

[2020] 11 S.C.R. 966

INDERJIT SINGH SODHI AND OTHERS

v.

THE CHAIRMAN, PUNJAB STATE ELECTRICITY BOARD
AND ANOTHER

(Civil Appeal No. 3837 of 2020)

DECEMBER 03, 2020

**[L. NAGESWARA RAO, HEMANT GUPTA AND
AJAY RASTOGI, JJ.]**

Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965 – Appellants, promoted from the post of Junior Engineer, claimed time bound promotional scale while working as Assistant Engineers – Allowed by Single Judge – Order set aside – On appeal, held: Claim of the appellants was for time bound promotional scale after completion of 9-16 years' service only at par with two juniors to them in the category of Assistant Engineer (Civil) who were appointed by way of direct recruitment – Appellants categorically admitted that the said persons were appointed by way of direct recruitment – While appellants were promoted to the post of Assistant Engineer in their term as per their seniority in the cadre of Junior Engineer – Promotee employees are entitled to time bound promotion scale in terms of the First Circular only – Second Circular which was issued to grant time bound promotional scale to directly recruited Assistant Engineers would not apply to the appellants as they are instead covered by First Circular – No error in the order passed by High Court.

Dismissing the appeals, the Court

HELD: 1.1 The appellants were promoted to the post of Assistant Engineers under Regulation 7(a)(ii) read with Regulation 10 of the Civil Regulations. Shri Kirpal Singh Mangat and Shri Raj Kumar Garg, who were junior to the appellants in the category of Assistant Engineer (Civil) were appointed by way of direct recruitment to such posts on the basis of their qualifications under Regulation 7(a)(i) of the Civil Regulations. Two sets of circulars were issued by the Punjab State Electricity

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Board for grant of time bound promotional scales w.e.f. 1.1.1986. The circular dated 23.04.1990 is the First Circular. Circular dated 24.05.1990 is the Second Circular. The Second Circular was issued to grant time bound promotional scale to directly recruited Assistant Engineers. However, the promoted employees were said to be entitled to time bound promotional scale as per the First Circular itself. The said Second Circular was issued to equally apply to the Civil and Electrical Branch of the Board. The Note to the said Circular mentions that the Circular has been issued under the Civil and Electrical Regulations. The claim of the appellants was based upon the First Circular for 9/16 years' time bound promotion scale though the appellants have referred to the Second Circular in para 18 of the writ petition. The Second Circular was not even annexed with the writ petition, however the same has been annexed by two other appellants. There is no challenge to the legality and validity of the Second Circular. Still further, the appellants have never claimed that there should be equal pay being members of the same cadre. The claim of the appellants was for time bound promotional scale after completion of 9-16 years' service only at par with Kirpal Singh Mangat and Raj Kumar Garg. The appellants were promoted within 9 or 16 years from their initial appointment, therefore, they are not entitled to time bound promotional scale. Kirpal Singh Mangat and Raj Kumar Garg were appointed by direct recruitment as Assistant Engineer (Civil), whereas the appellants have been promoted to the post of Assistant Engineer (Civil). Hence, the Second Circular would not be applicable to them. The promotee employees are entitled to time bound promotion scale in terms of the First Circular only. Hence, the appellants are not entitled to claim any parity with Kirpal Singh Mangat and Raj Kumar Garg. Some other employees have been granted benefit by virtue of the orders passed by the High Court. However, the principle laid down in the aforesaid judgments run counter to the subsequent judgment of this Court in *Krishan Kumar Vij*. The Special Leave Petition in many of these cases were dismissed but such dismissals would not be a binding precedent for this Court. The dismissal of special leave petitions is of no consequence on the question of law. [Paras 5-9, 16-18][971-F; 972-A, G; 976-H; 977-A-B; 979-B-H]

