that, the right of the State to make contractual appointments and to appoint suitable officers for specialized posts is very much within its power but reasons have to necessarily flow when such contractual appointments are made which are otherwise expressly barred under the relevant service rules, as noticed above and only in public interest, it is to be done.

(Para 40)

Further held that, resultantly, the question is answered against the State that in the absence of any public interest having been recorded at the time of granting re-employment to a public servant and similarly,

in the absence of any outstanding merit having been found, re-employment cannot be given at the asking, in view of the specific bar of the statutory Rules.

(Para 44)

Further held that, resultantly, this Court cannot but step in and rectify the error which has taken place and accordingly, by issuing a writ of certiorari the extension orders qua all the three respondents including the second extension granted to respondent No.6 is quashed. However, it is made clear that the said respondents will be entitled to retain whatever financial benefits they have received during the promotions on their re-employment, since they had worked against their posts.

(Para 45)

Karan Nehra, Advocate,
for the petitioners in CWP-6527-2017 and CWP-16384 2017.

Mohit Garg, Advocate,
for the petitioner in CWP-16016-2017.

Harish Rathee, Sr.DAG, Haryana.
Dr.Surya Parkash, Advocate,
for respondent-Anup Chauhan.
Puneet Gupta, Advocate,
for respondent-Ramesh Kumar.

Harsimran Singh Sethi, Advocate,
for respondent-Pardeep Ranjan.

G.S. SANDHAWALIA, J.

(1) This judgment shall dispose of 3 writ petitions, bearing CWP- 6527, 16016 & 16384-2017, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-6527-2017 titled ***R.K.Verma & others Vs. State of Haryana & others.***

(2) The core question which arises for consideration is whether in the absence of any public interest and in the absence of any outstanding merit, recorded at the time of granting of re-employment to a public servant, whether the same is permissible at the asking, in view of the specific bar in the statutory rules that the Government servant is to retire at the age of 58 years.

(3) Petitioners challenge the order dated 01.03.2017 (Annexure

P- 8), 02.03.2017 (Annexure P-10) and the order dated 29.04.2016 (Annexure P-12), whereby the respondents No.4 to 6 have been re-employed to the post of Chief Engineer in one case and Superintending Engineers in case of respondents No.5 & 6, for a period of one year, after they had reached the age of superannuation. Resultantly, relief is also sought that petitioner No.1 be considered for the post of Chief Engineer and petitioner No.2 to the post of Superintending Engineer, in accordance with the rules, since they are fully eligible for promotion and are at the top of the seniority list of their respective cadres in the Department.

(4) It is their pleaded case that petitioner No.1 is working at the post of a Superintending Engineer and petitioners No.2 to 7 are working on the posts of Executive Engineer and as per the seniority list, their promotion was due after the retirement of the private-respondents No.4 to 6 from the posts of Chief Engineer and Superintending Engineer, respectively. Respondent No.4 who was to superannuate on 28.02.2017, has been re-employed on cadre post vide the impugned order dated 01.03.2017 (Annexure P-8). Similarly, respondent No.5 was due to retire from the post of Superintending Engineer on 28.02.2017 but he has also been re-employed vide order dated 01/02.03.2017 (Annexure P-10). Similarly, respondent No.6 was also due for superannuation on 30.04.2016 from the post of Superintending Engineer but he has also been re-employed for a period of one year. It has further been averred that the re-employment of respondents No.4 to 6 is in contravention of the provisions of Haryana Service of Engineers, Group A, Public Works (Buildings & Roads) Department Act, 2010; HCS (General) Rules 2016; PWD Code & the Re- Employment Policy/Instructions dated 02.02.2016 (Annexures P-4 & P-5) of the State. Respondent No.1, by ignoring the said instructions and by by-passing the due procedure prescribed, has re-employed respondents No.4 to 6 on the cadre posts, thus, depriving the petitioners by delaying their chances to get promoted and benefits accruing thereof and adopted the policy of pick and choose.

(5) The case of the petitioners is that re-employment is only to be done in case where there is public interest and due to existence of exceptional circumstances and only if no competent person is available to take over the charge of the said post. A certificate from the said Department is required to be sought that there is no availability of the said staff or that there is a shortage of competent officers in the cadre before making a proposal to the Council of Ministers. The case of the

petitioners is that there was no such availability certificate obtained by respondent No.2-Department and by the competent authority/Council of Ministers before granting re-employment and therefore, the said action is done in an arbitrary manner. The files have to be moved at least 3 months from the crucial date of retirement and the entire process has been curtailed and by-passed by respondents No.1 to 3 and no certificate was ever supplied by the respondent-Department that the proposed re-employment would not adversely affect the interest of the other officers of comparable seniority in the Department. The case, thus, was that the posts the private-respondents were holding were to be filled up only by way of promotion, as per the merit-cum-seniority, as per the service rules in force and therefore, the petitioners were getting affected.

(6) The retirement of petitioner No.1 was due on 30.11.2017 and he was the senior-most Superintending Engineer in the Department and he would never get promotion to the post of Chief Engineer as he would retire before the expiry of the contract period of respondent No.4. Similarly, on account of respondent No.5 being given the re-employment, it was causing grave injustice to petitioners No.2 to 7. It is further averred that the nature of work carried out by the Engineers of the Public Works (B&R) Department has the mandate for construction and maintenance of various categories of roads, bridges and buildings in the State and all these works are either planned in-house or out-sourced from expert consultants and there was no extraordinary or exceptional circumstances to grant extension in service. It is, accordingly, averred that the petitioners had given representations (Annexure P-6 Colly.), for consideration for promotion that they were no exceptional circumstances for re-employment of respondent No.4 and the service record of the said respondent was just 'Average'. Similarly, representations had been given by petitioners No.2 to 6 for promotion to the post of Superintending Engineer. Reliance is also placed upon the noting sheets of the re-employment, to submit that there was no such recommendation in favour of respondent No.4 and the same had been done in a discriminatory and arbitrary manner which has resulted in blocking of the promotional avenues of the juniors. The instructions on the said issue had been ignored in an arbitrary manner as the file had moved from the office of the Chief Minister at the request of the MLA to the office of Engineer in Chief, totally against the prescribed procedure.

(7) Respondents No.1 to 3, in their written statement, admitted that consolidated instructions dated 02.02.2016 (Annexure P-5) had been issued regarding grant of extension in service/re-employment of Haryana Government employees, after the age of 58 years. Reliance was placed upon the instructions dated 15.01.1990 that in exceptional circumstances, extension in service/re-employment had been allowed by the Chief Secretary to Government of Haryana after obtaining relaxation in these instructions from the Council of Ministers. It has further been admitted that the matter has been considered that in future, the memorandum to the Council of Ministers for grant of relaxation in the instructions shall be submitted by the concerned department and the advice of the Chief Secretary would be obtained before submitting the case to the Chief Minister, for placing the same before the Council of Ministers. Reference was made to instructions dated 08.04.2015 that the School Education Department and Engineering Department/Engineerign PSUs may grant extension in service after superannuation for a period of 2 years in such cases, on case to case basis. Accordingly, the case of the State was that most of the departments do not follow these instructions and solicited ex- post facto approvals for services rendered by a person taken on re-employment and there are no instructions of the Chief Secretary with regard to the ex-post facto approvals. If the Administrative Department deems a case fit for re-employment, it may send the same to the Chief Secretary, at least 2 months before the date of superannuation of that officer and the department would issue the orders of re-employment only after completing the entire process associated with the re-employment as per Government instructions.

(8) The stand taken was that re-employment to the private-respondents had been allowed by the competent authority and the ex-post facto approval of re-employment of respondent No.6 had been received from Chief Secretary to Government of Haryana and the cases of respondents No.4 & 5 have been sent to Chief Secretary to Government of Haryana by respondent No.2 for ex-post facto approval vide communication dated 09.03.2017 and the same was still awaited. The approval of the Council of Ministers was also awaited as approval of the Finance Department and Chief Secretary to Government of Haryana hadnot been received so far. It was admitted that petitioner No.1 fulfilled the criteria for promotion to the post of Chief Engineer. Thus, in sum and substance, the State, in its reply, has admitted that the instructions dated 02.02.2016 would be applicable and that the sanction regarding respondent No.6 has been received

from the Chief Secretary whereas it was awaited from the Council of Ministers and even the Finance Department and the Chief Secretary had not approved it qua respondents No.4 & 5.

(9) In the subsequent affidavit filed on 13.07.2017, an effort has been made to justify the appointment of respondent No.4 that he was working as Chief Engineer but had introduced the concept of green roads in the State of Haryana. The work was under progress and therefore, the services of the officer were required for further development of the green roads. It was averred that he had 2 years of experience as Chief Engineer to his credit along with 9 years of experience as Superintending Engineer whereas petitioner No.1 had only 3 ½ years of experience as Superintending Engineer and he is to retire on 30.11.2017 and therefore, replacing him would not be in public interest as he would require some experience. He would superannuate in November, 2017 and no public interest would be served by promoting him as Chief Engineer. Resultantly, it has been pleaded that 5600 kms of work is under progress under the supervision of the said respondent and the Government is planning to carry out the work upto 2019 and therefore, the services could not be dispensed with, at this stage. The said respondent had also been awarded 'Outstanding' ACRs for the last few years whereas petitioner No.1 could earn 'Good' and 'Very Good' ACRs. The sanctioned cadre strength for the posts of Chief Engineer is only 6 which includes 4 permanent and 2 upgraded posts and a total of 10 officers were working as Chief Engineers and surplus Chief Engineers had been sent on deputation to other departments. There was an excess in the cadre strength and a decision had been taken in a meeting held on 11.04.2017 under the Chief Secretary to Government of Haryana, that no Superintending Engineer would be promoted as Chief Engineer because in the absence of any vacant post and since persons on deputation were to be repatriated and they would be reverted back, leading to more resentment and heart burn. Petitioner No.1 could not be considered for promotion to the post of Chief Engineer as it would create administrative and legal problems.

(10) Respondent No.4, in his reply, took the plea that there were only 4 sanctioned posts of Chief Engineers in the Department against which, 10 Chief Engineers were working including the answering respondent and therefore, the petitioners cannot claim promotion as a matter of right. The application submitted by the answering respondent had been processed as per the prevailing instructions and

the competent authority after considering the overall record/performance, had ordered re-employment to the post of Chief Engineer for a period of one year. It was denied that the same had been done in contravention of the provisions of the Haryana Service of Engineers, Group A, Public Works (Building and Roads) Department Act, 2010; HCS (General) Rules, 2016; PWD Code & Re-employment Policy/instructions dated 02.02.2016 and the requisite formalities had been fulfilled and the competent authorities, as such, had processed the case and even referred to the exceptional circumstances and ordered re-employment. It was admitted that petitioner No.1 was the senior-most Superintending Engineer but the plea taken was that he could not claim the promotion to the post of Chief Engineer as a matter of right and more than 10 Engineers were working against the 4 sanctioned posts. It was further submitted that 3-4 Chief Engineers had gone on deputation to various departments and the date of retirement of petitioner No.1 of November, 2017, was of no value.

(11) Similarly, respondents No.5 & 6, in their joint written statement, took the plea that the relief sought by petitioner No.2 for promotion from 01.05.2016 is not permissible as his immediate senior-Shri P.K.Dhaka had no grievance to the grant of re-employment to the 2 answering respondents. It was submitted that there were specific provisions under the Haryana Civil Services (General) Rules, 2016 that re-employment could be granted to an employee in view of public interest and exceptional circumstances, with the approval of the Council of Ministers. Even in the instructions dated 02.02.2016, the extension/re-employment could be granted in view of the exceptional circumstances of the on-going technical projects sanctioned by the competent authority. The instructions provided that in exceptional circumstances, procedure prescribed can be relaxed, after obtaining relaxation in these instructions from the Council of Ministers and reference was made to Clause 6 of the said instructions. The re-employment had been allowed after due approval from the competent authority, as per the notings which have been appended with the writ petition and reference was made to the on-going projects of respondents No.5 and 6 in Annexure R-5/1 and R-5/2. The instructions having not been challenged, the extension, as such, could not be challenged.

(12) The further stand was that there were 15 sanctioned cadre posts of Superintending Engineers (Civil) and there were 18

Superintending Engineers working including the answering respondents who were working on contract basis against the 2 ex-cadre posts. Even if petitioners No.3 to 8 were to be promoted, they could only claim promotion against the 15 sanctioned cadre posts and not beyond that. 16 Superintending Engineers (Civil) were working against the sanctioned posts and were in excess and therefore, they had no right. Petitioner No.2 already stood promoted on 06.04.2017 (Annexure R-5/4) and therefore, the writ petition was liable to be dismissed. As per the tentative seniority-list, three more persons were senior to petitioners No.2, 3 & 7 and even then, the petitioners could not be promoted against the said posts as there was one employee senior to the said petitioners, working as a Senior Executive Engineer. After the re-employment of the answering respondents, 8 Executive Engineers were promoted to the post of Superintending Engineers and the contention of petitioners No.2 to 8 that their promotion chances had been curtailed, is absolutely misconceived and misplaced. The details of the Superintending Engineers who had been promoted on 23.06.2016 onwards were, accordingly, given. Even when respondent No.6 was granted re-employment from 01.05.2016, there were already 16 Superintending Engineers and therefore, petitioners No.3 to 8 could not be affected by the re-employment because they were also due to retire much later and the dates of retirement were referred to. It was denied that any instructions had been violated and the re-employment had been allowed as per the approval of the competent authorities after keeping in view the respective fields. It was further pleaded that the PWD Code was not a statutory Code and the re-employment was valid. Resultantly, it was prayed that the writ petition be dismissed.

(13) In CWP-16384-2017, the subsequent order dated 27.04.2017/01.05.2017 (Annexure P-11) whereby Shri Pardeep Ranjan- respondent No.6, in the first place, has been further re-employed for the second time from 01.05.2017 to 30.04.2018, is under challenge, since the same was passed during the pendency of CWP-6527-2017. A further prayer has been made to promote the petitioners, in accordance with their seniority w.e.f. 01.05.2016. In the written statement filed by Shri Pardeep Ranjan regarding the second extension granted to him, it was pleaded that it was in public interest and in compliance of the 2016 Rules, for one year, for supervising the construction of roads and other major works at Rohtak. The retiral benefits had already been released to the answering respondent as well as the Gratuity funds and the pay had also been fixed by adjusting

the pension. The re-employment was granted in view of the exceptional circumstances of the ongoing highly technical specifications which had been initiated by the answering respondent in order to execute the work within a fixed time-frame. The execution of the work was to be completed approximately in 4 months and was likely to be completed before the answering respondent completes his tenure. The elected representative was empowered to see the development of the area and to get facilities and therefore, the recommendation was made in public interest so that the work does not suffer. The said respondent had been involved in completion of so many projects and there were no complaints against him and he was a much more experienced Superintending Engineer. The petitioners who were claiming promotion had no experience and therefore, in State's wisdom the answering respondent had been given re-employment. The 2016 Rules which had come into force subsequently would have supremacy over the guidelines and the petitioners never represented or raised any grievance regarding the re-employment of the answering- respondent and had no *locus standi* and neither there was any other senior officer available. There were only 15 cadre posts of Superintending Engineers and 16 persons were working in substantive promotions and 3 Superintending Engineers were on deputation and there was no post which was lying vacant. The re-employment was on contract basis and there was no cadre post available for the said promotion and there was no question of blocking the promotion of the petitioners. The petitioners had to establish and earn the promotion and then only would have *locus standi* since all cadre posts had already been occupied and even if the re-appointment was set aside, the petitioners would not get any promotion. Similarly, in CWP- 16016-2017, filed by Anant Kumar Garg, challenge has been raised to the subsequent order also wherein Shri Pardeep Ranjan has been granted the second extension, apart from raising challenge to the re-employment of the private-respondents and claiming a right of consideration for re- employment.

(14) Mr. Karan Nehra has, accordingly, argued that re-employment is to be done only in public interest and in exceptional circumstances, while placing reliance upon Rule 8 (26) and (73) of the Haryana Civil Services (General) Rules, 2016 and Rule 143, to submit that except in public interest and in exceptional circumstances, without the approval of the Council of Ministers, the same could not have been done. He has also referred to the Haryana PWD Code, which assigns the duties and responsibilities of the officers concerned and the instructions dated 02.02.2016 (Annexure P-5) which provide for grant

of extension in service/re-employment of the Haryana Government employees after the age of 58 years, to submit that cases for re-employment have to be processed at least 3 months from the crucial date. Only in the absence of any alternative and in exceptional circumstances, re-employment is to be done and the ex-post facto sanction, as such, was not permissible. He, accordingly, referred to the noting process of how the files were processed and wherein the relevant instructions were kept in mind, that the promotion of the senior-most officers would be held up and reference has been made particularly to petitioner No.1 that he was to retire on 30.11.2017 and that he would be denied promotion.

(15) It was also pointed out that the State had taken a U-turn in the matter, as such, while filing the additional affidavit. Reference was also made to the communication dated 31.03.2017 (Annexure P-17) addressed to the Government that there was a representation from the feeder cadres of Sub-Divisional Engineers, Executive Engineers and Superintending Engineers that re-employment was not required as chances of promotion were washed out and there was no shortage of capable officers. Reference was similarly made to the noting in the case of Shri Pardeep Ranjan, respondent No.6 who has been given the second extension from 01.05.2017 to 30.04.2018 (Annexure P-8), to show that there was no proper process, as submitted earlier and only on account of the approval at the top level of the Chief Minister, re-employment had been ordered.

(16) Accordingly, reliance was placed upon the Division Bench judgment in *K.G.Nanchahal* versus *State of Punjab*¹ that extension in service/re-employment was only to be in exceptional circumstances and that it was a case of “Spoils System” where re-employment had been made and the illegality could not be perpetuated by allowing the private-respondents to continue. Merely because a recommendation had come from the elected representative, who had, thereafter, been given the charge as a Minister of the Cooperation Department, would not justify the extension/re-employment in the absence of the satisfaction recorded. Reference was also made to one communication dated 15.05.2016, to show that respondent No.4 had been given the charge of a Circle to speed up the road works and thus, it could not be said that he was not blocking the scope of promotion or that he was only appointed on an ex-cadre post.

¹ 2002 (1) SCT 485,

(17) Dr. Surya Prakash, Advocate, appearing for respondent No.4 has submitted that there were no posts available for promotion and 9 Chief Engineers were already working and there were only 4 posts in the cadre and 2 of them had been upgraded and there was no vacancy and referred to the plea taken by the State that a decision was taken on 11.04.2017 that there was to be no further promotion to the post of Chief Engineer. He further submitted that the said respondent was highly qualified and therefore, there were valid reasons and on the public interest, re-employment had been ordered on contractual basis.

(18) Similarly, Mr. Puneet Gupta, Advocate, for respondent No.5 has submitted that there was sufficient public interest on account of which, re-employment had been done and there was no necessity of approval of Council of Ministers and it was not a case of retention in service and the clause of exceptional circumstances would only apply where there was retention in service. Reference was also made to the order dated 05/06.04.2017 to show that petitioner No.2 stood promoted to the post of Superintending Engineer (Civil) in Public Works (B&R) Department and therefore, the cause of action was no longer subsisting to him. The other petitioners No.3 to 8 were juniors and neither there was any application or claim made by them and they had no *locus standi* to raise an objection against the re-employment. Reference was made to the table in the written statement filed, to show that there was one person senior to petitioner No.2 who had never been aggrieved when respondent No.5 had been given re-employment. Resultantly, reference was made to the 2016 Rules which came into force on 19.07.2016, to submit that it was a case of re-employment on contract basis. Reliance was also placed upon the judgment of the Apex Court in *State of Jharkhand* versus *Bhadey Munda & another*² to submit that only a right of consideration was there and in the absence of any existing vacancy, it would not give the petitioners any right to file the writ petition and mere chance of promotion was not a condition of service.

(19) Mr. Harsimranjit Singh Sethi, Advocate, appearing for respondent No.6, submitted on similar lines and referred to Rule 8(26) & (73) that it was not a case of retention but a case of re-employment and public ground was good reason and the sanction of the competent authority had already been granted and therefore, the

² 2014 (10) SCC 398

2016 Rules would have supremacy and the executive instructions were only supplementary. He, accordingly, referred to Rule 8(73) to submit that it was a case of re-employment which was given in public interest, after the retirement of the Government employee and therefore, the argument raised that under Rule 143, it had to be given in only exceptional circumstances and with the approval of the Council of Ministers, was without any basis and submits that there was no procedural lapse. It was his case that there were only 15 cadre posts of Superintending Engineers in which 16 persons were working and even if the respondent is to be denied the extension, it would not help the petitioners as it was contract appointment for public purpose and he resultantly, relied upon a Division Bench judgment in *Faruq Ameen* versus *State of Punjab & others*³ that the instructions had no force of law and were only administrative in nature. Similarly, reliance was placed upon *Narendra Kumar Maheshwari* versus *Union of India & others*⁴ that guidelines were not enforceable and policy is not a law. Similarly, reliance was placed upon *Tata Cellular* versus *Union of India*⁵, to submit that there was no such arbitrariness and therefore, the judicial review should not be exercised in the present facts and circumstances, for the decision making process as it was an administrative process and the sanction from the concerned authorities was in place and there was no illegality or irrationality or procedural impropriety in the decision making process. Similarly, reliance was placed upon *Indian Drugs & Pharmaceuticals Ltd.* versus *Workmen, Indian Drugs & Pharmaceuticals Ltd.*⁶ to contend that Courts should not step into the issue of creation of posts and appointments were executive and legislative function and judicial restraint must be followed.

(20) The original record was produced by the State in deference to the orders passed, to find out the exigencies of the case and how the cases have been processed, keeping in view the provisions of the rules, which would be applicable. The fact remains that regarding the order dated 29.04.2016 (Annexure P-12) in the main case, the same has run out of currency regarding the re-employment given to respondent No.6 for the first year. However, during the pendency of the writ petition, it is to be noticed that another re-employment order has been passed in

³ 1979 (3) SLR 219

⁴ 1990 SCC (Supp.) 440

⁵ (1994) 6 SCC 651

⁶ 2007 (1) SCC 408

favour of the said respondent on 27.04.2017 which is subject matter of challenge in CWP-16384-2017. Vide order of even date (Annexure R-4/1), it had been specified that the second years' re-employment is on contract basis for a period of one year from 01.05.2017 to 30.05.2018, in public interest for the supervision of the elevated roads and other major works which related to public works (Building & Road Development), Haryana, on various terms and conditions at Rohtak. As per Clause (ix), the said respondent is also entitled to reside in the Government accommodation, as available to him as Superintending Engineer (Civil) on licence fee which was being deducted while he was serving in the said post. As per Clause (xv), the re-employment was subject to concurrence and approval of the Chief Secretary, Government of Haryana and the Finance Department and approval of the Council of Ministers. The other two extensions had already been made after 19.07.2016 when the new Rules came into force and the re-employment orders are on contract basis and therefore, the 2016 Rules would be of relevance. Rule 8(26) & (73) and Rule 143 read as under:

“Rule 8 (26) “extension in service” means the retention in service of a Government employee in **public interest** after attaining the age of superannuation or otherwise;

(73) “re-employment” means reappointment of a Government employee in **public interest** after his retirement.

143. (1) Except as otherwise provided in these rules, every Government employee shall retire from service on afternoon of the last day of the month in which he attains the age of retirement prescribed for him or for the post held by him in substantive or officiating capacity, as the case may be. However, a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the prescribed age. The age of retirement on superannuation is fifty eight years for all groups of employees except the following for whom the same is sixty years :-

- (i) Disabled employees having minimum degree of disability of 70% and above;
- (ii) Blind employees;
- (iii) Group ‘D’ employees; and

(iv) Judicial Officers.

No Government employee shall be retained in service after attaining the age of superannuation, except in public interest and in exceptional circumstances, without the approval of Council of Ministers.

Note 1.— One eyed employee shall not be treated as blind or disabled person for the purpose of this rule.

Note 2.— When a Government employee is due to retire on superannuation from service an office order shall be issued on 7th of the Month in which he is going to be retired and a copy of every such order shall be forwarded immediately to the Principal Accountant General, Haryana.

(2) No Engineer-in-Chief in the PWD (B & R), Irrigation Department and Public Health Engineering Department shall, without re-appointment, hold the post for more than five years, but re-appointment to the post may be made as often and in each case for such period not exceeding five years, as the competent authority may decide:

Provided the term of re-appointment shall not extend beyond the date of attaining the age of superannuation.

