

a reference as to how the decision taken by the competent authority could not be challenged by means of appeal within the time prescribed under the Act. The *suo mottu* revision even when there was provision for an appeal was clearly not justified.

(3) The impugned proceedings are quashed and the writ petition is allowed.

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A. Agg.

*Before M. M. Kumar & Gurdev Singh, JJ.*

**SURINDER SINGH AND ANOTHERS,—Appellants**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**L.P.A. No. 1598 of 2010**

15Th July, 2011

*Punjab Service of Engineers, Class-II (Irrigation Branch) Rules, 1941 - Rl. 3, 4 & 5 - Punjab Irrigation Department (Group A) Service Rules, 2004 - Junior engineers in Irrigation Branch of PWD aspiring for promotion to SDO/ Assistant Engineer - Services governed by the 1941 Rules -Eligibility in terms of Rules 3, 4 & 5 - Appellants contended that no separate quota was provided as to how number of posts in service would be apportioned amongst various eligible persons -In 1957 government decided that no officer should be appointed by Direct Recruitment to PSE Class-II and posts be filled up by promotion amongst temporary Engineers and sectional officers and head draftsmen - Ratio revised from time to time - Some Junior engineers filed petitions on ground that promotion could not be made of those Junior Engineers who did not answer to the qualification provided under Rule 3 - Petition allowed holding that of the Rules are silent as to percentage of quota meant for different feeder categories, same could be provided by Executive instructions but the quota can only be for such members who are qualified for purposes of promotion to higher post - No quota could*

*be provided for unqualified persons - Further held that non-degree holders are ineligible for promotion to PES Class II as per Rule 3 (i)(c) and Rule 5 - SLP filed by the State was dismissed - Various representations made for implementation of order and subsequently contempt petition filed - In reply to the contempt petition it was contended that due to closure of Ranjit Sagar Dam, SYL and other projects large number of staff had become surplus and thus out of 687 post of SDO's, 115 posts were occupied by persons having AMIE qualifications and thus promotion could not be made in excess of the quota - Appellants then filed writ petition praying that Junior Engineers who have AMIE qualification be promoted against 45 % posts available as per the 1941 Rules which has been upheld by this Court as also Supreme Court - State contended that the 1941 Rules were amending in the Punjab Irrigation Department (Group A) Service Rules, 2004 were notified w.e.f. 9.7.2004 and the 1941 Rules were repealed - As per 2004 Rules diploma holders eligible for promotion and 25% posts of Sub Divisional Engineers to be filled up from diploma holders - The Appellants filed an application seeking promotion as per 1941 Rules on the ground that when the vacancies arose those rules were in existence - In the meantime 20 Junior Engineer Diploma Holders were given current duty charge as SDO/Assistant Engineer under proviso to Rule 5 of the 1941 Rules - CDC was subsequently withdrawn which was challenged by various writ petitions - while disposing of the said petitions it was held that since the vacancies arose under the 1941 Rules, the same should be filled up on the basis of the 1941 Rules - Further held vacancies prior to 31.3.2001 should be filled up by following criteria indicated by instructions dated 1.10.1999 and 29.12.2000 in terms of 1941 Rules - Order challenged in the Supreme Court which formulated two questions - Dealing with the second question the Hon'ble Supreme Court observed that under the 1941 Rules there was no provision for promotion quota for Diploma Holders proviso to Rule 5 provided relaxation of Rules for Diploma Holders who have outstanding merit - 2004 Rules did away with the said criteria and Diploma Holders were entitled to 25% out of 40% promotional quota - it was further opined that Government took a conscious decision not to fill up the vacancies under the old Rules - State*