- A 1.2 The appellants being only Diploma holders were promoted under Regulation 7(a)(ii) read with Regulation 10.4 of the Regulations. They had the opportunity to compete for direct recruitment after 12 years of service, which they never availed or remained unsuccessful. The appellants would have been entitled to claim parity with Kripal Singh Mangat and Raj Kumar Garg only if they were qualified and promoted against the posts reserved for those employees by direct recruitment. Consequently, the appellants cannot claim time bound promotion after completion of 9/16 years at par with Kirpal Singh Mangat and Raj Kumar Garg. It has been categorically admitted by the appellants that the said persons were appointed by way of direct recruitment under Regulation 7(a)(i) as provided under Regulation 9 of the Regulations. The appellants, on the contrary, have been promoted to the post of Assistant Engineer in their term as per their seniority in the cadre of Junior Engineer. Thus, Second Circular which would be applicable to Kirpal Singh Mangat and Raj Kumar Garg would not apply to the appellants as they are instead covered by the First Circular. In terms of the First and Second Circulars, the employees of the Board who have not earned promotion within 9 years from their initial recruitment are entitled to time bound promotional scale. If they have been promoted within the initial 9 years, the next promotion cannot be granted to them after completion of 3 years. [Paras 20-22][981-F-H; 982-A-D]

- 1.3 Therefore, the High Court in the impugned judgment was correct in law holding that in view of the judgment in *Krishan Kumar Vij*, the appellants are not entitled to time bound promotional scale on the basis of parity in the other cases. In view of the said facts, no error is found in the order passed by the High Court which may warrant any interference of this Court. [Paras 23, 25][982-D-F]

- G *Bhakra Beas Management Board v. Rajinder Singh Patpatia and Anr.* (2002) 1 Recent Service Judgments 32; *Krishan Kumar Vij v. State of Punjab* (Writ Petition No. 19306 of 2003) – referred to.
H *Bhakra Beas Management Board v. Krishan Kumar Vij & Anr.* (2010) 8 SCC 701 [2010] 10 SCR 462;

Kunhayammed & Ors v. State Of Kerala (2000) 6 SCC 359:[2000] 1 Suppl. SCR 538 – relied on. A

Case Law Reference

[2010] 10 SCR 462	relied on	Para 12	A
[2000] 1 Suppl. SCR 538	relied on	Para 18	
CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3837 of 2020.			B

From the Judgment and Order dated 09.04.2014 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 1085 of 2011.

With

C Civil Appeal Nos. 3835 & 3836 of 2020.

P.S. Patwalia, Sr. Adv., B. K. Satija, Ms. Neha Mehta, Himanshu Satija, Anil Mittal, Vibhuti Sushant Gupta, Ram Naresh Yadav, Satinder S. Gulati, Mrs. Priya Puri, Ms. Rashmi Sachdeva, Vibhav Srivastava, Ms. Yati Sharma, Advs. for the appearing parties.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. The present appeals are directed against a common order of the Punjab and Haryana High Court dated 09.04.2014 whereby the intra-Court appeals filed by the Punjab State Electricity Board were allowed and the order of Learned Single Judge, allowing the writ petitions for the grant of 9/16 years' time bound revised promotional scale to the appellants was set aside.

2. The facts of the appeals are similar but for the sake of reference, facts are taken from the appeal preferred by Inderjit Singh Sodhi and others. The appellants herein have claimed time bound promotional scale while working as Assistant Engineers. They were promoted to the said post from the post of Junior Engineer. The services of the appellants are governed by the Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965¹.

3. The post of Assistant Engineer as per Regulation 7 is required to be filled up (1) by direct recruitment in terms of Regulation 9; (2) by promotion in terms of Regulation 10 or (3) by transfer of an officer already in services of a Government or another Government or

¹ for short, 'Civil Regulations'

- A Undertaking of the Government. The qualification required for direct recruitment under Regulation 9 is BE in Civil Engineering from a recognised institution or university. The Regulations further permit serving Section Officers who possess three- or four-years diploma in Civil Engineering and minimum 12 years qualifying service to apply for the post by way of direct recruitment. Regulation 10, on the other hand, provides for the promotion of the candidates with not less than 10 years' experience subject to the condition that their number do not exceed 30 per cent of the total number of the cadre posts of the Assistant Engineers.

