

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No.18825 of 2013

Date of decision: March 30, 2015

Ram Dev Soni

.....Petitioner

versus

The Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. A.K. Walia, Advocate
for the petitioner.

Mr. R.L. Sharma Advocate
for the respondents.

DEEPAK SIBAL, J.

Through the present writ petition, the petitioner seeks quashing of the order dated 25.06.2012 (Annexure P-2) vide which the benefit of placement in the higher pay scale granted to the petitioner's wife (now deceased) after completion of 23 years of service is sought to be withdrawn. The petitioner further prays that on quashing of the above referred order impugned by him he be held entitled to all consequential benefits.

A few facts may be noticed.

The petitioner is the husband of late Usha Rani, who in April 1979 joined the service of the Punjab State Power Corporation Limited (hereinafter referred to as the 'Corporation') as Lower Division Clerk. She was granted the benefit of proficiency step up after completion of eight years of service w.e.f. 21.04.1987.

The respondent-Corporation issued instructions dated 23.04.1990 for the grant of higher pay scale to its employees after completion of 9/16/23 years of service. Accordingly, the petitioner's late wife was granted 1st time bound higher pay scale after completion of 9 years of service and after 16 years of service was granted 2nd time bound higher pay scale. Through order dated 02.06.2004 (Annexure P-5), on completion of 23 years of service, she was granted the benefit of higher pay scale w.e.f. 21.04.2002. Thereafter, vide order dated 28.11.2011, the petitioner's late wife was offered promotion to the post of Circle Assistant which on account of her family circumstances, she declined to accept. The decision of the petitioner's late wife to forego her promotion was accepted by the respondent-Corporation but as a result thereof she was debarred for further promotion for a period of three years. Thereafter, came the impugned order dated 25.06.2012 (Annexure P-2/T) through which the benefit of time bound higher pay scale already granted to the wife of the petitioner vide order dated 02.06.2004 w.e.f. 21.04.2002, was ordered to be withdrawn and as a result thereof recovery was also ordered to be made. It is the admitted position that before the issuance of the impugned order dated 25.06.2012 (Annexure P-2/T), the petitioner's late wife was not issued any show cause notice nor was granted any opportunity of hearing.

It is brought to my notice that in view of the impugned order, recovery of ₹ 2,08,639/- has already been made out of the retiral dues payable to her. Before Usha Rani could agitate the issuance of the above referred impugned order, she expired on 01.06.2013. It is in the above circumstances that the present writ petition has been filed by her

husband as her legal heir for the reliefs as mentioned above.

I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

It is the admitted position between the parties that through order dated 02.06.2004 benefit of higher pay scale after completion of 23 years of service was granted to the petitioner's late wife w.e.f. 21.04.2002, the benefits of which she enjoyed for over eight years and the same was sought to be withdrawn through the impugned order dated 25.06.2012 on the ground that the petitioner's late wife had foregone an offered of promotion to the post of Circle Assistant offered to her in the year 2011.

It is further the admitted case between the parties that before withdrawal of the above referred benefit no show cause notice or opportunity of hearing was granted to the petitioner's late wife.

Once the above facts are admitted then I have no hesitation in holding that the withdrawal of the benefit which had accrued and was in fact enjoyed by the petitioner's late wife for over eight years could not have been taken away on account of a subsequent event. It is not disputed that at the time when the petitioner's late wife was granted the benefit she was fully entitled to the same. Further, the grant of the benefit was not subject to or conditional on the happening of any subsequent event whatsoever.

The impugned order also cannot be sustained being in gross violation of principles of natural justice. The benefit which had been granted over eight years ago could have not been withdrawn without any show cause notice or without opportunity of hearing.

To justify their action, the respondents rely on Clause (v) of the Circular dated 28.07.2000. The Circular dated 28.07.2000 in its entirety, is reproduced below:-

*“ PUNJAB STATE ELECTRICITY BOARD
(Finance Section) Finance Circular
No.20/2000/*

Office Order No.392/Fin./PRC-121 Dated: 28.7.2000

The Punjab State Electricity Board is pleased to decide that the granted of benefit of promotional increment(s) decide that the grant of benefit of promotional increment(s) to an employee on completion of 23 years service as envisaged in its O/o No.384/Fin./PRC-121 dated 09.11.1999 will be governed by the following conditions:-

- (i) he/she has the avenue of three promotions but has not earned three regular promotions in his/her regular service from the date of joining on the induction post/or any other post specifically declared as induction post for granting time bound promotional/devised promotional scale.*
- (ii) he/she has not earned third promotion in his/her regular service between 16th and 23rd years of service.*
- (iii) he/she has not been placed in a scale which is higher than the scale of his/her next higher post.*
- (iv) the increment(s) are in the nature of advance promotional benefited to be absorbed in the next regular promotion.*
- (v) those who forego promotion shall not be entitled for this benefit.”*

2. This order will be effective from 1.1.96 without prejudice to the Assured Career Progression Scheme to be devised consequent

upon revision of pay scales.

3. *The other conditions as incorporation in office order No.197/Fin./PRC-1988 dated 23.4.1990 and amended from time to time will remain un-changed.*
4. *The arrears accruing from re-fixation of pay on granted of advance promotional increment(s) will be credited to GPF accounts of the employees in full wherever GPF accounts exist and payable in case w.e.f. 1.8.2000. For the retired employees, the arrears will be paid in case as per existing policy.*

*Secretary,
Punjab State Elecy. Board,
Patiala.”*

It is further submitted on behalf of the respondents that while foregoing her promotion the petitioner's late wife had given an undertaking that she would not object to the withdrawal of the benefit granted after 23 years of service as per the instructions of respondent-Corporation.

So far as the reliance of Clause (v) of a Circular dated 28.07.2000 is concerned, according to me, the same has no application and the same would apply in case the offer of promotion is foregone by an employee before the grant of the benefit of placement in the higher pay scale on the completion of 23 years of service. Thus, the reliance of the respondents a Clause (v) of the Circular dated 28.07.2000 is misplaced.

So far as the undertaking given by the petitioner's late wife at the time of foregoing of her promotion to the post of Circle Assistant to the effect that she would not challenge the withdrawal of the benefit of placement in the higher pay scale granted after 23 years of service is concerned, before I proceed further it would be appropriate to refer to the undertaking, which is reproduced as under:-

“To

*The Chief Engineer/Estt. Section,
GGSSTP, Roopnagar.*

Sub:- Regarding forgo the promotion of Circle Asstt.

It is requested that I have been promoted as Circle Asstt vide Superintending Engineer/Personnel, Zone-C. Patiala Office Order No.161 Dt. 28-11-11 and I have foregone the same for 3 years with my own will as my family circumstances are not favourable and due to my family obligations. In case 23 years. Advance Promotional Increments is withdrawn as per the conditions of the said office order and instructions of PSPCL and recovery is made to this effect I will not object to the same. Also, I will not initiate any legal proceedings in this regard.

*Yours Faithfully,
Sd/-*

C/S

Sd/-

*Addl, Superintending Engineer
For Dy, CE/CHP, Circle
O&M, GGSSTP, Roopnagar*

(Usha Rani, UDC)

*O/o Dy.S.E./CHP, Circle,
GGSSTP, Roopnagar.
[emphasis supplied].”*

The above undertaking was to the effect that on account of foregoing of promotion by the petitioner's wife, if, as per any instruction of the respondent-Corporation the benefit of placement in the higher pay scale after 23 years of service could be withdrawn, then on the withdrawal of the same, the petitioner's late wife would raise no objection. As observed by the earlier, no instruction of the respondent-

Corporation permits the withdrawal of the benefit of placement in a higher pay scale after 23 years of service, in case, the offer of promotion is foregone after such benefit has accrued and has been granted.

Even otherwise, the above undertaking cannot be held to bind the petitioner as at the time when the undertaking was given the petitioner's late wife she was not in any position to bargain. The above undertaking can only be considered to be unconscionable term being imposed upon the petitioner's late wife which I hold would not be binding as the same was apparently not given by free will.

In view of the above, the impugned order dated 25.06.2012 (Annexure P-2/T) is quashed. The recovered amount be paid back to the petitioner along with interest at the rate of 8% per annum from the date of recovery till date of actual payment. The petitioner is also held entitled to all other consequential benefits arising out of the quashing of order dated 25.06.2012 (Annexure P-2/T).

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

March 30, 2015

Jyoti I