***Government to fill up vacant posts in accordance with the 2004 Rules within a period of three months - Writ Petition disposed off by Ld. Singled Judge on agreed statement of counsel for the parties that the matter was covered - Application for recalling the said order was also dismissed - Contention of the Appellants that the Judgment in Arun Kumar Aggarwal's case did not cover the controversy as the said Judgment did not cover the vacancies which arose prior to the year 2000 and 105 vacancies are required to be filled up on the principle of "Old Rules Old Vacancy" - Moreover, Rule 3 of the 1941 Rules required a candidate for promotion to have a University Degree or other qualification prescribed in Appendix-A and that Public Service Commission must be satisfied about the candidate's character and antecedents - Appellants satisfy all above requirements - Insofar as concession recorded by counsel is concerned it was contended that counsel who was marked present was appearing in other bunch matter and counsel for the Appellants was not present at the time of disposal of the petitions - Appeal allowed.***

*Held*, The Judgment rendered by the Hon'ble Supreme Court in the Arun Kumar Aggarwal's case specifically dealt with the vacancies which arose in the year 2000-01 - the 2004 Rules became effective from 9.7.2004 and in Arun Kumar Aggarwal's case it was held that the 2004 Rules were to apply for vacancies which arose during 2000-01 - in the present case the vacancies have arisen prior to 1999 and therefore the principles of "old vacancy old rule" enunciated by the Hon'ble Supreme Court in the case of VV Rangiah Vs. J Sreenivasa Rao; (1983) 3 SCC 284 would apply. In other words, the non-degree holder Junior Engineers would not be eligible for further promotion the post of SDO/Assistant Engineer. P. Ganeshwar Rao Vs. State of Andhra Pradesh 1988 (Supp) SCC 740, Arjun Singh Rathore Vs. BN Chaturvedi (2007) 11 SCC 3605 and State of Bihar Vs. Mithlesh Kumar (2010) 13 SCC 467 relied upon.

*Further held*, that counsel whose presence had been marked was in fact not the counsel for the Petitioner-Appellant and he was counsel in the other cases. Ld. Single Judge did not consider the above submission. No doubt that presumption of truth is attached to the order passed by the Court, however, a factual error may not attract a presumption of truth. Such

an error would not be covered by setting up a plea that once a concession has been made by counsel then the same could not be withdrawn. Appeal allowed. Respondents directed to consider the case of the Appellants for promotion to the post of Sub Divisional Engineer/Assistant Engineer against the vacancies pertaining to the year 1999 or earlier in accordance with the provisions of the 1941 Rules.

(Para 5, 9, 10, 12, 14, 15, 17, 18, 22, 23, 24)

D.S. Patwalia, Advocate, *for the appellants*.

Suvir Sehgal, Addl. AG, Punjab, for respondent Nos. 1 to 3.

**M.M. KUMAR, J.**

(1) The instant appeal under Clause 10 of the Letters Patent is directed against an agreed order dated 10.10.2007 passed by the learned Single Judge. On the agreed statement made by the counsel for the parties stating that the matter was covered by the judgment of Hon'ble the Supreme Court rendered in the case of **State of Punjab and others versus Arun Kumar Aggarwal and others (1)**, the writ petition has been disposed of by the learned Single Judge. The petitioner-appellants have also challenged in this appeal subsequent order dated 4.2.2009 rendered by the learned Single Judge dismissing the application for recalling order dated 10.10.2007, holding that the said order was passed in the presence of the counsel for the parties on the statement made by them. The short issue raised on the merit of controversy is whether the judgment in Arun Kumar Aggarwal's case (*supra* Arun *supra*) would apply to the vacancies of the year 1999 or not. If it is held that the judgment would not apply to the vacancies of Sub Divisional Officers / Assistant Engineers relating to the year 1999 then such vacancies are required to be filled up in accordance with the view taken by a Division Bench judgment of this Court rendered in the case of Gurmej Singh and another v. State of Punjab (CWP No. 16691 of 1997, decided on 07.01.1998 (P-3)). The aforesaid judgment had attained finality because SLP has been dismissed on 14.05.1999 by a Speaking order of Hon'ble the Supreme Court. The net result of the aforesaid situation would be that it is only graduate Junior Engineers like the appellants who could be considered and promoted to the post of Sub Divisional Officer/ Assistant

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(1) 2007 (5) SLR 237

Engineers and that diploma holders would not have any right. The instructions to the contrary issued on 23.04.1992 (P-2) were set aside by the Division Bench in Gurmej Singh's case (supra).

(2) Facts may first be noticed. The petitioner-appellants are Junior Engineers in the Irrigation Branch of the Public Works Department in the respondent State of Punjab. Appellant Nos. 1 and 2 joined the service in December 1990 and April 1985 respectively. They are aspiring for promotion on the post of Sub Divisional Officer/ Assistant Engineer. The services of the Junior Engineers working in the Overseers Engineering Service, Irrigation Branch of the respondent State were to be governed by the service rules, namely, the Punjab Service of Engineers, Class-II (Irrigation Branch) Rules, 1941 (for brevity, 'the 1941 Rules')[P-1/A]. 1941 Rules- Promotion as Sub Divisional Officer/ Assistant Engineer. If a Junior Engineer is graduate or equivalent qualified. A brief survey of 1941 Rules would show that for promotion to the post of Sub Divisional Officer/ Assistant Engineer. A degree or equivalent qualification is essential requirement and diploma holders are not eligible. Rule 3 of the 1941 Rules talks about the nationality and other qualifications of candidates. As per Clause (c) of Rule 3 no person could be appointed to service unless he possesses one of the University degrees or other qualifications prescribed in Appendix 'A' to the 1941 Rules. It may be observed here that Appendix 'A' to the Rules, to which reference has been made in Rule 3(c), lays down a degree in Engineering from certain Institutions/Universities as the prescribed qualification for appointment to Class-II Service. However, note appended to Rule 3 clarified that qualification laid down in Clause (c) may be waived in case of the members of the Overseer Engineering Service, Irrigation Branch, for promotion to Class II Service to be given under proviso to Rule 5. Rule 5 of the 1941 Rules deals with the appointment to service and states that the appointment to the service could be made from the classes mentioned in Rule 4. But no person could be appointed to the service unless he possesses the qualifications specified in Rule 3, which in turn refers to Appendix 'A' appended to the 1941 Rules. Rule 5 further specifies that no Temporary Engineer could be taken into service and no member of the Overseers Engineering Service or Draftsman Service could be promoted to the Service unless he is declared fit for service by the Commission on the report of the Chief Engineer. A further stipulation has been laid down that such person must be serving in the Department and must have held

an appointment for not less than 2 years continuously before the date of entry into the service. He must not be less than 26 years or more than 50 years of age on the first day of June immediately preceding the date on which he was taken into the service. After promotion the members of Overseers Engineering Service or Draftsman Service are obliged to pass the Department's Professional and Revenue Examinations of the Irrigation Branch. However, proviso to Rule 5 clothed the Chief Engineers with the power of relaxation of the above rule with respect to possessing of qualifications specified in Rule 3 in order to grant promotion to a outstanding meritorious member of the Overseer Engineering Service of Irrigation Branch, Punjab, and Irrigation Branch (Provincial Draftsman and Tracers) Service.

(3) The petitioner-appellants claimed that under the 1941 Rules though there were various modes provided for induction into Service but no separate quota was provided as to how the number of posts in the service would be apportioned amongst various eligible persons. On 20.8.1957, the Secretary to Government of Punjab, Public Works Department (Irrigation Branch) issued a letter to the effect that in view of a large number of temporary Engineers being in employment of the Irrigation Branch due to heavy expansion on account of Bhakra Nangal and other projects, the Government had decided that till further orders no officer should be appointed by direct recruitment to P.S.E. Class II and henceforth the same be filled up by promotion from amongst temporary Engineers and Sectional Officers and Head Draftsmen in the ratio of 75% : 25% respectively. Later on the above percentage was revised from time to time and ultimately on 23.4.1992 (P-2), the same has been fixed as under:-

‘I: DIRECT RECRUITMENT;	
Temporary Engineers	55%
II: BY PROMOTION;	
(i) From Junior Engineers (Civil):	20%
(ii) From Junior Engineers (Mech):	5%
(iii) From Members of Drawing Section:	6%
(iv) From AMIE Qualified:	14%
Junior Engineer:	11%
Drawing Staff:	3%”

(4) It is evident that 55% quota has been earmarked for temporary Engineers by way of direct recruitment. Out of the remaining 45% by way of promotion, 25% has been prescribed for Junior Engineers Civil and Mechanic, 6% for the members of the Drawing Section and 14% for AMIE qualified persons. 14% quota of AMIE qualified persons has been further bifurcated into 11% for Junior Engineers and 3% for Drawing Staff. In this manner, the total quota for Junior Engineers by promotion comes out to be 36% and remaining 9% comes to the share of Draftsman. These instructions apparently made non-graduate engineers eligible for promotion as Sub Divisional Officer/ Assistant Engineer which is patently against Rule 3(i)(c) of 1941 Rules. Prescription of quota for Junior Engineer by letter dated 23.04.1992 (P-2) declared illegal by the Division Bench.

(5) The next promotion of the Junior Engineer is to the rank of Sub Divisional Engineer (also called Assistant Engineer), which is also governed by the 1941 Rules. Some of the Junior Engineers working in the Punjab Irrigation Department, who were having the qualification of AMIE and treated as Graduates in Engineering, filed CWP Nos. 16691 of 1997 and 12725 of 1997 before this Court challenging order dated 23.4.1992 (P-2) on the ground that prescribing of 31% quota for the categories of Junior Engineer (Civil), Junior Engineers (Mechanical) and members of the Drawing Staff for further promotion to the rank of Sub Divisional Engineer (Assistant Engineer) ultra vires 1941 Rules because no promotion could be made of those Junior Engineers who do not answer the qualifications provided under Rule 3 of the 1941 Rules. On 7.1.1998 (P-3), a Division Bench of this Court In Gurmej Singh's case (supra) allowed the aforementioned writ petitions holding that if the rules are silent as to the percentage of quota meant for different feeder categories, the same could be provided by Executive instructions but the quota could be only for such members of the feeder cadres who are qualified for the purposes of promotion to the higher post. For unqualified persons no quota could be provided. The Division Bench further observed that the non-degree holders are ineligible for promotion to P.E.S. Class II as per the requirement of Rule 3(i)(c) and Rule 5 of the 1941 Rules.

6. The State of Punjab filed Special Leave Petition against the Division Bench judgment dated 7.1.1998, which was dismissed. Their Lordships' of Hon'ble the Supreme Court, vide order dated 14.5.1999,

passed in SLP (Civil) Nos. 9315-16, concluded that “*in our opinion the High Court was right in holding that a temporary Junior Engineer who does not possess a degree qualification is not eligible for promotion to the post of Assistant Engineer and therefore, the impugned notification fixing quota for promotion was bad to that extent.*” The necessary consequence is that degree holder Junior Engineers alone were held entitled to quota of 36% whereas qualified Drawing Staff has been held entitled to quota of 9%.

(7) Thereafter, the degree holder Junior Engineers through their Association made various representations to the respondent State for implementation of the Division Bench judgment and to fill up the vacancies. When nothing was done, a Contempt Petition No. 612 of 1998 was filed. In the contempt proceedings, at one stage the respondent State came up with the plea that a list of eligible Junior Engineers was sent to the field officers calling for their record for considering their names for promotion in terms of the Division Bench judgment of this Court (P-5). On 6.7.1999, the Chief Engineer/Canals, Irrigation Department, informed the Government about the vacancy position of the post of Sub Divisional Officers/Assistant Engineers. A perusal of the said letter reveals that as on 6.7.1999, 105 vacancies were available against which the eligible persons would be considered (P-6). However, in the written statement filed in contempt petition No. 612 of 1998 a total somersault was taken by the respondent Irrigation Department. In para 5 of the said written statement it was urged that due to the closure of the Ranjit Singh Dam, SYL and other projects, a large number of staff became surplus. The resultant effect was that out of 687 posts of SDOs at that time, 115 posts were occupied by the persons having AMIE qualification as against 96 posts (14%). Therefore, no promotion of the AMIE/B.E. qualified Junior Engineers/ Drawing Staff could be made being already in excess of quota (P-8).

(8) Faced with this position, the petitioner-appellants and proforma respondent Nos. 4 to 23 filed the CWP No. 11644 of 1999, which is relatable to the instant appeal, praying that the official respondents be directed to promote those Junior Engineers who are having AMIE qualification against 45% posts available in the Punjab Service of Engineers (Class-II) Irrigation Branch as per the provisions of the 1941 Rules as interpreted by the Division Bench vide judgment dated 7.1.1998 (P-3) and upheld by Hon’ble the Supreme Court.



(9) In the written statement filed on 31.5.2000, the categorical stand taken in preliminary objection No. 3 was that the Government was considering to amend the 1941 Rules and a Committee of three Chief Engineers was constituted for making recommendations with regard to fixing the quota for different categories and its due incorporation in the relevant Rules. Eventually, the respondent State of Punjab notified the Punjab Irrigation Department (Group A) Service Rules, 2004 (for brevity, 'the 2004 Rules') with effect from 9.7.2004, repealing the 1941 Rules. In the 2004 Rules diploma holders have again been made eligible for promotion. 25% posts of Sub Divisional Engineers have been earmarked to be filled up from diploma holders. On 13.8.2004, the Chief Engineer/Canals, Irrigation Department, Punjab, called for the personal record of Junior Engineers (Civil) and (Mechanical) for filling up 100 posts of Sub Divisional Officer by promotion under the 2004 Rules (A-2). On 7.10.2004, the petitioner-appellants filed CM No. 18687-88 of 2004 in CWP No. 11644 of 1999 seeking a direction from this Court to promote them (petitioners) as Sub Divisional Officer as per the 1941 Rules because on the date when the vacancies arose those rules were in existence. The petitioner-appellants have alleged that all this has been done at the behest of Diploma Holders who want to grab the post of Sub Divisional Engineer (Assistant Engineer) by hook or crook.

(10) At this stage it would be pertinent to notice that during the pendency of the writ petition filed by the petitioner-appellants, 20 Junior Engineer Diploma holders (outstanding category) were given current duty charge as Sub Divisional Officer/ Assistant Engineer under proviso to Rule 5 of the 1941 Rules, by an order dated 21.6.2001. They otherwise did not possess the graduate qualifications in engineering specified under Rule 3(i) (c) of the 1941 Rules. The CDC was subsequently withdrawn by an order dated 22.6.2005, which was impugned by the diploma holders (outstanding category) by filing various writ petitions in this Court. On 18.10.2005, this Court disposed of all the writ petitions by a common order. This Court took the view that since vacancies arose under the 1941 Rules, and the same should be filled up on the basis of 1941 Rules. Accordingly, while quashing order dated 22.6.2005, a direction was issued to the Government to fill up the posts under the Government instructions issued on 1.10.1999, 29.12.2000 and 25.9.2003. It was further held that the vacancies becoming available prior to 31.3.2001 should be filled up by

following the criteria indicated by instructions dated 1.10.1999 and 29.12.2000 for determination of outstanding merit in terms of the 1941 Rules. The matter then travelled to Hon'ble the Supreme Court in the case of Arun Kumar Aggarwal (*supra*). Their Lordships' of Hon'ble the Supreme Court formulated following two questions of law for determination :

- “(1) Whether any indefeasible right has been (sic) accrued to the diploma-holder (outstanding categories) for promotion to the post of SDO by virtue of being given current duty charge by an order dated 21.6.2001 and whether any cause of action arose by withdrawing the same by an order dated 22.6.2005.
- (2) Whether old 1941 rules or new 2004 Rules which became effective from 9.7.2004 will be applied for filling up the vacancies which arose during 2000-01 under old 1941 Rules for promotion to the post of SDO (Irrigation) Department) in the State of Punjab.”

(11) On the first question, in para 15 of the judgment in **Arun Kumar Aggarwal's case (*supra*)** it has been held that no right much less indefeasible right had accrued to the diploma-holder Junior Engineers by virtue of giving them CDC of the post of SDO warranting because it was purely a stopgap arrangement. According to the dicta of Hon'ble the Supreme Court, it was based on seniority nor efficiency and no cause of action had arisen on the withdrawal of CDC by the order dated 22.6.2005.

(12) Dealing with second question, it has been observed that under the 1941 Rules there was no provision for promotion quota for diploma holders. A proviso to Rule 5 provided for relaxation of the Rules for diploma holders in favour of those who were of outstanding merit. However, under the 2004 Rules the criteria of outstanding merit has been done away with and the diplomaholders are entitled to 25% out of 40% promotional quota. In para 22 of the judgment the stand taken by the respondent State in the writ petition filed by the present petitioner-appellants has been noticed that regular promotion on the posts of SDO's would be considered after finalisation/amendment of the Departmental Service Rules by a Committee of 3 Chief Engineers. It has further been noticed in para 23 that the

Government also constituted DPC for the category of candidate of outstanding merit on various dates, namely, March 2001, 30.4.2001, 8.11.2001, 21.11.2001, 9.1.2002 and 29.5.2002. But no DPC was conducted on the said dates. In this way, their Lordships' have formed an opinion that the Government has taken conscious decision not to fill up the vacancies under the old Rules and that such decision has been validly taken keeping in view the facts and circumstances of the case. Ultimately, the judgment dated 18.10.2005 passed by this Court has been set aside and in the penultimate para 38 following observations have been made:

“38. We hold the Government has taken conscious decision not to fill up the posts under the old 1941 Rules. The impugned order of the High Court is set aside. We may at this stage point out that the problem seems to have been compounded by the inaction/casual approach of the Government detrimental to public interest. The State Government shall now fill up the vacant posts in accordance with the 2004 Rules within a period of three months from today. All the eligible candidates who satisfy the criteria laid down under 2004 Rules shall be considered. The entire process of recommendation and appointment shall be completed within three months from today.”

(13) As already stated in the first para of this judgment, the learned Single Judge disposed of the writ petition relatable to the instant appeal in terms of judgment of Hon'ble the Supreme Court rendered in **Arun Kumar Aggarwal's case (supra)**.

(14) Mr. D.S. Patwalia, learned counsel for the petitioner appellant has vehemently argued that the judgment of Hon'ble the Supreme Court rendered in the case of **Arun Kumar Aggarwal (supra)** would not cover the controversy because a perusal of second question framed by their Lordships' of Hon'ble the Supreme Court in para 5(2) would show that the application of the 2004 Rules, operated from 9.7.2004, and it was confined to the vacancies which arose during the year 2000-2001. In other words, the vacancies which have arisen prior to the year 2000 were not covered by the judgment rendered in **Arun Kumar Aggarwal's case (supra)**. Therefore, the 105 vacancies are required to be filled up on the principle of 'Old rule old vacancy'. All these vacancies find mention in the

letter dated 6.7.1999 sent by the Chief Engineer, Irrigation Department, to the Principal Secretary to government of Punjab, and are thus, required to be filled up in accordance with 1941 Rules provided that the appellants are senior enough on the date of occurrence of vacancies and fulfilled the educational and other qualifications laid down under the 1941 Rules. Mr. Patwalia further pointed out that Rule 3 of the 1941 Rules requires a candidate for promotion to the post of Sub Divisional Engineer (Assistant Engineer) to have University degree or other qualification prescribed in Appendix 'A'. The other requirement is that he must satisfy the Public Service Commission about his character and antecedents. Learned counsel further stated that the petitioner appellants answers all the above requirements.

(15) Mr. Patwalia has also submitted that the so called concession imputed to the appellants is wholly misplaced because Mr. Vivek Sharma, Advocate, who has been marked present by the learned Single Judge, was appearing in another bunch of petitions. He has pointed out that the counsel of the appellants was not even present at the time of disposal of the petition and accordingly, no argument could be raised that the judgment in **Arun Kumar Aggarwal's case (supra)** had dealt with the vacancies pertaining to the year 2000-2001. Learned counsel has maintained that the learned Single Judge had not adjudicated the controversy and even dismissed the review application on 4.2.2009 on the ground that presumption of truth is attached to the order passed by the Court.

