

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.18641 of 2013(O&M)
Date of Decision: **August 24, 2015**

Dharam Pal

...Petitioner

Versus

The Punjab State Co-operative Milk Producer Federation Limited
(Milkfed) and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Ashwani Bakshi, Advocate
for the petitioner.

Mr.Ashwani Parashar, Advocate
for the respondents.

HARINDER SINGH SIDHU, J.

The petitioner has filed the present petition praying for directions to quash the orders dated 16.01.2008 (Annexure P-9) and 12.02.2008 (Annexure P-10) to the extent that while fixing his pay he has been treated as a Carpenter even after 06.09.2001, though he had been promoted as Junior Mechanic(General) on 06.09.2001 and confirmed on the said post w.e.f., 11.9.2002 on satisfactorily completing his probation period (Annexure P-5). He further prays that his pay be fixed in the pay scale of Junior Mechanic w.e.f., 06.09.2001

and he be further promoted to the post of Mechanic General w.e.f., 16.12.2002, the date one Hazari Lal, Carpenter, junior to him, was so promoted.

The petitioner had joined Punjab Dairy Development Corporation (for short 'the Corporation') as Carpenter in the year 1975. At that time, he was eligible for the post being a Matriculate with ITI Diploma. Earlier, his name was Ruldu Ram, which, he subsequently changed to Dharam Pal.

Initially, the pay scale of the Carpenter in the Corporation was Rs.140-300 which was revised to Rs.510-800 w.e.f., 1.1.1978. The petitioner, however, had not been granted this scale though some carpenters junior to him had been so granted. On 4.1.1984, the Corporation was merged with the Punjab State Co-operative Milk Producers Federation Limited (for short 'Milkfed') and thus the petitioner became an employee of Milkfed. However, even after the merger, he was given the lower scale of Rs.400-600, though other carpenters got the scale of Rs.510-800.

With his grievance that the other carpenters, namely, Hazari Lal, etc. who were similarly placed as the petitioner, were given the grade of Rs.510-800, whereas, on his absorption in Milkfed he was given the grade of Rs.400-600 (Annexure P-6), he filed CWP No.5288 of 1985. This petition was dismissed. Against the decision, he filed LPA No.540 of 1995 which was allowed on 22.8.2007 with the

following directions:

“Denial of grade of Rs.510-800 to the appellant is per se discriminatory. In the parent organisation, pay scale of the Carpenter was Rs.510-800 and non-granting of the same to the appellant initially was itself wrong. If the appellant had acquiesced to it, then the case would have been different but he represented to the parent department for grant of similar pay scale as has been given to other carpenters. We fail to understand that in the absence of any other grade of carpenter except Rs.510-800, why the appellant was given the grade of Rs.400-600. Therefore, there is no merit in the submission of learned counsel for the respondents.

We do not have any record before us as to under what circumstances, the Managing Director had promoted other three carpenters to higher pay grade while denying the same to the appellant and hence, do not find any justification for the same.

With these directions, the appeal is allowed and the judgment passed by the learned Single Judge is set aside. The appellant shall be entitled to the same grade as has been given to other Carpenters in the parent organization. The appellant shall also be entitled to get the arrears of his salary on the basis of grade of Rs.510-800 which was received from time to time. All the arrears of the salary shall be paid to the appellant within a period of three months by the respondents from the date of receipt of copy of this judgment.”

Consequent upon the aforesaid decision, the Milkfed passed order dated 16.01.2008 (Annexure P-9), vide which the

petitioner's pay was fixed in the pay-scale of Rs.140-300 w.e.f. 01.01.1977 and further revised scales, equivalent to Hazari Lal, etc. The arrears were paid to him as directed by the Court though after deducting Rs. 67,000/- as income tax.

During the pendency of the LPA and before its final disposal, vide order dated 6.9.2001 (Annexure P-4) the petitioner had been promoted as Junior Mechanic (General) in the pay scale of Rs.4020-6200. He was to remain on probation for a period of six months. On his completing the probation period satisfactorily his services as Junior Mechanic (General) were regularized vide order dated 10.9.2002 (Annexure P-5).