4. The relevant extract of the Civil Regulations read as under:-

- C "7. Recruitment to the Service shall be made by the Appointment Authority by any of the methods indicated below as may be determined in each case:-
 - (a) In case of posts of Asstt. Engineers.
 - (i) By direct appointment as provided in Regulation 9
 - (ii) By Promotion as provided in Regulation 10
 - (iii) By transfer of an officer already in the service of a Government or any other State Electricity Board or an Undertaking of Government.

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QUALIFICATION FOR DIRECT APPOINTMENT

- F 9. No Person shall be appointed as AE (Civil) on training by direct appointment unless he has passed BE in Civil Engineering from recognised Institution/Univ.(Equivalency as notified by the Institution of Engineers Association of Indian Universities/ Pbi.University/Pbi.Univ. Calendar.)
- G PSEB Serving sectional officers (Civil) who possess $\frac{3}{4}$ years diploma in Civil Engineering & have minimum 12 years qualifying service as Sectional Officer (Civil) with satisfactory service record shall also be eligible to apply for the post.

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QUALIFICATION FOR APPOINTMENT BY
PROMOTION

10.1 (a) Sectional Officers (Civil) under the Board having their record above average and with not less than 10 years experience to their credit shall be eligible for appointment to the service as Assistant Engineer, subject to the condition that their number does not exceed 20% of the total number of cadre posts of Assistant Engineers excluding the posts with B.D.M.B./B.C.B. and deputation posts or posts where PSEB cannot directly post its officers i.e. Hydel/Design Directorate, Chandigarh.

(b) Over and above this reservation, Sectional Officers (Civil) with requisite service/experience may be considered for additional vacancies of Assistant Engineers for field work without any fixed percentage.

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3. Persons appointed by promotion as Assistant Engineers under Sub Regulation (1) and (2) above shall not be eligible for promotion to the posts of Assistant Executive Engineer and above, unless they possess the qualification prescribed in Regulation-9.

4. 9% of the cadre posts of Assistant Engineers (Civil) shall be reserved for Departmental employees (Technical Subordinates and Drawing Staff) who while in the service of the Board have qualified Section (A) and (B) of A.M.I.E. Examination and have completed three years service. (This shall take effect from 15th April, 1983)."

5. The appellants were promoted to the post of Assistant Engineers under Regulation 7(a)(ii) read with Regulation 10 of the Civil Regulations as stated in para 4 of the writ petition which reads as under:

"4. That the petitioners were appointed as AE Class II service by way of promotion under Regulation 7(a)(ii) i.e. by way of promotion out of Junior Engineers Grade I Service: whereas Kirpal Singh Mangat and Raj Kumar Garg have been appointed under Regulation 7(a)(i) i.e. by way of direct recruitment provided under Regulation 9 of the PSEB Regulations 1965."

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- A 6. Shri Kirpal Singh Mangat and Shri Raj Kumar Garg, who were junior to the appellants in the category of Assistant Engineer (Civil) were appointed by way of direct recruitment to such posts on the basis of their qualifications under Regulation 7(a)(i) of the Civil Regulations. A representation was submitted by the appellants claiming parity with B Kirpal Singh and Raj Kumar Garg with regard to the time bound promotional scale. Such representation was decided on 06.11.2012, wherein, it was *inter alia* said to the following effect:

“And whereas, Er. Inderjit Singh Sodhi, AEE (Retd.) was promoted from the post of S.O./Civil to AE/Civil w.e.f. 19.8.77 as per avenue of his promotion in terms of Reg.7 read with Reg. 10 of PSEB Service of Engineers (Civil) Regulations, 1965 and further promoted as AEE(Civil) w.e.f. 22.3.85. Whereas Er. Kirpal Singh Mangat and Er. Raj Kumar Garg both AEE now senior Executive Engineer (Civil) while working as S.O./ Civil applied for the post of AE/Civil under direct recruitment category and were selected D for the post of AE/Civil and given fresh appointment letter.