Note.— The following authorities are competent to retain a Government employee after the age of superannuation:-

Powers to retain a Government employee in public interest and in exceptional circumstances after the age of superannuation.	Administrative Department	Full powers subject to a maximum of two years with the approval of Council of Ministers.
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(21) Similarly, Rule 23 of the Haryana Civil Services (Pension) Rules, 2016 reads as under:

“23. (1) No Government employee shall retire with a view to being re-employed, and drawing pension in addition to pay in any Department or Organization under Haryana Government.

(2) A person who is in receipt of superannuation or retiring pension shall not be reemployed in service, except where it

is utmost necessary in public interest and in a purely temporary capacity with the sanction of the competent authority. The reemployment shall not be extended beyond the age of sixty- five years of the Government employee. The service rendered on re-employment after retirement shall not qualify for pension.”

(22) The orders of re-employment of the 3 respondents read as under:

“The Governor of Haryana is pleased to order re-employment of Sh. Anup Chuahan as Chief Engineer (Roads) on contract basis for a period of one year i.e. from 01.03.2017 to 28.02.2018 in Public Works (Building and Roads) Department, Chandigarh.

2. The terms and condition of Sh. Anup Chuahan as Chief Engineer will be issued later on.

ALOK NIGAM

Dated Chandigarh
the 27.02.2017

Additional Chief Secretary to Government
of Haryana

Public Works (B&R) Department,
Chandigarh.”

“The Governor of Haryana is pleased to order re-employment of Sh. Ramesh Kumar, Superintending Engineer (Civil), Karnal on contract basis for a period of one year i.e. from 01.03.2017 to 28.02.2018 in Public Works (Building and Roads) Department, Chandigarh and he will continue at his last place of posting before his re-employment i.e. Superintending Engineer, Karnal Circle, Public Works (B&R),

Karnal

2. The terms and condition of Sh. Ramesh Kumar as Superintending Engineer (Civil) will be issued later on.

ALOK NIGAM

Dated Chandigarh
the 01.03.2017

Additional Chief Secretary to Government
of Haryana

Public Works (B&R) Department,
Chandigarh.”

“The Governor of Haryana is pleased to order re-employment of Sh. Pardeep Ranjan as Superintending Engineer(Civil) on contract basis for a period of one year i.e. from 01.05.2016 to 30.04.2016 in Public Works (Building and Roads) Department, Chandigarh with immediate effect on the following terms and conditions:-”

(23) The record having been perused, one fact which is clear is that the respondents No.4 & 5 have retired w.e.f. 28.02.2017 and in case of respondent No.6, on 30.04.2016, under Rule 3.26 of the Punjab Civil Services Rules, Vol-I Part-I. Therefore from the combined reading of the retirement orders and Rule 8(73), it is a case of re-employment which has been done of the said respondents.

(24) The issue now remains is as to whether there is any **public interest** which would be the underlined purpose or whether re-employment is to be granted to a public servant at the asking, as admittedly, as per Rule 143, the retirement is to fall at the age of 58 years and retention in service is not permissible after attaining the age of superannuation.

(25) The retention, if any, as noticed, would only mean to be in public interest and in exceptional circumstances and with the approval of the Council of Ministers. From a perusal of the file, it apparently shows that it is a case of re-employment, as such. However, the circumstances in which the re-employments have been asked for would make interesting reading. In the case of respondent No.4, who was due to retire on 28.02.2016, he submitted an application for extension in service for 2 years. The said application reads as under:

“I, Anup Chauhan, hereby submit that I am retiring from Govt. service on 28.02.2017 after attaining the age of 58 years. I have been serving as Chief Engineer (Roads) since 01.07.2015. Prior to that I worked as SE (Buildings) in Head Office from November 2006 to June 2015.

I have a vast experience of construction of Buildings and Roads. At present I am looking after 24,000 KM road network (SH/MDR/ODR) in Haryana and have handled work programme of 2015-16 for Repair/ Improvement of roads amounting to Rs.1560 crores and for 2016-17 amounting to Rs.1818 crores successfully. 4700 Kms of roads have been repaired/ improved against WP 2015-16 & 5600 Kms of road are being improved against WP 2016-17.

Moreover 1580 Kms of ODRs are being widened from 3.66 m to 5.50 m. Green Technology has been introduced in Road Construction. Road improvement works carried out by me have been appreciated by everyone. My working has always been appreciated by my seniors and I have earned many outstanding reports. No inquiry of any kind is pending against me.

I assure that in case I am granted extension in service, I will serve the department with devotion and dedication.”

(26) Similarly, respondent No.5 submitted an application dated 09.02.2017 that he is going to retire on 28.02.2016, on attaining the age of 58 years and he may be given extension upto 60 years. His request reads as under:

“To

The Engineer-in-Chief,
Haryana, PWD B&R Branch,
Chandigarh

Memo No.34451 Dated 09.02.2017

Subject: Request for the extension of service from the age of 58 years to 60 years.

Sir,

With all due regards, it is submitted that I am going to retire from the Government service on 28.02.2017 after attaining the age of 58 years. It is requested that extension in the service from the age of 58 years to 60 years i.e. upto 28.02.2019 may kindly be granted.

Thanking you,

Your's Sd/-
Ramesh Kumar
Superintending Engineer,
Karnal Circle PWD B&R Br., Karnal”

(27) In the case of respondent No.6, who retired on 30.04.2016, an MLA from Rohtak had proposed his extension in service for a period of 2 years on account of 3 major projects in the form of elevated roads in Rohtak city which were being executed and would take 2/3 years for completion. The request was received in the office of the Chief Minister on 24.12.2015. The same reads as under:

“Sub: Extension in Service

I would like to request the Hon'ble Chief Minister Haryana that Sh. Pardeep Ranjan, Superintending Engineer, PWD B&R Br., Rohtak is a senior most SE in the Department. Sh. Pardeep Ranjan SE is persuing three major projects such as elevated road in Rohtak City costing 150 crores, Kachha Beri Road ROB costing around 70 Crore and elevated Rohtak-Gohana rail line alongwith many other projects of my constituency, with NCRPB, Railway and Central/ State Govt. Department. He is familiar with the probable problems in execution of these projects and is competent to tackle the same in coordination with local population. Being most experienced and senior most SE, well-versed with these projects he is the best suitable person to persue the approval and execution of these projects which will take 2-3 years for completion. Accordingly, Hon'ble Chief Minister is requested that the service period of Sh.Pardeep Ranjan SE may be extended from 1.5.2016 to 30.4.2018 so that prestigious projects of my constituency are completed will in time.

Sd/-

Manish Grover
MLA, Rohtak”

(28) In the case of respondent No.6, since he had been completing his 1 year's extension in service on 26.04.2017, another request was received from the same MLA who was now holding the post of Minister of Cooperation on 24.03.2017 which was allowed and the second extension in service was granted, which are reproduced below.

“Sh. Pardeep Ranjan, Superintending Engineer, PWD B & R, Br. presently posted at Rohtak is a senior most SE of the Department is pursuing four Major projects of my constituency such as elevated road in Rohtak City costing 152 Crores, Kachha Beri Road elevated ROB costing around 70 Crores, Rohtak-Gohana elevated railway line costing 320 Crores and Lakhan Majra ROB costing 20 Crores with NCRPB, Railway and Central/ State Govt. Department. Elevated road project is in progress in Rohtak city & is being constructed without any hindrance due to his sincere efforts being well versed with the problems of this

area. He is due for retirement on 30.04.2017 and for timely completion of above mentioned projects and many other projects of my constituency, services of Pardeep Ranjan, S.E. is required.

2. Therefore, I would request Hon'ble CM that extension in service/ Re-employment to Sh. Pardeep Ranjan, SE may please be granted for one year i.e. from 01-5-2017 to 30-4-2018 for timely completion of above mentioned projects of my Assembly Constituency, Rohtak.”

“The Governor of Haryana is pleased to order that Sh. Pardeep Ranjan, Superintending Engineer (Civil) on his re-employment from 01.05.2017 to 30.04.2018 will continue to work as Superintending Engineer Rohtak Circle Public Works Rohtak.

These orders would be effective w.e.f. 01.05.2017 till 30.04.2018 only.

ALOK NIGAM

Dated Chandigarh
the 27.04.2017

Additional Chief Secretary to Government
of Haryana

Public Works (B&R) Department,
Chandigarh.”