The grievance of the petitioner is that though, vide order dated 16.1.2008 (Annexure P-9) the respondents have re-fixed his pay w.e.f. 01.01.1977 in the pay scales of Carpenter as revised from time to time, however, his pay was fixed in the pay-scale of Carpenter even after 04.09.2001, on which date, he had already been promoted as Junior Mechanic (General). Further, the respondents passed order dated 12.02.2008 (Annexure P-10) clarifying that the post of Carpenter in the pay scale of Rs.4020-6200 held by the petitioner in compliance of the judgment in the LPA 540 of 1995, shall be personal post of Carpenter and the same shall stand abolished on his leaving the service. In other words, the grouse of the petitioner is that the directions of this Court in LPA No.540 of 1995, whereby, the action of

the respondents in denying the pay-scale of Carpenter to the petitioner since 1977 was held to be per se discriminatory, were wrongly interpreted by the respondents to mean that the petitioner was liable to be reverted back to the post of Carpenter from the post of Junior Mechanic (General), to which post he was promoted in 2001, during the pendency of the aforesaid LPA. The respondents have misinterpreted the decision which was in his favour, to deny him the pay scale of Junior Mechanic (General) after 6.9.2001, even though he had worked on that post. This was so, even though no specific order reverting the petitioner from the post of Junior Mechanic General to the post of Carpenter ever came to be passed by the respondents.

The petitioner submitted representation dated 17.07.2008 (Annexure P-11) to the respondents against the order dated 12.2.2008 (Annexure P-10), and requested that he be treated as Junior Mechanic (General) w.e.f., 06.09.2001 the date of his promotion as such and his pay re-fixed accordingly. He further claimed that he be promoted to the post of Mechanic as his junior Hazari Lal had been so promoted. He also asked that he be refunded the amount deducted as income-tax from the arrears of pay because such deduction should have been made on yearly basis by spreading the amount of arrears in the respective years, when the same was due. The said representation has been decided by the

respondents vide order dated 27.11.2008 (Annexure P-12), wherein, the petitioner was informed that he could claim the refund of tax deducted from arrears of his pay from the concerned authorities by filing revised return. His request for promotion to the post of Mechanic (General) has been rejected by stating that the post of Mechanic (General) is a different cadre post, which does not fall in the promotion channel of the post of Carpenter.

Finding himself, thus stonewalled, the petitioner took recourse to the RTI Act to seek following relevant information:

- “1. Is it a fact that one Hazari Lal Carpenter was appointed on 8.5.1981 in the Milk Plant, Mohali. Kindly give the letter of appointment.*
- 2. Is it a fact that he was under metric and whatever his qualification (Educational and Technical). Kindly given details and copies.*
- 3. Is it a fact that the above said Carpenter initially appointed by Punjab Dairy Development Corporation, was taken over by the Punjab State Cooperative Milk Producers Fed. Ltd. in the year 1983-83, as per policy.*
- 4. Is it a fact that on recommendation of Departmental Promotion Committee said Sh. Hazari Lal Carpenter was promoted to the post of Mechanic (General) in the scale 5000-8100 vide letter dated 6.12.2002 issued by General Manager. Kindly supply copy.*
- 5. Kindly give detail as to under what rules Sh. Hazari Lal was promoted from the post of Carpenter. Supply copy.*

6. *Kindly give the copies of the rules or regulations or any policy making appointment/ promotion from the post of Carpenter to the Mechanic (General).*
7. *It is a fact that the next promotion from the post of Carpenter or any other trade is to the Junior Mechanic and then to the Mechanic (General) and therefore Hazari Lal was given promotion as Mechanic (General).*
8. *Is it a fact that Sh. Hazari Lal has since retired as Mechanic (General) and retiral benefit paid as Mechanic (General).*
9. *Qualification prescribed for the post of Mechanic (General) for direct recruitment and also for departmental promotional.”*

In response to the aforesaid letter, the petitioner received the following information:

- “1. The copy of the stated appointment letter of Sh. Hazari Lal, Carpenter, dated 08.05.1981 is not traceable at the present moment being very old i.e. about 28 years.*
- 2. Regarding qualification, he was illiterate. Copy of the record of this effect is attached as page No.1.*
- 3. The demanded information is very old i.e. about 25 years back.*
- 4. The copy of the recommendation of Departmental Promotion Committee is attached herewith as page No.2.*
- 5. He was promoted as per Non-Common Cadre Rules 1996 (6.2), copy of which is attached as page No.3.*
- 6. He was promoted on the basis of*

recommendation of concerned Selectional Head followed by the recommendations of Departmental Promotion Committee. A copy of the recommendation of the concerned Selectional Head is attached as page No.4.

