

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr.No. 212

Case No. : C. W. P.No. 25939 of 2013

Date of Decision : May 07, 2015

Mahesh Kumar Petitioner
Vs.
The Punjab State Power Corporation
Limited and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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

Mr. Gursimranjit Singh, Advocate
for respondent no. 1.

Mr. Rajesh Garg, Senior Advocate
with Ms. Nimrata Shergill, Advocate
for respondents no. 2 and 3.

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DEEPAK SIBAL, J. :

Through the present writ petition, the petitioner seeks quashing
of the pay fixation statement dated 06.04.2013 (Annexure P-9), as well as
the recovery statement (Annexure P-10) issued by the respondents, whereby

the pay of the petitioner has been reduced retrospectively on account of withdrawal of the first, second and third time bound higher pay scales, granted to the petitioner after completion of 9/16/23 years of service and on that basis, recovery is sought to be made.

As per the instructions dated 23.04.1990 issued by the respondent Punjab State Power Corporation Limited (hereinafter referred to as – the Corporation), through order dated 27.04.2005, the petitioner was granted the benefit of time bound higher pay scales after completion of 9 and 16 years of service. Thereafter, under the same instructions, through order dated 24.10.2008, he was granted the benefit of time bound higher pay scales after 23 years of service.

While the petitioner was enjoying the benefits, granted to him as above, through order dated 29.06.2012, he was offered promotion to the post of Circle Assistant . For personal reasons, the petitioner sought to forego his promotion, for which he sought and got permission from the respondent Corporation.

Without issuing any Show Cause Notice or passing of any order, on the ground that the petitioner had foregone his promotion, the benefits that had already been granted to the petitioner, of time bound higher pay scales after 9/16/23 years of service, were withdrawn. Accordingly, his pay was reduced after re-fixation and consequently, recovery was initiated from the petitioner. The above withdrawal of

benefits, already granted to the petitioner, was purportedly under instructions of the respondent Corporation dated 22.10.1993. It is in these circumstances that the petitioner has approached this Court through the present writ petition.

The issue, that arises for consideration, is whether the foregoing of promotion by the petitioner in the year 2012 could be made the basis of withdrawal of benefits already granted and enjoyed by the petitioner, more so without following the principles of natural justice. This issue 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 re-fixation of pay of the petitioner (Annexure P-9) and the recovery statement (Annexure P-10) are quashed.

The respondents are further directed to restore the time bound promotional pay scales granted to the petitioner after 9/16/23 years of service, as also to refund the amount already recovered from the petitioner along with interest @ 9% per annum within a period of three months from the date of receipt of a certified copy of this order.

No costs.

(DEEPAK SIBAL)
JUDGE

May 07, 2015
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