(29) In the case of re-employment granted to respondent No.4 it was categorically mentioned in the notings that the extensions/re-employment of the said gentleman would adversely affect the senior-most officers who were waiting for Chief Engineers after fulfilling the requisite criteria for the post of Chief Engineer. Specific reference was made to petitioner No.1 Shri R.K.Verma that he was going to retire from the Government service on 13.11.2017 and he would be denied promotion to the post of Chief Engineer (Civil). Specific objections raised by the Engineer-in-Chief pertaining to the instructions dated 02.02.2016 where there was availability of suitable officers of having requisite experience and that the department is having sufficient officers for promotions and it would adversely affect the interest of other concerned officers, were nowhere discussed. An approval was, accordingly, put up that the re-employment be granted for one year and the orders be issued and the ex- post facto approval be taken of the Chief Secretary, Finance Department and that of the Council of Ministers also, as per the notings put up on 13.02.2017 by

the Additional Chief Secretary. The approval was, thereafter taken from the Chief Minister and the Minister concerned for Department of Works (B&R) on 23.03.2017 and resultantly the said respondent was put back on the saddle without any reference to the public interest or the mentioning of any fact about his outstanding abilities, as such, or recording any finding that he was indispensable to the system and needed to be retained at the cost of others. His terms and conditions dated 28.03.2017 also allowed him the same benefits of entitlement in the Government house and the licence fee which was being deducted as Chief Engineer (Civil), which have been further confirmed vide order dated 18.05.2017 by fixing his specific terms and conditions and subject to the approval of the Chief Secretary.

(30) The stand of the State, thus, is very clear that petitioner No.1, Shri R.K.Verma fulfills the terms and conditions for the post of Chief Engineer and therefore, it is apparent that the said petitioner has been denied the right of consideration for promotion to the said post only on account of re-employment which has now been granted to respondent No.4. As noticed, in a subsequent affidavit, an effort has been made to justify the experience of respondent No.4 and reliance has been placed upon the decision dated 11.04.2017 that no Superintending Engineer is to be promoted as Chief Engineer. The said decision also would be of no avail to the State. A perusal of the same would go on to show that in a meeting held by the Chief Secretary, it was decided in principal that the Public Health Engineering Department (PHED) would not promote a person to the post of Chief Engineer for sending him on deputation to a foreign department/client on the demand of the latter as senior-most Superintending Engineer of the department was to be sent wherein he could work on the post of Chief Engineer and on his repatriation, continue to work as Superintending Engineer, so that there would be no need of reverting such officer. The decision dated 11.04.2017 reads as under:

“After detailed discussions, the following decisions were taken:-

1. In future the parent department i.e., PHED would not promote a person on the post of CE for sending on deputation to any Client/foreign department on the demand of the latter and the senior most SE of the Department may be sent on deputation, where he can work on the post as Chief Engineer and on his repatriation in the Department, he may continue to work as Superintending Engineer and

there will be no need of reverting such officer.

2. The tenure of the officer sent on deputation must be at least one year and that officer should not be repatriated before completion of such tenure as fixed by the Government.

3. In future, the client department should not seek any specific officer by name on deputation, which may create an embarrassing position for the parent Department.”

(31) The element of public interest being wanting in the decision making process, at the first instance, wherein no such effort was made, has been sought to be covered up in the present case by the same Secretary, who firstly filed the written statement and it was admitted that Shri R.K.Verma was entitled for consideration to the post of Chief Engineer. The said improvement has been obviously made at the subsequent stage due to the pendency of the writ petition and on account of the fact that the Chief Secretary himself, vide communication dated 15.05.2017, asked the administrative department to re-examine the matter, as per para 4 (C)(viii) of the Government instructions dated 02.02.2016. Resultantly, respondent No.1 has recorded a note of approval on 11.07.2017 qua the requirement and outstanding performance and capabilities of respondent No.4 to put him at a position, over and above petitioner No.1, who has been down-graded for this purpose that there was nothing extraordinary noticeable on the achievements made by him qua respondent No.4. It has also been mentioned in the detailed note prepared on the basis of which the additional affidavit was filed on 17.07.2017 that respondent No.4 has been granted re-employment on an already existing post and no ex-cadre post was created for him. Thus, one factor would be clear from this aspect that respondent No.4 continues to block the promotional rights of the petitioner No.1 inspite of the fact that he stood retired on 28.02.2017. The Apex Court in *Union of India & another* versus *Hem Ram Chauhan & others*⁷ held that the right of the eligible employees for promotion is obviously a fundamental right and a guarantee of fair consideration. Relevant portion of the judgment read as under:

“38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part

⁷ 2010 (4) SCC 290

of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

39. In The Manager, Government Branch Press and Anr. vs. D.B. Belliappa - (1979) 1 SCC 477, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is "fairness founded on reason" (See para 24 page 486).

40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy."

(32) It is, thus, apparent that petitioner No.1 has been short-changed on account of respondent No.4 and is losing out of his right to be considered for the post of Chief Engineer despite his seniority. The right of the employee to earn promotion to the higher post is one right which the employee waits for being well aware of his seniority and the seniority of his co-employees. Merely because respondent No.4 has been able to promote himself on his own achievements which even the State did not consider at that stage to be of any extraordinary or exceptional capabilities which would be clear from the decision making process, as has been discussed. This would also be clear from the stand taken in the written statement, as such and any subsequent improvement which has now taken place after 11.07.2017, after the filing of the written statement, was to take place at the initial stage. It is also settled principle that if the orders do not speak of the reasons, the same cannot be done, subsequently, by filing an affidavit to that extent, as has now been done, to improve the case qua respondent No.4. Reliance can be placed upon the judgment passed by the Apex Court in *Mohinder Singh Gill* versus *Chief Election Commissioner*⁸

⁸ (1978) 1 SCC 405,

wherein it has been held that reasons have to be mentioned in the order itself. Relevant portion of the judgment reads as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In *Gordhandas Bhanji* case : "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself". Orders are not like old wine becoming better as they grow older.”

(33) The said view was followed recently by the Apex Court in *Dipak Babaria and another* versus *State of Gujarat and others*⁹, *State of Punjab* versus *M/s Bandedep Singh & others*¹⁰ and *T.P.Sen Kumar, IPS* versus *Union of India & others*¹¹ wherein it was held that the State cannot be allowed to supplement or improve its stand by way of filing affidavits.

(34) The Division Bench in **K.G. Nanchahal** (supra), while considering the provisions of Rule 3.26 and Rule 7.17, while considering the scope of re-employment, held that existence of such a situation necessarily has to be a matter of fact and not that one of inference. The record must speak for itself and there must be reasons or grounds for arriving at such a conclusion which must be apparent on the face of the records. It was further held that there is greater burden on the State to take a conscious and reasoned decision and that too in a larger public interest while noting that public grounds as mentioned in

⁹ 2014 (3) SCC 502

¹⁰ 2016 (1) SCC 724

¹¹ 2017 (6) SCC 801,

Rule 3.26, would be a term synonymous to the term public interest. The need of re-employment supposedly in the public interest was not to be sponsored by private or political interests. Reliance was, accordingly, placed also upon Rule 7.17 of the Punjab Civil Services Rules, that the appointment was to be on purely a temporary capacity on the sanction of the competent authority. It is pertinent to mention here that there is specific mention that “utmost necessary in public interest” finds mention in Rule 23 of the Haryana Civil Services (Pension) Rules 2016, reproduced above, where re-employment has to be done.

(35) It is, thus, an admitted fact that the post of Chief Engineer is a 100% promotional post with a feeding cadre of Superintending Engineer and a legitimate right of petitioner No.1 is to be considered for promotion and he cannot be short-changed of his such right on account of the said re-employment of respondent No.4, who has been promoted without any specific application of mind at the relevant levels of the Government and neither the legal right of petitioner No.1 which was being taken away was ever discussed, as such, or his competency levels which on a subsequent occasion, respondent No.1 has sought to down-play. Resultantly, this Court has no hesitation in quashing the order dated 01.03.2017 (Annexure P-8).

(36) Similarly, in case of respondent No.5, as noticed from the record, the application dated 09.02.2017 was received from him which led to representations also being filed by various other Executive Engineers apart from the petitioners on 23.02.2017 including the persons mentioned at Sr.No.6 to 8 in the table which has been reproduced by respondents No.5 & 6, in the written statement, who are in the zone of consideration and one of them now stands promoted on 06.04.2017. A perusal of the communication dated 02.05.2017 would also show that the Chief Secretary had sought explanation and clarification regarding the point-wise reply to the proposal which has been made and in spite of this fact the said person has been re-employed for a period of one year and continues to function at his last place of posting before his re-employment as Superintending Engineer, Public Works Department (B&R) Karnal. It has not been denied that it is a cadre post and thus, blocking the chances of promotion of persons who are in line irrespective of the fact that they are petitioners or not. While processing his case, the office had put up the note that if extension/re-employment would be given, it would block the promotion of the senior-most officers who are in line of promotion.