7. *It is fact that the next promotion from the post of Jr. Mechanic is Mechanic (Gen.). Sh. Hazari Lal was already having identical pay scale/duties of Jr. Mechanic and therefore Sh. Hazari Lal was given promotion of Mechanic (Gen.).*

8. *Sh. Hazari Lal was retired as Mechanic (Gen.) and retiral benefits were paid as Mechanic (Gen.). Copy office orders issued vide letter No.RMU/Admn./PF/ 1224-256 dated 27.6.2005 is attached as page No.5.*

9. *Qualifications prescribed for the post of Mechanic (Gen.) are as under:*

ITI Certificate in Fitter/Welder/Mechanist Trade having minimum exp. of 7 years in operation, maintenance and installation of plant equipment and machinery in a large sized dairy/ chemical plant/food processing plant. Those having outstanding exp. of 10 years though without ITI Certificate would also be considered.

For promotion extract of the existing and amended Non-Common Cadre Rules, 1996 (6.2) is attached as stated under part No.5 above.

This is for your information please.”

Being fortified with the above information, the petitioner has filed the present writ petition seeking the reliefs as mentioned

above.

In the written statement filed on behalf of the respondents, a preliminary objection on the ground of delay and laches has been taken. Regarding the petitioner's claim for parity with Hazari Lal, it has been stated that he has retired as an employee of the Ropar District Cooperative Milk Producers Union Ltd., which is a separate legal entity from Milkfed. It is stated that the benefits granted to an employee in one entity cannot be claimed by an employee of another entity. Regarding the claim of the petitioner that he had been wrongly reverted as Carpenter despite having been promoted as Junior Mechanic (General) on 06.09.2001, it has been admitted that he had been so promoted in the pay scale of Rs. 4020-6200 w.e.f., 1.9.2002. No reason or justification for giving him scale of a carpenter even after 06.09.2001 is given. It is only stated that after the judgment of the High Court dated 23.8.2007, when the salary of the petitioner was refixed vide order dated 30.1.2008, he was granted the pay scale of Rs. 4020-6200 w.e.f., 1.1.1996. A laboured reasoning has been given in justification of the order dated 12.02.2008 by stating that the reason for issuing the order was that in view of the staffing pattern of the milk plant as revised by the Registrar, Cooperative Societies, Punjab vide his letter dated 09.05.1989, the post of Carpenter was sanctioned in the pay scale of Rs.400-600 instead of Rs.510-800 and the scale of the same post was revised to Rs.950-1800 and Rs.1200-2130 w.e.f.

01.01.1986 and 01.01.1996. There was no post of Carpenter in the pay scale of Rs.510-800, against which the petitioner could be adjusted. Due to non-availability of the post in the pay scale as ordered by this Court, the petitioner has been adjusted against the present post, which will be abolished with the retirement of the petitioner. If the petitioner had been kept in the lower scale in view of the revised staffing pattern, it would have amounted to violation of the order of this Court. Hence, the respondents treated the post of the petitioner of Carpenter in the higher scale as a special post. It is also stated that there is no further promotional post of Carpenter. Accordingly, the petitioner has been granted the benefit of Assured Career Progression Scheme, 1996. Pay scale of Junior Mechanic(G) and Carpenter is Rs.4020-6200 and the petitioner has been promoted to post of Carpenter (present post) at a pay scale of Rs.4020-6200, when he was in the pay scale of Rs.3120-5160. Regarding his claim for promotion as Mechanic (General), it is stated that the petitioner cannot compare himself with Hazari Lal as his promotion was by a different legal entity. Further, it is stated that the post of Mechanic (G) is a different cadre post and it does not fall in the promotion channel from the post of Carpenter.

I have heard Ld. Counsel for the parties and perused the record. The Ld. Counsel for the respondents had sought dismissal of the petition on the ground of delay and laches. In my view, in the

facts of this case this objection of the respondents is untenable.

The impugned orders are dated 16.1.2008 (Annexure P-9), dated 12.2.2008 (Annexure P-10) and dated 27.11.2008 (Annexure P-12). The petitioner had earlier filed CWP No.7799 of 2010 which was permitted to be withdrawn with liberty to file a fresh one with better particulars vide order dated 29.11.2011. Thereafter, the petitioner has filed the present petition in the year 2013. Thus, it does not suffer from any inordinate delay and laches, and is not liable to be dismissed on that ground.