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- E And whereas, from the record it is evidence that interest these persons named Er. Inderjit Singh Sodhi, Er. Kirpal Singh and Er. Raj Kumar Garg came into service on 3.1.62, 12.9.64. 14.10.64 dates and all of them got an opportunity to go to the direct recruitment quota of Assistant Engineers. The Board advertised the posts for Assistant Engineers/Civil to be filled through direct recruitment in which the existing Board employees can also apply and in that contest Er. K. S. Mangat and Er. Raj Kumar Garg had F also applied and got selected as Assistant Engineer/Civil and were given the new appointment letters from the effective dates and they continue to serve as per the Board regulations framed from time to time.

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- G 7. Two sets of circulars were issued by the Punjab State Electricity Board for grant of time bound promotional scales w.e.f. 1.1.1986. The relevant extract from the circular dated 23.04.1990² reads thus:

H ² hereinafter referred as “First Circular”.

"Features of the Scheme

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1. The benefit of first time bound placement into promotional/devised promotional scale, as determined and notified on the basis of principles, enunciated above, would become available to an employee on completion of 9 (Nine) years of regular service on a post and the second time bound promotional/devised promotional scale would become available after completion of 16 (sixteen) years of service. If an employee gets normal promotion to the next higher post before completion of 9 years service from the date of direct recruitment then he will not be given first time bound promotional/devised promotional scale. He will be eligible to get second time bound promotional/devised promotional scale after the completion of 16 years of service counted from the date of direct recruitment provided he does not earn second normal promotion before the completion of the above said 16 years of service. Further an employee placed into the first promotional/devised promotional scale on account of his length of service will not be placed into the second promotional/devised promotional scale before completion of atleast three years from the date of his placement into the first promotional/devised promotional scale.

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For example an employee who has completed 17 years of service in an inducting post and was not promoted upto 1.1.1986, will be allowed 1st time bound promotional/devised promotional scale on 1.1.1986 and the 2nd time bound promotional/devised promotional scale will be admissible on 1.1.1989 i.e. after completion of three years service in the first time bound promotional/devised promotional scale.

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2. At the time of placement in the time bound promotional/devised promotional scale to each employee in any cadre the prescribed period will be counted from the date of commencement of service to the lowest post on which regular appointment has been made through direct recruitment in the concerned cadre.
3. At the time of placement in the time bound promotional/devised promotional scale, the employee will be allowed promotional increment(s), as are admissible on promotion

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- A under the provisions of Regulations 8 of PSEB (Revised Pay) Regulations, 1988 and as amended from time to time.
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4. If an employee already in the service of the Board is directly appointed to a higher post through open selection then for the purpose of grant of time bound promotional/devised promotional scale in that cadre counting of the period of service will commence from the date of joining the above post by direct recruitment.
 5. The Board shall draw up schedule (s) indicating the lowest post(s) for direct recruitment in respect of various cadres for the purpose of this order, separately.
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6. In cases, an employee has already availed of the benefit of placement to the time bound promotional/devised promotional scale(s) and is promoted to the next higher post, his pay would be fixed at the next stage in the same scale. In case he is promoted to a post which is lower than the scale in which he has already been placed on time bound promotional/devised promotional scale, he will not be entitled to any increment and continue to draw the pay of the scale in which he has already been placed.
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7. In case of employees who do not fulfill the qualification/ passing of examination essential for their promotion to the next higher post, they shall also be place into the time bound promotional/devised promotional scale to be specified by the Board in the schedule as referred to in para 5 (above).
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8. No anomaly of pay would be claimed by any senior employee viz-a-viz any other employee merely on the strength of latter getting his placement into the time bound promotional/devised promotional scale.
 9. The authority competent to grant time bound promotional/ devised promotional scales after 9 years and 16 years service shall be the promoting authority of the employees concerned.
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2. The Punjab State Elecy. Board has further decided to allow benefit of promotional increment(s) to an employee on completion of 23 years of regular service provided:-
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- (i) He has not been benefited by the scheme of 9/16 years time A bound promotional scale.
- (ii) He has not earned three regular promotions in his career.
- (iii) He has not earned third promotion in his regular service between 16th and 23rd years of service.
- (iv) The increments referred to in para-2 above are in the nature of advance promotional benefit to be absorbed in next regular promotion.” B

