

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.7066 of 2012

Date of decision: 11.05.2015.

Johar Singh

..Petitioner

Versus

Punjab State Power Corporation Ltd. and another ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. O.P. Sharda, Advocate
for the petitioner.

Mr. Harsh Garg, Advocate
for the respondents.

Daya Chaudhary, J.

The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 18.11.2011 (Annexure P-7), order dated 15.12.2011 (Annexure P-1(i)) and order dated 02.03.2012 (Annexure P-1(ii)). A prayer has also been made for issuance of a writ in the nature of mandamus directing the respondents to release the retiral benefits of the petitioner along with interest @ 9% per annum with effect from the date of retirement till the payment is made.

The petitioner was appointed as Peon on ad-hoc basis vide order dated 11.11.1980 and thereafter, he was appointed as Peon on officiating basis. The petitioner was given one additional increment on account of proficiency step up by the Punjab State Electricity Board on completion of eight years of service in the pay scale of ₹750-1350 with effect from 14.01.1990. He was also granted first time bound pay scale on account of completion of nine years of service with effect from 14.01.1991. Thereafter, he was promoted as Assistant Lineman in the pay scale of ₹950-1800 but he was ready to forego his promotion for a period of three years. He made representation, which was forwarded to the Deputy Chief Engineer, Distribution Circle, Punjab State Electricity Board, Sangrur and the Board allowed the petitioner to forego his promotion as Assistant Lineman and to continue on the post of Regular Team Mate. Ultimately, the petitioner retired from service as Regular Team Mate on attaining the age of superannuation on 30.06.2011.

Learned counsel for the petitioner submits that all formalities were got completed for releasing the retiral benefits but the same were not released. A notice was sent to the petitioner stating therein that salary in excess with effect from 14.01.1990 to 30.06.2011 has been paid to him and order of recovery of amount of ₹3,49,106/- was passed. The order was modified and the petitioner was asked to deposit an amount of ₹2,95,653/-. Learned counsel further submits that the petitioner was conveyed order dated 18.11.2011 passed by

respondent No.2 informing that since he had forgone promotion from the post of Regular Team Mate to the post of Assistant Lineman, therefore, time bound pay scale after nine years and the second time bound pay scale and proficiency step up granted to the petitioner vide order dated 09.03.1992 and 16.06.1994 stood withdrawn. Learned counsel also submits that as the petitioner was promoted from the post of Regular Team Mate to the post of Assistant Lineman and he was granted benefits admissible to him and subsequently, those benefits cannot be withdrawn. There was no fault on the part of the petitioner as neither any misrepresentation was there nor any excess amount was paid on the promoted post. The petitioner has been paid benefits on the promoted post not on the earlier post.

Learned counsel for the respondents submits that the recovery was ordered from the petitioner for the proficiency step up and the time bound scales, which were given to the petitioner after 8, 9 and 16 years of service respectively. The petitioner was not entitled for these benefits as he has foregone his promotion. As per scheme of the respondents, time bound promotion was introduced vide letter dated 23.04.1990 whereby the employees are entitled for promotional scheme on completion of 9 and 16 years of regular service but the petitioner opted to forego his promotion and order of recovery was passed.

Heard arguments of learned counsel for the petitioner as well as learned counsel for the respondents and have also perused

the impugned orders and the other documents on the file.

The case of the petitioner is that he was granted benefits of proficiency step up and 1st and 2nd time bound pay scale on completion of 8, 9 and 16 years of service and there was no misrepresentation on his part. The stand of the petitioner is that these benefits were given to him on his earlier post and not on the promoted post whereas the stand of the respondents is that the petitioner opted to forego the promotion as Assistant Lineman for a period of three years and, therefore, he was not entitled for any benefit. Vide finance circular No.44/90 dated 26.07.1990, a clarification in respect of grant of promotional scale was issued wherein it was clarified as to what will be the effect if an employee foregoes his promotion. The clarification has been made that the employee, who foregoes his promotion will not be entitled for promotional/devised promotional scale on completion of 9/16 years of service. The stand of the petitioner is that the petitioner has been granted benefits on the post before his promotion and not on the promoted post and as such, he is entitled for the benefits granted to him.

In view of the facts as mentioned above, it is held that the petitioner is entitled for the benefits on the post, he was holding before opting to forego the promotion and he is not entitled for any benefit of promoted post. However, any benefit on the promoted post cannot be withdrawn from him.

Accordingly, the present writ petition is allowed and the

impugned order dated 18.11.2011 (Annexure P-7), order dated 15.12.2011 (Annexure P-1(i)) and order dated 02.03.2012 (Annexure P-1(ii)) are hereby quashed and the respondents are directed to release the retiral benefits to the petitioner within a period of three months from the date of receipt of certified copy of this order. The retiral benefits be released on the basis of fixation of his pay not on promoted post but on the basis of benefits permissible on the post, he was holding. The petitioner is also entitled for interest @ 9% per annum after expiry of period of three months from the date of retirement till the payment is released.

11.05.2015
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(DAYA CHAUDHARY)
JUDGE