Coming to the merits of this case, the facts on record reveal that the petitioner has been extremely unfairly treated by the respondents. He was initially not given the pay scale of Rs.510-800 which was given to other carpenters. When in the LPA directions were issued to the respondents to give him the scale of Rs.510-800 and pay him the arrears, though the pay scale was given and the arrears paid, however, on a patent misinterpretation of the order of the Court, vide order dated 16.1.2008 (Annexure P-9), he was given the pay of Carpenter even for the period after 4.9.2001, on which date he had been promoted as Junior Mechanic (General). In the impugned order dated 12.2.2008 (Annexure P-10), it was specifically stated that the pay of the petitioner had been fixed in the scale of Carpenter as per the decision of the Court in the LPA. It was stated that the post of carpenter in the pay scale of Rs.4020-6200 held by the petitioner shall

be the personal post of the petitioner and shall stand abolished on his leaving the service. The order to this extent cannot sustain.

The LPA Bench was only concerned with the plea of the petitioner to be given the same pay scale of Rs.510-800 as was being given to other Carpenters, which claim was allowed. The judgment could not be read to mean that even for the period after the promotion of the petitioner as Junior Mechanic (General) he shall continue to get the pay scale as given to other Carpenters and that any promotion earned by him be undone. As is clear from Annexures P-3 and P-4, the petitioner had been promoted to the post of Junior Mechanic (General) on 6.9.2001 and regularised on the said post w.e.f., 11.9.2002. Hence, he could not be treated to be working on the post of Carpenter after 6.9.2001. Accordingly, the order dated 12.2.2008 (Annexure P-10) to the extent it treats the petitioner to be on the post of Carpenter even after 6.9.2001 is quashed. It is directed that for the period after 6.9.2001, the petitioner be paid the salary for the post of Junior Mechanic (General). Any additional amount that may be payable to the petitioner on that account be paid to him within two months from the date of receipt of the certified copy of this order. This amount be paid with interest @ 8% p.a. with effect from the date it was payable. However, on no account, any recovery shall be effected from the petitioner.

The respondents have denied the claim of the petitioner for

being promoted to the post of Mechanic (General) on the ground that the post of Mechanic (General) is a different cadre post and does not fall in the promotion channel to the post of carpenter. This stand of the respondents is wholly untenable. The petitioner was promoted to the post of Junior Mechanic (General) on 6.9.2001. I have already held that the order Annexure P-10 to the extent it treats the petitioner as a Carpenter is illegal. Hence, the petitioner has to be treated as a Junior Mechanic (General) after 6.9.2001. In the reply to the petitioner under RTI Act, it has been clearly stated that the next promotion from the post of Jr. Mechanic(General) is Mechanic (Gen.) and Sh.Hazari Lal, who was having identical pay scale/duties of Jr. Mechanic was given promotion to the post of Mechanic (Gen.). He retired on that post and was paid retiral benefits accordingly.

As per the information given, the qualifications prescribed for the post of Mechanic (Gen.) are as under:

“ITI Certificate in Fitter/Welder/Mechanist Trade having minimum exp. of 7 years in operation, maintenance and installation of plant equipment and machinery in a large sized dairy/ chemical plant/food processing plant. Those having outstanding exp. of 10 years though without ITI Certificate would also be considered.”

The respondent- Milkfed in its written statement has stated that the said information has been given by the Ropar District Cooperative Milk Producers' Union which is a separate legal entity. However, in the written statement, it has not been stated that the

qualifications for promotion to the post of Mechanic (General) in the Milkfed are any different.

The petitioner along with his replication has annexed a letter dated 21.09.2001 written by the Registrar, Cooperative Societies to the Managing Director of respondent-Milkfed, as per which there were 16 posts of Junior Mechanic (General) and one post of Mechanic (General).

Accordingly, it is held that action of the respondents in rejecting of the petitioner's claim for promotion as Mechanic (General), by treating him to be Carpenter is illegal. The petitioner has to be treated as working on the post of Junior Mechanic (General) since 6.9.2001. It is directed that the case of the petitioner for promotion as Mechanic (General) be considered by treating him as Junior Mechanic (General) w.e.f., 6.9.2001, subject to availability of posts and his fulfilling the qualifications. This consideration be completed within a period of three months from the date of receipt of certified copy of this order. If promoted, the petitioner shall also be entitled to all consequential benefits.

The petition is allowed in the above terms.

August 24, 2015

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(HARINDER SINGH SIDHU)
JUDGE