8. Another Circular dated 24.05.1990³ is part of the record of the other two appeals preferred by Surinder Kumar Pathak and R.K. Arora and another. It reads as under:- C

“In supersession of office order no. 195/PRC/Fin-1988 dated 31.3.1990, the Punjab State Electricity Board is pleased to order that an Assistant Engineer/Assistant Executive Engineer would be placed in the next higher scale of Rs. 3000-5000 and allowed a minimum pay of Rs. 3500/- in the 10th year i.e. on completion of 9 (nine) years regular service as Assistant Engineer/Assistant Executive Engineer. Similarly, he would be placed in the next higher scale of Rs. 4500-6300 in the 17th (Seventeenth) year i.e. on completion of 16 (sixteen) years regular service as Assistant Engineer/Assistant Executive Engineer. D E

The next higher scale will thus be allowed as under:- F

AE/AEE	(i)	2200-50-2400-60- 2700-3000-100-4000 125-4250(with	Basic Scale
	(ii)	3000-100-4000-125- 5000-150-5600	Next Higher Scale with a minimum pay of Rs. 3500/- in the 10 th year i.e. on the completion
	(iii)	4500-125-5000-150 5900-200-6300	Second Next Higher scale in the 17 th
XEN		3000-100-4000-125-	Basic Scale
		4500-125-5000-150-	Next Higher Scale

³ hereinafter referred to as “Second Circular”. H

- A 2. The above higher scales will only be available to the directly recruited Asstt. Engineers as per Regulation 7-a(i) read with Regulation-9 of PSEB, Service of Engineers (Electrical) Regulations-1965/ 7-a (i) read with Regulation 9 of PSEB Service Engineers (Civil) Regulations-1965. The cases of Assistant Engineers appointed by promotion as per provisions of Regulation-7-a(ii) read with Regulation-10 of the Regulations ibid will be governed by guidelines circulated vide Secretary/Finance Office Order No. 197/PRC/Fin-1988 dated 23.4.1990.
- B Note:- The departmental employees (Technical) Subordinates and Drawing Staff who while in service of the Board have been promoted to the post of AE (Electrical)/ (Civil) against quota reserved for promotion from amongst them under Regulation 7-a(ii) read with Regulation-10(7) of the PSEB Service of Engineers (Electrical) Regulations-1965/ Regulation 7-a(ii) read with Regulation 10(4) of the PSEB Service of Engineers (Civil) Regulations-1965 shall be deemed to have been appointed as Asstt. Engineers like the Asstt. Engineers appointed through direct recruitment under Regulation 7-a(i) read with Regulation-9 of the Service of Engineers (Electrical)/
- C Regulation 7-a(i) read with Regulation -9 of the service of Engineers (Civil) ibid for the purpose of grant of above next higher scales after 9-16 years of regular service as Assistant Engineer/ Assistant Executive Engineer/ Executive Engineer/Xen, prescribed period to be counted from the date of joining the post of Asstt. Engineer on regular basis. Similarly Graduates in Electrical/ Mechanical Engineering/ Civil Engineering AMIE qualified/ AMIE qualified hands who possess this qualification before joining the service of the Board and subsequently promoted as Assistant Engineers against quota reserved for promotion from amongst them in terms of provisions of Regulation 7-a(ii) read with Regulation 10(9) of Service of Engineers (Electrical) Regulations-1965/
- D Regulation 7-a(ii) read with Regulation 10(6) of Service of Engineers (Civil) Regulations-1965 will be treated likewise.”
- E 9. The Second Circular was thus issued to grant time bound promotional scale to directly recruited Assistant Engineers. However,
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the promoted employees were said to be entitled to time bound promotional scale as per the First Circular itself. The said Second Circular was issued to equally apply to the Civil and Electrical Branch of the Board. The Note to the said Circular mentions that the Circular has been issued under the Civil and Electrical Regulations. For the purpose of better understanding, the format has been changed to put the Regulations in one line as an alternative Regulations.

10. Similar claim for time bound promotional scale was raised by one Rajinder Singh Patpatia, a promoted Assistant Engineer working with Bhakra Beas Management Board. The writ petition filed by him before the Punjab and Haryana High Court was allowed by the learned Single Judge on 26.08.1999 and the intra-Court Appeal against the same was dismissed on 13.08.2001 *vide* judgment reported as ***Bhakra Beas Management Board v. Rajinder Singh Patpatia and Anr***⁴. The Special Leave Petition against such order of the Division Bench was also dismissed on 15.2.2002.

11. Another writ petition was filed by one named T. R. Bansal, junior to the appellants as Assistant Engineer (Civil) which was allowed by the Division Bench of the High Court on 1.02.2005. The Special Leave Petition against the said order was dismissed by this Court on 15.07.2010. Subsequently, Writ Petition no. 468 of 2004 preferred by T.S. Behl and others was also allowed on 10.02.2006 by the Division Bench of the Punjab and Haryana High Court.

12. A Writ Petition No. 19306 of 2003, ***Krishan Kumar Vij v. State of Punjab*** was filed before the Punjab and Haryana High Court claiming time bound promotional scale. The writ petitioners were employed with Bhakra Beas Management Board. The said Board had adopted the Circular issued by Punjab State Electricity Board on 26.6.1992. The writ petition was allowed by the Division Bench of the High Court on 6.12.2004. The order of the High Court was however later set aside by this Court in a judgment reported as ***Bhakra Beas Management Board v. Krishan Kumar Vij & Anr***⁵.

13. Mr. Patwalia, learned Senior Counsel for the appellants argued that once the appellants have been promoted to the post of Assistant Engineer, at par with other juniors who may have been appointed by

⁴(2002) 1 Recent Service Judgments 32

⁵(2010) 8 SCC 701

- A way of direct recruitment, there cannot be any discrimination in the matter of pay scale and that they are entitled to equal treatment in the matter of pay. It was pointed out that the appellants were appointed as Junior Engineers in 1961-62 and were promoted after 14 years to the post of Assistant Engineers. In terms of Regulation 7 of Civil Regulations, the appellants possessed the qualifications for direct recruitment. Hence, the appellants could not be treated differently in comparison to the directly appointed Assistant Engineers. The directly recruited Assistant Engineers were granted time bound promotional scale, whereas, the appellants who were senior to them have been denied such benefits. It was thus contended that it is a blatant arbitrary and discriminatory act of the respondents
- B which was unsustainable in law. It was further argued that there was a consistent view of the High Court in the cases of T. R. Bansal and T. S. Behl, who were similarly placed promoted Assistant Engineers with the Punjab State Electricity Board. They were found to be entitled to time bound promotional scale w.e.f. 1.01.1986 vide the orders of the High Court in separate writ petitions filed by them. However, while dismissing the case of the appellants, the High Court relied upon a judgment of this Court in **Krishan Kumar Vij** which dealt with the claim of an Assistant Engineer in the Bhakra Beas Management Board, thus the judgment relied on was not on similar facts.
- E 14. Mr. Patwalia raised another argument in the written submissions that in terms of the Second Circular, the promotee employees are to be considered for time bound promotional scale in terms of First Circular. According to the Clause 2(iii) of the First Circular, an employee on completion of 23 years' service is also entitled to the benefits of the said Scheme in case he is not benefited from the Scheme of 9/16 years.
- F 15. On the other hand, Mr. Gulati, learned Counsel for the respondents argued that time bound promotional scale would be applicable to the promotee officer such as the appellants only in terms of the First Circular which contemplates that an employee shall be entitled to promotional scale on completion of 9 years of regular service on a post
- G and subsequent second time bound promotional scale after completion of 16 years of service. If in case an employee gets normal promotion to the next higher post before completion of 9 years' service, he would not be entitled to first time bound promotional scale. He would however be eligible to get second promotional scale after completion of 16 years' service, counted from the date of direct recruitment, provided that he
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does not earn second normal promotion before the completion of above A
said 16 years' service. It was also contended that the Second Circular
was not disputed by any of the appellants at any stage.

16. We do not find any merit in the argument raised by Mr. Patwalia. B
The claim of the appellants was based upon the First Circular for 9/16
years' time bound promotion scale though the appellants have referred
to the Second Circular in para 18 of the writ petition. The Second Circular
was not even annexed with the writ petition, however the same has
been annexed by two other appellants Surinder Kumar Pathak and R.K.
Arora. There is no challenge to the legality and validity of the Second
Circular. Still further, the appellants have never claimed that there should
be equal pay being members of the same cadre. The claim of the
appellants was for time bound promotional scale after completion of 9-
16 years' service only at par with Kirpal Singh Mangat and Raj Kumar
Garg.

17. We find that the appellants were promoted within 9 or 16 D
years from their initial appointment, therefore, they are not entitled to
time bound promotional scale. Kirpal Singh Mangat and Raj Kumar Garg
were appointed by direct recruitment as Assistant Engineer (Civil),
whereas the appellants have been promoted to the post of Assistant
Engineer (Civil). Hence, the Second Circular would not be applicable to
them. The promotee employees are entitled to time bound promotion
scale in terms of the First Circular only. Hence, the appellants are not
entitled to claim any parity with Kirpal Singh Mangat and Raj Kumar
Garg.

18. We find that some other employees have been granted benefit E
by virtue of the orders passed by the High Court. However, the principle
laid down in the aforesaid judgments run counter to the subsequent
judgment of this Court in **Krishan Kumar Vij**. The Special Leave Petition
in many of these cases were dismissed but the such dismissals would
not be a binding precedent for this Court. This argument was also raised
and examined in **Krishan Kumar Vij** wherein this Court relied upon the
judgment of this Court reported as **Kunhayammed & Ors v. State Of G**
Kerala (2000) 6 SCC 359. Therefore, the dismissal of special leave
petitions is of no consequence on the question of law. The following was
held in **Krishan Kumar Vij**:

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- A “**22.** We have already mentioned hereinabove with regard to Clause 2 of the 1990 Order read with Regulation 9 which restricts the benefit only to directly recruited Assistant Engineers/Assistant Executive Engineers, meaning thereby that one must possess the requisite qualification as prescribed under the Regulations, then only the benefit would accrue to the employee, not otherwise.
- B The Note appended thereto clearly stipulates that even those employees who were promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be deemed to have been appointed by direct recruitment. This legal fiction is limited. It is applicable only to those employees who have been promoted in conformity with the provisions contained in Clause 4. Thus, the employees who had passed both Parts (A) and (B) of the AMIE examination and were promoted against 9% posts reserved for that class were fictionally treated as direct recruits. Thus, it clearly stipulates that only those Assistant Engineers who were either directly recruited or had acquired the requisite qualifications prescribed for direct recruitment were chosen to be granted higher scale if they had been promoted against the post falling within the quota of 9% of the cadre strength of the said post.
- C **23.** The 1990 Order contemplates that it is to be followed as per regulation which provides that only such persons as have been promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be treated as direct recruits. In other words, it does not apply to the promotees irrespective of their academic qualifications nor can they be treated on a par with the direct recruits. There was a purpose for treating them so, otherwise, it would have the effect of violating the constitutional mandate contained in Articles 14 and 16 of the Constitution of India, on the premise that unequal have been treated as equals. It is with that intention, to avoid criticism and future litigation that such persons who possessed qualifications for direct recruitment and could be promoted against the posts falling vacant, would become entitled to claim the benefit. Since Respondent 1 did not fall in this category, obviously, he was not entitled to the higher scale.
- D **24.** Thus, there appears to be no illegality committed by the Board in rejecting Respondent 1’s representation. So, in our considered opinion, the High Court has clearly erred in setting aside and quashing the same.