The objections which have been raised by the officers had never been taken into consideration in the decision making process and the matter was sent to the Chief Secretary and the Finance Department at a subsequent point of time, after taking approval from the Minister on 27.02.2017 and from the Chief Minister on 28.02.2017 with the noting that ex-post facto approval would be taken by the Chief Secretary/Finance Department and the Council of Ministers, while making re-employment for a period of one year, with the categorical noting that no new posting would be given since he was already employed, as noticed above. A perusal of the file also goes on to show that there were four explanations called from the officer and a noting was put on 27.04.2017 that all explanations pending be processed positively by 31.05.2017. Resultantly, approval was obtained on 21.06.2017 and the terms of re-employment had been issued. The said files also do not show any application of mind and the utmost necessity or public interest for the terms of the re-employment of the said respondent and his outstanding abilities and capabilities, which the rule itself provides and resultantly, the said re-employment also cannot be upheld in view of the observations of the Division Bench in **K.G. Nanchahal** (supra). The relevant observations of the Division Bench read as under:

“11. It is a settled rule of interpretation that the rules containing negative language must be construed strictly as a liberal interpretation of such rules may lead to frustration of the very object sought to be achieved under such rules. The Government, therefore, must be confronted with the situation where, exceptional circumstances exist and the competent authority considered it in public interest to retain or re-employ a Government employee. Existence of such a situation necessarily has to be a matter of fact and not one that of inference. The record must speak for itself in this behalf. The reasons or grounds for arriving at such a conclusion must be apparent on the face of the records.

12. Every Government decision which affects the rights of its employees should normally be a decision arrived at by due process of thinking and reasoning, and decision taken there- upon should be in conformity with the law or rules regulating such condition of service of the employees. To avoid rigours of a rule worded negatively, greater burden is casted upon the State to take a conscious and reasoned

decision and that too in the larger public interest. A decision offending the above principles would be open to judicial review or scrutiny.

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14. The cumulative effect of the above provisions and instructions issued by the Government, in furtherance thereto, is that :-

i) No Government employee can be retained upon his attaining the age of 58 years (except Class-IV employees) and no Government employee can be re-employed unless -

a) Exceptional circumstances exist and it is in public interest/public grounds that such employee is retained, continued or re-employed in Government service.

b) The Government must take such decision in accordance with and upon following the procedure prescribed in the Government instructions.

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21. In addition to existence of extra-ordinary circumstances, the re-employment could be only for public grounds. The public grounds would be a term quite synonymous to the expression "public interest". The State has to consider the need for re-employment in the larger interest of public as well as the department and its decision ought not to be sponsored by private or political interests. The Government is obliged to balance the need for re-employment in public interest on the one hand and its obligation to consider the cases of other eligible candidates or their non-availability on the other. This approach alone would be in accordance with the specific instructions issued by the Government itself. The decision of the Government in re-employing a Government servant, thus, must stand to the acid test of dual criteria afore referred.

22. The Government is the final authority to take such a decision. The decision is subjective but ought to be data based, *bonafide* and in public interest and as well in the interest of administration of service of the State. The implied prohibition in the negatively languaged rules is indicative enough of the necessity on the part of the State not to resort to the provisions of re-employment.

Ordinarily the burden of showing the exceptional circumstances and public grounds is on the State and it must be so reflected from the record. A Full Bench of this Court in the case of *Daya Nand v. State of Haryana, 1995(1) SCT 423 (P&H)(FB) : 1995(2) Recent Services Judgments page 55* while construing the instructions of the Government in face of Rule 3.26 and examining the ambit of public interest held that it is only an exception that for reasons to be recorded and in exceptional circumstances that extension in service is to be allowed. The phraseology used in Rule 3.26(d) is entirely different, though the element of public interest is prominent therein also.

23. In the present case the sole ground for extension/re-employment of respondent No. 2 is that works are going on and are about to be completed, of which the respondent No. 2 was in charge as Chief Architect of the State. This sole ground even seen in the light of the service profile of the said respondent could hardly be stated to be in larger public interest. It cannot be said to be a public ground as elucidated in the rules and more particularly the instructions issued by the Government. The respondent-State has admittedly not considered the cases of the eligible candidates. The concerned authorities admittedly did not advert their attention to the question whether other eligible officers are available in the department or not. In fact they granted extension/re-employment to respondent No. 2 *on his mere asking*. This attitude of the State certainly tilts the balance of equality and administrative exigencies towards private/individual interest rather than public interest.

24. In fact, the impugned orders are totally silent in regard to basic ingredients postulated under the terms and conditions of the Rules and the instructions. The order of extension, which was issued even prior to the approval of the proposal by the Cabinet, as well as the order of re-employment, which was issued after approval on 29.6.2001 i.e. nearly two months after the date on which the said respondent No. 2 ought to have been retired on superannuation, even remotely does not suggest much less uses the expression "public interest or public ground".

25. Administrative orders of the present kind must serve a greater public interest. It must be passed on public grounds. The said expression is of wide magnitude and cannot have such a limited meaning that because merely a person is In-charge of few works, thus, he must continue till completion of those works. There appears

to be no justifiable nexus between the reasons recorded on the file and the object sought to be achieved under the rules and the instructions. Shortly, we would proceed to discuss the manner in which extension/re-employment has been granted on the file produced before us, though the written statement is devoid of any such reasonable grounds.

26. During the course of hearing, learned counsel for the State conceded that amongst other officers including the petitioners and respondent No. 3, there were other competent officers involved and directly handling all the works where respondent No. 2 was involved. It is also not disputed that the officers satisfied the eligibility conditions for promotion to the post of Chief Architect. In the light of the above, we find definite merit in the contention of the petitioners that the Government has specifically violated Clause 3(i) of its instructions dated 17.2.1967.

27. Normally, the power of the Government in this regard is absolute but is subject to the conditions and limitations provided in the rules or instructions. Once the Government forms the opinion that it is in public interest to do so, then correctness of such opinion can normally be not challenged before the Courts. However, if such decision is based on collateral grounds, is arbitrary, or offends the rules of instructions, it will be open for the Court to interfere in such matters. In other words, *bonafides* of the State and compliance of its rules and instructions are the very foundations for the State to claim exclusion from judicial scrutiny. Once the order is silent then the State must produce such record and show that order is *bonafide* is in consonance with the instructions and is in public interest. In this regard reference can be made to the cases of *Union of India v. J.N. Sinha and another, AIR 1971 Supreme Court 40* and *State of Madhya Pradesh and others v. Indra Sen Jain, 1998(1) SCT 143 (SC) : 1998(1) Recent Services Judgments 70.*

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35. Extension in service or re-employment of a Government employee is an exception to the rules afore-stated. Rudiments of such exception are existence of exceptional circumstances, public grounds and compliance to the instructions issued by the State. Ideal would be the situation, where these ingredients are satisfied on data based study and service profile of a Government employee so as to provide greater transparency in the State action. Such

compliance would obviously eliminate element of arbitrariness in such action. Arbitrariness in State action, particularly where it denies the right of consideration to other eligible officers for promotional posts thereby undermining the principle of equality enshrined in Articles 14 and 16 of the Constitution of India, would vitiate the State action in law. In the present case, except for the note initiated by respondent No. 2 himself in this regard, the basic elements like the need of the State, the public grounds, existence of exceptional circumstances and non-availability of other eligible officers for promotion for justifying an order of re-employment, are conspicuously absent in the record produced by the respondent-State before the Court. The competent authority has failed to discernly decipher the public grounds or public interest to the individual interests of respondent No. 2.

36. For the reasons recorded above and after perusing the records produced before the Court, we are of the considered view that neither exceptional circumstances existed, nor were there any public grounds, before the competent authority while passing the order of re-employment of respondent No. 2 to the post of Chief Architect, Punjab. In fact the impugned orders violate and offend the rules and the instructions issued by the Government dated 17.2.1967. The orders suffer from the vice of arbitrariness and are opposed to the accepted canons of service jurisprudence, more particularly, in relation to legitimate expectancy of a Government employee in matters relating to promotion to higher posts in the existing hierarchy of the department. Thus, we have no hesitation in quashing the impugned orders dated 27.4.2001 and dated 29.6.2001, which we do hereby quash and set aside. The State is directed to take appropriate steps forthwith in accordance with law. However, in the facts and circumstances of the case, there shall be no order as to costs.”

(37) In the case of respondent No.6, it is to be noticed that the first extension was granted on 28/29.04.2016 before the coming into force of the 2016 Rules and one necessarily would have to turn back to Rule 3.26 and Rule 7.17 of the Punjab Civil Services Rules (as applicable to Haryana), which read as under:

“**3.26** (a) Except as otherwise provided in this rule, the date of retirement of a Government employee shall be as follows, namely:—

(i) fifty-eight years in the case of Group “A”, “B” and “C” employees; and

(ii) sixty years in the case of Group “D” employees;

Provided that if the State Government is of the opinion that it is necessary and expedient so to do in public interest, the Service of a Government employee or a class of Government employees, may be extended for a period of two years on yearly basis, subject, however, to giving an option within a period of three months before the date of retirement by the Government employee, who seeks extension:

Provided further that a Government employee, who is already on extension, shall also give fresh option within a period of one month from the date of publication of these rules: Provided further that no Government employee, shall be retained in Service, after the completion of his extended period of Service. However under exceptional circumstances,

if the State Government considers it necessary and expedient so to do in public interest, it may extend the Service of a Government employee beyond the aforesaid limit, for thereasons to be recorded, in writing.

Note 6.—This rule is applicable to re-employed personnel and the rules in Chapter VII of Volume II of these rules are subject to the conditions laid down in this rule. Rule 7.17 of Volume II of these rules, however, from the nature of its concession and conditions puts the re-employment of a person in receipt of a superannuation or retiring pension in a special class outside this rule and subject to the conditions stated in that rule itself which must be observed with every renewal of sanction.

7.17 A Government employee who is in receipt of a superannuation or retiring pension shall not be re-employed or continue to be employed in service paid from the Government revenues or from a Local Fund, except on public grounds and in a purely temporary capacity with the sanction of the competent authority.”

(38) Similarly, 2010 Rules provide that the members of the

service of respective cadre would be eligible for any of the respective posts and promotion was to be made on the basis of seniority-cum-merit and suitability, under Rule 9(2). The Superintending Engineer has to render 3 years service before he can be eligible for promotion to the rank of Chief Engineer and similarly, an Executive Engineer has to render 7 years of service before he is eligible to be promoted to the post of Superintending Engineer. Rule 21 provides that the members of the service has to be governed by General & Special Rules as may have been and may hereinafter be framed up by the Government, from time to time. Similarly, as per consolidated instructions dated 02.02.2016, which was circulated by the Chief Secretary regarding grant of extensions in service/re-employment, the reasons for recommending for re-employment have to be reduced in writing and the administrative departments were requested to send the quarterly sanction of cases sent to the Chief Secretary and the case for re-employment has to reach the Administrative Secretary at least 3 months before the crucial date. As per Clause 4(C)(vii) only when there is a shortage of experienced hand and there is no alternative, re-employment is to be done and the policy of pick and choose is to be avoided. Similarly, the interests of the persons of comparable seniority have to be kept in mind and as per Clause 6, the advise of the Chief Secretary should be taken before submitting the case to the Chief Minister for placing it before the Council of Ministers, which is to be obtained invariably and as per Clause 8, it should not be a matter of routine and it should be allowed in very exceptional circumstances. The relevant clauses read as under:

“4. Govt. Instruction No.9246-GII-57 issued vide dated 08.01.1958, inter alia stated that it is hardly necessary to emphasise the need to exercise very careful scrutiny and discretion in all such cases and ensure that the conditions laid down by Government from time to time for this purpose are strictly observed. The present policy and procedure to govern such cases is laid down below:-

A. In all such cases the reason for resorting to re-employment must be reduced to writing as required under Rule 3.20 of Civil Services Rules, Vol. I, Part I.

B. The Administrative Departments are requested to send quarterly Statement of cases sanctioned by them to the Chief Secretary. These statements should be

sent for the previous quarter by April 15, July 15, October 15 and January 15.

C. (i) (ii) (iii)(vi)(v)

- The case for re-employment continued/re-employment must reach the Administrative Secretary concerned at least three months before the crucial date.
- When a Department is facing shortage of experienced hands and there is no alternative but re-employment everyone who attains the age of superannuation should be considered for re-employment except those who are physically and mentally unfit to continue in service or have a bad service records. A policy of pick and choose should be avoided as far as possible.
- The Administrative Department should certify that the proposed re-employment will not adversely affect the interest of other connected officers of comparable seniority in the Department concerned.

5. Vide Govt. Instruction No. 32/226/4GSI, dated 16.08.1983, it was decided that no employee should henceforth be granted extension in service or be re-employed after the age of 58 years.

6. Thereafter, vide Govt. Instruction No. 32/313/89-4GSI, dated 15.01.1990, it was stated that in exceptional cases, extension in service/re-employment after the age of 58 years has been allowed by Chief Secretary after obtaining relaxation in these instructions from the Council of Ministers. The matter has further been considered it has been decided that in future the memorandum to the Council of Ministers for grant of relaxation in the instructions, referred to above, shall be submitted by the concerned department and the advice of Chief Secretary would be obtained by the concerned department before submitting the case to Chief Minister for placing it before the Council of Ministers.

7. Besides this, vide Govt. Instruction No. 33/4/91-4GSI, dated 07.04.1991, it was also emphasized that before submitting the case to Chief Minister/ Governor for placing the matter before C.M./Governor in Council for relaxing the instructions for grant of extension in service/re-employment, the prior advice of CS may be obtained

invariably. Any violation of these instructions would be viewed seriously. It was also stated that no re-employment or extension in service beyond the age of 58 years be given as a matter of routine.

8. Vide FD's letter No. 5/1/2012-1B&C, dated 04.07.2012, it was stated that henceforth, no ex-cadre/additional posts would be created for re-employment of officials/officers after their superannuation and such posts would be treated within the sanctioned posts of their cadre. It is also decided that re-employment of officials after their superannuation should not be allowed as a matter of routine and it should be allowed in very exceptional circumstances.

9. Vide FD's letter No. 5/1/2012-1B&C, dated 29.05.2013, it was also stated that the cases of re-employment of several retired officers/officials are being sent frequently to Finance Department for creating ex-cadre posts which are contrary to the instructions issued vide letter no. referred to above. The Finance Department intends to

further elaborate their instructions No. 5/1/2012-1B&C, dated 04.07.2012 as under:- "Finance Department observes that several retired people are being re-employed. The Finance Department has two options-(i) that a new post is created for the person to be re-employed or (ii) an existing post vacated by the retired person (to be re-employed) is utilized for the re-employed person. Finance Department has opted for the second option since re-employment in every case would otherwise imply creation of additional post causing unnecessary burden on the exchequer in any case, if the work in that department/place was discharged by 'x' number of employees earlier, it would be inappropriate to have 'x+1' persons to do the same work without any justification. This would also ensure that the pressure of serving employees will deter the re-employment of all and sundry. The government has expressly banned the creation of new posts considering the strain on the resources and the continuing revenue deficit."

10. Now, vide Govt. Instruction No. 34/08/2015-4GSI, dated 08.04.2015, it is stated that School Education Department and Engineering Departments/ Engineering

PSUs may grant extension in service after superannuation for a period of two years in such cases on a case to case basis. It is therefore requested that such cases of their Departments may be considered in the light of other points which are mentioned in the instructions issued from time to time in this regard.

11. Further more, the sub para-vi of para C of instructions dated 08.01.1958 provides that the case for re-employment continued/re-employment must reach the Administrative Secretary concerned at least three months before the crucial date. But most of the Departments do not follow these instructions and solicit ex-post-factor approvals for services rendered by person taken on re-employment. It is apparent that there are no instructions in the Chief Secretary Office with regard to ex-post-facto approvals. So, after examining the matter if AD deems a case to be a fit case for re-employment it may send the case to CS (in GAD) at least 2 months before the date of superannuation of that officer/ official. Concerned Department should issue the orders of re-employment only after completing the entire process associated with the re-employment as per above referred Govt. Instructions.

