

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 215

Case No. : C. W. P.No. 20078 of 2014

Date of Decision : May 15, 2015

Vinod Devi Petitioner

Vs.

Bhakra Beas Management Board
and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Amrik Singh, Advocate
for the petitioner.

Mr. Rajesh Garg, Senior Advocate
with Mr. Virender Soni, Advocate Addl. A. G., Punjab
for the respondents.

* * *

DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks quashing of office orders dated 24.02.2012 (Annexure P-5), 02.08.2013 (Annexure P-4) and 15.07.2014 (Annexure P-6), through which the time bound scale granted to the petitioner w.e.f. 11.04.1993, on completion of 16 years of

regular service, has ordered to be withdrawn on the ground that the petitioner has foregone her adhoc promotion w.e.f. 29.01.2003.

The issue, whether the time bound promotional scale, accrued and granted prior to the foregoing of promotion, can be withdrawn at a subsequent date, is no longer res integra. In **Rattan Chand vs. Punjab State Electricity Board and others** in **C. W. P. No. 2587 of 2009**, decided on **12.08.2010**, this Court has held as under :-

“(9). In the case in hand, the 1st and 2nd time-bound promotional scales were granted to the petitioner on 11.10.1990 and 18.06.1993, respectively. There is indeed no denial to the fact that the petitioner got no offer for promotion as Lineman before 18th June, 1993. As a matter of fact the first ever promotion offered to the petitioner was on 27th December, 2001 only, which he declined to accept may be due to the fact that he was nearing retirement and was not willing to shift to a new place of posting.

(10). The clarificatory Circular dated 26.07.1990 (Annexure R3/1) nowhere provides nor it can lead to such absurd

consequences that a promotion offered after 16 years of service would take away the service benefit given to an employee on completion of 9 years' service. Since the petitioner never refused to accept the promotion before he was granted the time-bound promotional pay scales on completion of 9/16 years of service, the subsequent offer for such promotion and that too at the fag end of his career, cannot take away the time bound promotional scales which were rightly granted to him being a stagnated employee.

(11). The impugned action of the respondents deserves to be struck down also being violative of the principles of natural justice. The withdrawl of the promotional pay scales has far-reaching civil consequences including reduction in the petitioner's pension and other retiral dues. Unfortunately, the respondents have acted with such a closed mind that they did not

deem it proper to hear the petitioner before passing the order under challenge and that too at the time of his farewell on retirement.”

Rattan Chand's case (*supra*) was then followed by this Court in **C. W. P. No. 371 of 2007 – Pritam Singh vs. Punjab State Electricity Board and others**, decided on **12.10.2010**, by holding as under :-

“(1). The petitioner seeks quashing of the order dated 14.07.2006 (Annexure P6) whereby the benefits of Time Bound Higher Pay-Scale granted to him on completion of 16 years of service has been withdrawn on the ground that having foregone the promotion offered to him, the petitioner was not entitled to the said benefit.

(2). The respondents have filed their reply/affidavit maintaining that the pay-scale in question has been rightly withdrawn.

(3). The undisputed facts are that the petitioner was granted the Time Bound

Higher Pay-Scale on completion of 16 years of service vide order dated 29.07.1992. Thereafter he was offered promotion to the post of UDC vide order dated 06.11.2001 (Annexure P3/T) which the petitioner did not accept.

*(4). The issue “whether the Proficiency Step-up/Time Bound Pay Scale (s) already granted to an employee can be withdrawn on the ground that he/she refused to accept the promotion offered subsequently” has been elaborately dealt with by this Court in **CWP No.2587 of 2009** titled as **Rattan Chand v. Punjab State Electricity Board and others** decided on 12.08.2010.*

*(5). For the reasons mentioned in the **Rattan Chand’s** case (supra), the writ petition is allowed and the impugned order dated 14.07.2006 (Annexure P6) is hereby quashed. The respondents are directed to restore the Time-Bound Higher Pay Scale to*

the petitioner on completion of 16 years of service besides refunding the amount already recovered from him. The respondents are further directed to re-fix the pension and other retiral dues of the petitioner accordingly within a period of four months from the date of receipt of a certified copy of this order.”

In **C. W. P. No. 2595 of 2011 – Rajinder Parshad Raturi vs.**

The Punjab State Power Corporation Ltd. And another, decided on **06.07.2012**, this Court, while considering an identical issue, has held as under :-

“8. The letter dated 22.10.1993 issued by the respondents provides that if the time bound higher pay scales accrue after foregoing the promotion the same are not to be granted but it cannot be interpreted to mean that the benefit of time bound higher pay scales already granted before foregoing the promotion can also be withdrawn. An eligible employee cannot be denied the time bound promotional scales

after completion of 16/23 years of service merely on the assumption that he was likely to get promotion in near future. Therefore, once the petitioner was granted the benefit of time bound higher pay scales, the same cannot be withdrawn merely on the ground that he had foregone the promotion offered to him subsequent to grant of higher scale.”

Rattan Chand's case (*supra*) was recently followed in **C. W. P. No. 10411 of 2012 – Jarnail Singh vs. The Punjab State Power Corporation Ltd. and others**, decided on **29.04.2014**, wherein it was held as under :-

“In the present case, the time bound promotional-scales on completion of 16/23 years of service were granted to the petitioner on 08.07.1999 w.e.f. 01.04.1993 and 24.08.2001 w.e.f. 01.04.2000. Petitioner was offered promotion to the post of Head Draftsman in the year 2004. Thus, petitioner had not been offered promotion before he was granted the time bound promotional scales and consequently, there

was no occasion for the petitioner to have declined the offer of promotion. It is only after the petitioner was granted the time-bound promotional scale, he was for the first time offered promotion to the post of Head Draftsman in the year 2004. In these circumstances, case of the petitioner is squarely covered by the decision of this Court, Annexure P-9 (CWP no.2587 of 2003).

Consequently, this petition is allowed. Impugned order dated 03.10.2007 (Annexure P-4), whereby, the time bound promotional scale granted to the petitioner on completion of 23 years of service, was withdrawn is set aside. Respondents are directed to restore the time bound promotional pay scale to the petitioner granted to him vide order No.408 dated 24.08.2001. Respondents are also directed to refund the amount recovered from the petitioner in pursuance of order dated

03.10.2007 (Annexure P-4) along with interest @ 9% per annum within a period of three months from the receipt of certified copy of this order.”

In view of the above settled position of law, the impugned office orders dated 24.02.2012 (Annexure P-5), 02.08.2013 (Annexure P-4) and 15.07.2014 (Annexure P-6), are quashed.

As a consequence, the respondents are directed to restore the time bound promotional pay scale granted to the petitioner after 16 years of service, with all consequential benefits, within a period of three months from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms.

No costs.

**(DEEPAK SIBAL)
JUDGE**

May 15, 2015
monika