(16) Mr. Suvir Sehgal, learned Addl. A.G., Punjab, has, however, argued that once Hon'ble the Supreme Court has taken the view that the vacancies pertaining to the year 2000-2001 were consciously kept unfilled by the State Government and the Rules of 2004 were to be applicable then by the same logic the earlier vacancies would also require to be filled up in accordance with the provisions of the Rules of 2004. He has further submitted that once there is a consent order passed by the Court on the statement made by counsel for the petitioner-appellant then it cannot be resiled and the same is binding.

(17) Having heard learned counsel for the parties we are of the considered view that the judgment in Arun Kumar Aggarwal's Arun Aggarwal's case (supra) specifically dealt with the vacancies which arose during the year

2000-2001. The aforesaid fact is clear from the second question framed by their Lordships' of Hon'ble the Supreme Court, which reads as under:-

“(2) Whether old 1941 Rules or new 2004 Rules which became effective from 9.7.2004 will be applied for filling up the vacancies which arose during 2000-01 under old 1941 Rules for promotion to the post of SDO (Irrigation Department) in the State of Punjab.”

(18) It is also pertinent to notice that the new 2004 Rules became effective from 9.7.2004 and in **Arun Kumar Aggarwal's case (supra)** it was held that the 2004 Rules were to apply to fill up the vacancies which have arisen during 2000-01. In fact, the judgment of Hon'ble the Supreme Court in **Arun Kumar Aggarwal's case (supra)** was based on an affidavit filed by the State Government stating that the Government had taken a conscious decision not to fill up the posts/vacancies which had arisen after 2000-01 under the old 1941 Rules. It was on account of the aforesaid affidavit that Hon'ble the Supreme Court took the view that there was a conscious decision taken by the Government not to fill up the vacancies which has arisen after 2000-01 under the 1941 Rules. However, in the instant appeal admittedly the vacancies have arisen earlier to 1999 and, in fact, are of the year 1996-97. Therefore, the principles laid down in the judgment of Hon'ble the Supreme Court in the case of **V.V. Rangaiah versus J. Sreenivasa Rao (2)**, would apply. The principle of 'old vacancy old rule' laid down in the aforesaid judgment would govern the issue and, therefore, the vacancies which have accrued earlier to 1999 have to be filled up in accordance with the 1941 rules. In other words, the non-degree holder Junior Engineers would not be eligible for further promotion to the post of Sub Divisional Officer/Assistant Engineer. The aforesaid view has been followed and applied in the case of **P. Ganeshwar Rao versus State of Andhra Pradesh (3)** and also repeatedly been relied upon in the later judgments, namely, **Arjun Singh Rathore versus B.N. Chaturvedi (4)**, and **State of Bihar versus Mithlesh Kumar (5)**.

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- (2) 1983 (3) SCC 284
  - (3) 1988 (Supp) SCC 740
  - (4) 2007 (11) SCC 605
  - (5) 2010 (13) SCC 467

(19) Moreover, the appellants had filed CWP No. 11644 of 1999, relating to the instant appeal with a prayer for issuance of direction to the respondents to promote them to the post of Sub Divisional Engineer/ Assistant Engineer being the degree holders, against 45% quota. The basis of the claim made in the writ petition was that the direction had already issued by this Court in Gurmej Singh's case (supra) on 7.1.1998. The aforesaid judgment was affirmed by Hon'ble the Supreme Court in SLP No. 9315-16, decided on 14.5.1999. Hon'ble the Supreme Court had observed as under:

“In our opinion the High Court was right in holding that a temporary Junior Engineer who does not possess a degree qualification is not eligible for promotion to the post of Assistant Engineer and therefore, the impugned notification fixing quota for promotion to the post of Assistant Engineer was bad to that extent. These appeals are therefore dismissed with no order as to costs.”

(20) Following the aforesaid directions, a proposal in that regard was sent by the Government on 18.6.1999 (P-5) and was duly affirmed by subsequent two proposals dated 6.7.1999 (P-6) and 9.7.1999 (P-7). Therefore, mandamus earlier issued in respect of 1999 vacancies cannot be deemed to be nullified. It has to be followed and given effect.

(21) We also find merit in the contention raised by Mr. Patwalia that the order dated 10.10.2007 passed by the learned Single Judge cannot be considered as binding. It would be appropriate to examine the aforesaid order, which reads thus:-

“Present:- Mr. Vivek Sharma, Advocate for the petitioners.

Mr. Ram Lal Gupta, Addl. AG, Punjab.

Mr. Girish Agnihotri, Senior Advocate with Mr. Arvind Seth, Advocate.

Rajesh Bindal, J.

Learned counsel for the parties are agreed that the issues raised in the present petition are squarely covered by a judgment of Hon'ble the Supreme Court in the case of State of Punjab and

others v. Arun Kumar Aggarwal and others, 2007(5) SLR 237 wherein identical issue has been gone into by Hon'ble the Supreme Court.

Accordingly, this writ petition is disposed of in terms of the judgment in **Arun Kumar Aggarwal's case (supra)**.

Sd/- Rajesh Bindal, Judge

October 10, 2007"

(22) A perusal of the aforesaid order would show that Mr. Vivek Sharma had appeared, who in fact, was not the counsel for the petitioner-appellants and he was counsel in other cases. Even in the order dated 4.2.2009, the aforesaid factual position has not been considered. The order dated 4.2.2009, rejecting the application for review reads as under:-

“ The order review of which is sought by the applicant/petitioner was passed in the presence of counsel for the petitioner where on the statement of the parties, the petition was disposed of being covered by the earlier judgment of Hon'ble the Supreme Court in State of Punjab and others vs Arun Kumar Aggarwal and others 2007 (5) SLR 237.

Now the plea is sought to be raised that on the date when the case was fixed, counsel for the petitioner was not present in the court and his presence has been wrongly marked. The same cannot be accepted as there is presumption of truth in the order passed by the court. There was no application filed for correction in the present case immediately after the receipt of copy of order dated 10.10.2007. The application was filed by the counsel on 12.11.2007 by only saying that he was not present in the court.

No case is made out to review the order dated 10.10.2007.

Civil misc. stands dismissed.”

(23) A perusal of the order would show that the learned Single Judge has not considered the submission that Mr. Vivek Sharma was not the counsel and the counsel of the petitioner appellants (Mr. D.S. Patwalia) was not present. It is no doubt true that presumption of truth would attach

to the order passed by the Court, however, a factual error may not attract a presumption of truth. Such an error would not be covered by setting up a plea that once a concession has been made by counsel then the same could not be withdrawn. Therefore, we find that there is an error apparent on the face of the record in the orders passed by the learned Single Judge on 10.10.2007 and 4.2.2009. Accordingly, we find no merit in the argument raised by the learned State counsel that the order of the learned Single Judge is based on the concession given by the counsel when the counsel of the petitioner-appellants, in fact, was not even present. Accordingly, we have no hesitation to reject the aforesaid argument.

(24) For the reasons stated above, this appeal is allowed. The order dated 10.10.2007 and 4.2.2009 are hereby quashed. A direction is issued to the respondents to consider the case of the petitioner-appellants for promotion to the post of Sub Divisional Engineer/Assistant Engineer against the vacancies pertaining to the year 1999 or earlier thereto in accordance with the provisions of the 1941 Rules. The needful shall be done within a period of three months from the date of receipt of a copy of this order.

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*M. Jain*

*Before M.M.Kumar & Gurdev Singh, JJ.*

**PUNJAB STATE POWER CORPORATION LIMITED  
AND OTHERS,—Appellants**

*versus*

**RAKESH KUMAR NANGLU AND ANOTHER,—Respondents**

**LPA No.872 of 2011**

24th August, 2011

*Respondent suffered 90% permanent disability while working as daily wager with appellant corporation - Filed writ petition seeking appointment - On first date of hearing, appellants were directed to give suitable appointment to respondent before next date of hearing - Appellant challenged interim order by way of filing instant LPA - Appeal allowed - Interim order set aside - Held - Ordinarily mandatory injunction should not be issued without affording opportunity to other side.*