12. You are, therefore, requested to bring this consolidated set of instructions to the notice of all concerned working under your control for strict compliance.”

(39) Thus, from the perusal of the above, it would be apparent that all the said clauses of the consolidated instructions were totally thrown to the winds and the prescribed procedure was never followed and the office of the Chief Secretary has been kept out of the loop and only ex post facto sanction has been sought.

(40) The observations of the Division Bench are, thus, to be given the utmost importance regarding the first extension granted since again exceptional circumstances along with public grounds and reasons to be recorded in writing was the mandate, as such, while granting the extension, at the first instance, which was also subject matter of consideration apart from the temporary nature of the job as per Rule 7.17. As noticeable, the request was received at the instance of the local MLA on account of the construction projects on 24.12.2015 in the office of the Chief Minister. Representations were received on

11.02.2016 from 9 Executive Engineers including the ones who had been subsequently promoted on 23.06.2016 onwards and mentioned in the table in para 11 of the reply of respondents No.5 & 6. A similar representation was also received on 11/12.04.2016 from as many as 7 Executive Engineers including petitioners No.7 & 8, referring to the instructions dated 02.02.2016 again and the violations and the pick and choose policy. On 28.03.2016, a communication was received from the Engineer-in-Chief that it would adversely affect the promotion of the senior-most Executive Engineers who are waiting for promotion and are in the line of promotion. It was followed up with similar communication dated 12.04.2016. The note was put up on 15.02.2016 specifically mentioned that promotional avenues of the senior Executive Engineers would be affected. Accordingly, the names of the persons who are due for promotion was sought to be put up while approval was being given for re-employment for one year on usual terms. Accordingly, taking into consideration the case for promotion of Nihal Singh, the Executive Engineer who was second senior-most, it was decided that he would be promoted against a vacancy which was coming up on 30.04.2016 whereas similarly, Arvind Kumar could be promoted against the vacancy of Neeraj Gupta, who was already serving as Superintending Engineer and was holding additional charge of the MD's post and could be promoted to the MD's post in HSRDC. The approval was only granted on 26.04.2016 by respondent No.1 and approved by the Minister on 27.04.2016. As noticeable again that ability of the officer and the inability of the other officers who were in the zone of consideration to continue with the work which was going on at Rohtak which was the proposal as such, by the MLA was never considered.

(41) As per the Rules applicable, at that point of time, the exceptional circumstances was the condition precedent apart from the fact that reasons had to be given in writing, as such, which are conspicuous by their absence. Though the said order has now run out of its currency, as noticed above, but the fact remains that the said gentleman has again got recommendation for re-employment from the same MLA, who is now a Minister, which was processed in the same manner and report was accordingly, given that the officer is quite hard working and his performance during the last years has been excellent and his integrity is beyond doubt. The approval was, thereafter, taken on 10.04.2017 from respondent No.1 and from the Chief Minister on 12.04.2017 and as per office noting dated 20.04.2017 he was to continue at Rohtak. It is also to be noticed that specific averment has

been made that the respondents No.5 & 6 are working against a cadre post and it is also part of the noting dated 14.07.2017 that respondent No.6 is also to continue to get the re-employment on the already existing post and no ex-cadre or additional post has been created for him.

(42) Similarly, in the case of Anoop Chauhan, a subsequent approval or the exceptional circumstances of respondent No.6 were noticed regarding his outstanding capabilities and the fact that he was the most suitable person to complete the project. The rights of petitioners No.3 & 4- Sanjeet Kumar and Balraj Singh were also brushed under the carpet on the ground that they did not had the maximum service in the non-field stations and were not suitable for the highly technical projects, apart from the fact that there was no vacant cadre post of Superintending Engineer and also reference was again made to the meeting dated 11.04.2017, which has also been discussed above. For the same valid reasons, discussed above in the case of respondent No.4, the subsequent recording of the reasons during the pendency of the writ petitions, to justify and make out exceptional circumstances for the private-respondents, would be of no avail to the State. The right of the State to make contractual appointments and to appoint suitable officers for specialized posts is very much within its power but reasons have to necessarily flow when such contractual appointments are made which are otherwise expressly barred under the relevant service rules, as noticed above and only in public interest, it is to be done.

(43) In similar circumstances the Apex Court in **B. Srinivasa Reddy** versus **Karnataka Urban Water Supply & Drainage Board Employees' Association & others**¹² upset the judgments of the Single Bench and the Division Bench while noticing that the Chief Minister in that case had approved the re-employment on the ground that the appellant's continuation in the post of the Managing Director was of utmost importance since negotiations with the World Bank were going on of laying the new water and sanitation improvement programmes. It was further held that administrative instructions which had been made to fill up the gaps and supplement the statutory rules affecting conditions of service would be binding and indispensable for a writ of certiorari under Article 226 of the Constitution of India, while placing reliance upon the earlier judgment of the Apex Court in

¹² (2006) 11 SCC 731 (II)

Union of India versus **K.P. Joseph**¹³. Resultantly, reliance of the counsels for the respondents upon the Division Bench judgment in **Faruq Ameen** (supra) and **Narinder Kumar Maheshwari** (supra) would be of no avail.

(44) Thus, it is apparent that the consideration for promotion to the persons in the zone of consideration is being directly affected by the re-employment of the said respondents and neither it has been denied in the written statement that respondents No.5 & 6 are not working on cadre posts. The argument, thus, raised by the private-respondents that the petitioners, as such, do not have any right of consideration, would also be of no force. As noticed various persons also have been agitating for their rightful grievances. The Court cannot shut its eyes that on the basis of recommendations from important quarters, respondent No.6 has been able to get his second extension at the cost of others. The observations of the Apex Court in **State of Bihar** versus **Upendra Narayan Singh**¹⁴ regarding the prevalent 'Spoils System' and the progenies which have all eaten into the vitals of service structure of the State and public bodies, at the instance of the favourites who pull the strings in the corridors of powers and this is why irregularities and illegalities are committed and necessarily open the door for exercise of judicial review, are fully applicable to the facts and circumstances of the present case.

(45) As has been held in **Tata Cellular** (supra) that unfairness is to be set right by the judicial review process where the decision making power could be termed as a illegality. It is correct that the Court is not sitting as a Court of appeal and there should be judicial restraint but if the decision making itself does not give out and spell out the reasons which are part of the requirements of the rule and the lack of public interest issue was never examined, the Court would step in to rein in any unbridled executive functioning, as the State can only use its power in a proper manner and the facts taken as a whole needed to be re-examined in total. As noticed above, this Court has but to intervene since the decision making has led to the private-respondents fostering their private interests which has been permitted by the State at the cost of the other employees without any recording at the initial stage that they had a high degree of intellect and specialized experience.

¹³ (1973) 1 SCC 194

¹⁴ 2009 (5) SCC65

(46) Resultantly, the question is answered against the State that in the absence of any public interest having been recorded at the time of granting re-employment to a public servant and similarly, in the absence of any outstanding merit having been found, re-employment cannot be given at the asking, in view of the specific bar of the statutory Rules.

(47) Resultantly, this Court cannot but step in and rectify the error which has taken place and accordingly, by issuing a writ of certiorari the extension orders qua all the three respondents including the second extension granted to respondent No.6 is quashed. However, it is made clear that the said respondents will be entitled to retain whatever financial benefits they have received during the promotions on their re-employment, since they had worked against their posts. A writ of mandamus is, accordingly, also issued to the respondents that petitioner No.1-Shri R.K.Verma would be considered for the post of Chief Engineer against the vacancy which has come on account of the setting aside of the re-employment order of respondent No.4, who continued to occupy the cadre post, as has been noticed above from the date he was wrongly granted the re-employment. The said exercise be completed expeditiously, within a period of 6 weeks from today.

(48) Similarly, the petitioners (in CWP-16384-2017) would also be considered for promotion to the post of Superintending Engineer from the date respondents No.5 & 6 were granted re-employment, vide orders dated 02.03.2017 and 29.04.2017, respectively.

(49) Resultantly, the present writ petitions are allowed, to that extent. In view of the writ petitions being allowed the relief claimed in CWP-16016-2017, to also consider for re-employment of the petitioners by advertising the post by giving others a chance to apply, in view of the re-employment given to the private respondents, has, thus, become infructuous.

(50) The official files/records be returned to the State Counsel, under proper receipt.

Payel Mehta