

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.15916 of 1994
Date of decision:06.01.2015**

N.K.Jain and others

...Petitioner

Versus

Haryana State Electricity Board through its Secretary

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.R.K.Malik, Sr. Advocate with
Mr.Mandeep Singh, Advocate for the petitioners.

Mr.P.S.Poonia, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the alleged inaction on the part of respondent authorities, petitioners have approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus, directing the respondent authorities to grant the benefit of annual increment from the date petitioners were appointed as Junior Engineer (Trainees), with all consequential service benefits.

Notice of motion was issued and pursuant thereto, written statement was filed on behalf of the respondent.

Learned senior counsel for the petitioners submits that the petitioners were initially appointed as Apprentice Junior Engineers vide order dated 14.7.1986 (Annexure P-1) at fixed pay of Rs.570/- per month plus allowances as admissible. As per condition of appointment contained

in para 3 of Annexure P-1, petitioners were appointed as Junior Engineers (Trainee) in a regular pay-scale of Rs.700-1250/- w.e.f. 1.4.1987. While referring to the communication Annexure P-3, learned senior counsel for the petitioners submits that Apprentice Junior Engineers were later on redesignated as Junior Engineer (Trainees). A batch of similarly situated Junior Engineer (Trainees) was appointed vide order dated 14.9.1989 (Annexure P-5) again on a fixed salary plus usual allowances. On successful completion of the training, they were also appointed like the petitioners in the regular pay-scale, as per para 3 of the terms and conditions of order (Annexure P-5). The respondent-Board took a conscious decision to treat the period spent by the trainees of all categories as a duty period for all intents and purposes including for grant of increments. This decision was taken vide communication dated 27.3.1991 (Annexure P-6) and it was further reiterated vide Annexure P-7. He would next contend that let petitioners be granted notional benefits of granting annual increments with effect from their first date of appointment as Apprentice Junior Engineer, i.e. 14.7.1986 vide Annexure P-1 and actual financial benefits may be ordered to be released in favour of the petitioners w.e.f. 29.1.1990 as decided by the respondent-Board vide its policy decision (Annexure P-6). Relying upon the averments taken in para 12(ii) of the writ petition, learned senior counsel for the petitioners submits that since exactly the same benefit has been granted to the similarly situated persons, the action of the respondent-Board, while denying the said benefit to the petitioners, was discriminatory on the face of it. He prays for allowing the present writ petition.

Per contra, learned counsel for the respondent submits that

policy decision dated 27.3.1991 (Annexure P-6) was applicable only qua those trainees of all categories who had been granted regular pay-scale w.e.f. 14.8.1990 and 13.9.1990, as pointed out in para 2 of the policy decision (Annexure P-6). He further submits that such a benefit was not available for the Junior Engineer (Trainees) like the petitioners, because they had already been granted regular pay-scale much earlier, i.e. w.e.f. 1.4.1987. He concluded by submitting that since the policy decisions (Annexures P-6 and P-7) were not applicable qua the petitioners, no relief could have been granted to the petitioners. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, the present writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of exactly similar appointment orders contained in Annexures P-1 and P-5 would show that earlier Apprentice Junior Engineers were appointed on a fixed pay in the year 1986 and later on another batch of Junior engineers was appointed as trainees. Terms and conditions of appointment were identical. These both sets of Junior Engineers were later on brought at par by the respondent-Board itself vide communication dated 2.8.1988 (Annexure P-3) redesignating the Apprentice Junior Engineers as Junior Engineer (Trainees). The relevant part of Annexure P-3 reads as under:-

“After careful consideration of the matter in the context of position gave in your above said letters it is clarified that the Apprentice JEs. appointed in pursuance of Board's office Memo No. .0-91/CHA/G-18/Vol-III, dated 2.7.86 addressed to the C.E. (O&M), PTPS Panipat may be treated as J.E. (Trainees) from the date they had actually joined.”

It is undisputed on record that in compliance of the terms and conditions of appointment orders Annexure P-1 as well as Annexure P-5, both sets of Junior Engineers were later on appointed on regular basis, granting them the regular pay-scales. Since this issue was repeatedly coming up for consideration before the respondent-Board, it was finally decided on 27.3.1991 vide Annexure P-6 that the period spent by the Trainees of all the categories, on training, shall be treated as duty period for all intents and purposes including for granting the benefit of annual increments. The relevant part of the order contained in paras 2 and 3 reads as under:-

“Board vide its notification No. 57, 58, 59, 60/RSF-137 dt. 14.8.90 and notification No. 76/RSG-39/2 dt. 13.9.90 have granted regular pay scales to the trainees of all categories w.e.f. 29.1.1990. In this respect, the field officers have sought a clarification whether the period spent by the trainee on the training is to be treated as duty for al intents and purposes or not.