25. The critical examination of the impugned judgment passed by the Division Bench of the High Court completely defeats primary purpose of the 1990 Order and provisions applicable to the employees of the Board. No doubt, it is true that the 1990 Order was issued only with an intention to remove the stagnation but this would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he does not fulfil prerequisite qualifications for holding the higher post. In other words, if he possesses the required qualifications but is unable to get the higher post on account of non-availability of such post, then only he can be categorised as suffering from stagnation as per Order of 23-4-1990.”

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19. The First and Second Circulars of the Punjab State Electricity Board were examined by this Court, wherein, it was observed that the Second Circular is applicable only in respect of employees appointed by way of direct recruitment. The benefit would not be extended to the promoted employees. This Court found that the legal fiction is limited in respect of the employees promoted under Regulation 7(a)(i) read with Regulation 10(4). It is applicable to only those employees who have been promoted in conformity with the provisions contained in Clause 4 of the Regulation 10 of the Regulations which deal with promotion of the employees who have passed both parts (A) and (B) of A.M.I.E. Examination and were promoted against 9% posts reserved for that Class of direct recruitment.

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20. Shri Krishan Kumar Vij, in the reported judgment, was not possessing A.M.I.E. qualification and thus was never appointed in terms of Regulation 7(a)(i) read with Regulation 10.4 of the Regulations. In the present appeals, there is no assertion that any of the appellants have qualified both parts of A.M.I.E. Examination which is treated to be equivalent to the Engineering Degree. The appellants being only Diploma holders were promoted under Regulation 7(a)(ii) read with Regulation 10.4 of the Regulations. They had the opportunity to compete for direct recruitment after 12 years of service, which they never availed or remained unsuccessful. The appellants would have been entitled to claim parity with Kripal Singh Mangat and Raj Kumar Garg only if they were qualified and promoted against the posts reserved for those employees by direct recruitment. Consequently, the appellants cannot claim time bound promotion after completion of 9/16 years at par with Kirpal Singh Mangat and Raj Kumar Garg.

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- A 21. The claim of the appellants of discrimination and arbitrariness on the basis of time bound promotional scale granted to Kirpal Singh Mangat and Raj Kumar Garg is not found to be sustainable. It has been categorically admitted by the appellants that the said persons were appointed by way of direct recruitment under Regulation 7(a)(i) as provided under Regulation 9 of the Regulations. The appellants, on the contrary, have been promoted to the post of Assistant Engineer in their term as per their seniority in the cadre of Junior Engineer. Thus, Second Circular which would be applicable to Kirpal Singh Mangat and Raj Kumar Garg would not apply to the appellants as they are instead covered by the First Circular.
- C 22. In terms of the First and Second Circulars, the employees of the Board who have not earned promotion within 9 years from their initial recruitment are entitled to time bound promotional scale. If they have been promoted within the initial 9 years, the next promotion cannot be granted to them after completion of 3 years.
- D 23. Therefore, the High Court in the impugned judgment was correct in law holding that in view of the judgment in *Krishan Kumar Vij*, the appellants are not entitled to time bound promotional scale on the basis of parity in the other cases.
- E 24. The argument that the appellants are entitled to promotion scale after 23 years was not the case setup either in the writ petition or even in the present appeals. Such an argument has in fact been raised for the first time in the written submissions. We find that such a factual argument cannot be permitted to be raised at this stage.
- F 25. In view of the said facts, we do not find any error in the order passed by the High Court which may warrant any interference of this Court. All the appeals are thus accordingly dismissed.

Divya Pandey

Appeals dismissed