After considering the pros and cons of the case, it has been decided that the period spent by the trainee(s) of all categories on Trg. shall be treated as duty for all intents and purposes i.e. grant of increment in accordance with the provisions as contained in the policy, leave and seniority i.e. from the date of joining in the cadre.”

The above-said decision was further clarified vide Annexure

P-7 and the relevant part thereof reads as under:-

“In this connection, it is stated that the Board, vide its memo No. Ch.93/Reg-137 dated 27.3.91 clarified that the period spent by the Trainees of all categories shall be treated as duty period for all intents and purposes i.e. grant of increment in accordance with the provisions as contained in policy, leave and seniority i.e. from the date of joining in the Board. The monetary benefit on account of pay scales and annual increment is to be granted to the trainees w.e.f. 29.1.1990 i.e. the date of decision of the Board.”

The contention raised by the learned counsel for the respondent-board that the decisions taken by the respondent-Board vide Annexures P-6 and P-7 would be applicable only qua those trainees who have been granted regular pay-scales w.e.f. 13.8.1990 and 14.8.1990 has been duly considered but the same has not been found worth acceptance. The reason is that it is not even the pleaded case on behalf of the respondent-Board nor it appeals to reason. The respondent has not said even a word in this regard, in the written statement filed on its behalf.

Further, had it been so intended by the respondent-board to restrict the benefit of annual increment on the basis of policy decisions (Annexures P-6 and P-7), only to those trainees who had been granted regular pay-scale w.e.f. 13.8.1990 and 14.8.1990, there would have been no difficulty to clarify that aspect of the matter in the policy decision (Annexure P-7) itself. Trainees like the petitioners have not been excluded from the scope of policy decision (Annexure P-6) or even by Annexure P-7 for that matter.

Petitioners have taken specific averments in para 12 (ii) of the

writ petition and the same read as under:-

“That like petitioners, another batch of Junior Engineer Trainee was appointed in the year 1989 and all the persons who have been appointed Junior Engineer Trainee like the petitioners in the year 1989 they were granted the benefit of increments from the date they were appointed as Junior Engineer Trainee however, monetary benefit has been granted to them w.e.f. 29.1.1990, so the case of the petitioners was similarly situated in all respect, petitioners were also entitled to the benefits of increments from the date they were appointed as Junior Engineer Trainee but were entitled monetary benefits w.e.f. 29.1.1990, the petitioners have been discriminated because the same treatment was not granted to the petitioners. The respondent would have treated the petitioners in similar manner then all the petitioners were entitled to the benefit of increments from the date they were appointed as Junior Engineer Trainee although monetary benefit w.e.f. 29.1.1990. By the action of the Board the petitioners were suffering loss and this is recurring loss to the petitioner.

The respondent-Board in corresponding paragraph of its written statement has not at all denied the above-said averments taken by the petitioners. The averments taken by the respondent-Board in para 12 (ii) of its written statement, read as under:-

“In reply to sub Para (ii) of the petition, it is stated that the demand made by the Haryana State Electricity Board Generation Wing Diploma Engineers Association regarding counting/allowing of benefit of increment during the training period, was discussed in the meeting of W.T.M. On 14.1.1995 and after discussion it was observed that the demand of the Association was not found feasible for acceptance. The representations Annexures P/11 and P/13 were consigned to record after due consideration by the Competent Authority. The

position was explained to the Association Diploma Holder Engineers during the course of various meeting held by them with the Management.”

In fact, the petitioners would have no case, had the respondent-Board not taken the policy decisions (Annexures P-6 and P-7) in favour of the employees like the petitioners. It was a conscious decision of the respondent-Board to treat the period spent by the trainees of all categories, on their training, as duty period for all intents and purposes, including for the purpose of grant of increments. Once the conscious decision has been taken by the respondent-Board, petitioners were also entitled for the benefit arising from the said policy decision. Since later batch of Junior Engineers appointed vide Annexure P-5 have been admittedly granted this benefit arising out of policy decision (Annexure P-6), the same benefit ought to have been granted to the petitioners as well. Since the respondent-Board has denied this benefit to the petitioners without any justified reason, the impugned action of the respondent-Board has been found to be violative of Articles 14 and 16 of the Constitution of India and the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the action of the respondent-Board in denying the service benefits arising out of the policy decision (Annexure P-6) has been found to be discriminatory on the face of it, the same is hereby set aside.

Petitioners are declared entitled for the similar benefit which

has been granted to the next batch of Junior Engineers appointed vide Annexure P-5. The period spent by the petitioners on training shall be treated as duty period for all intents and purposes including for the purpose of grant of annual increments. However, the financial benefits shall be granted to the petitioners only w.e.f.29.1.1990

Let needful be done within a period of three months from the date of receipt of a certified copy of this order. If needful is not done within stipulated period, petitioners shall also be entitled for interest @ 9% per annum from the date the amount became due i.e. 29.1.1990 till the date of actual payment. The consequential service benefits shall also be granted to the petitioners.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands allowed, however, with no order as to costs.

06.01.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE