IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.1445 of 2013 (O&M)
Date of Decision: May 06, 2015

Bhakra Beas Management Board and others
.....Appellants

versus

Smt.Kanta Aggarwal
.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Rajesh Garg, Senior Advocate with
Ms.Nimrata Shergill, Advocate, for the appellants.
Mr.B.S.Rana, Senior Advocate with
Mr.Rajinder Paul, Advocate, for the respondent.

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1. Whether Reporters of Local papers may be allowed to see the judgment?Yes
2. To be referred to the Reporters or not?Yes
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

This letters patent appeal impugns the order dated 31.05.2013 whereby learned Single Judge allowed the writ petition filed by the respondent and the appellant-Board has been directed to equate the post of Junior Accountant in the Rajasthan State Electricity Board (for short, 'RSEB') with the post of Superintendent Grade-II in the Bhakra Beas Management Board (for short, 'BBMB') and grant the consequential benefits.

[2] The facts giving rise to this appeal may be briefly noticed.

[2] The husband of respondent was an Assistant Engineer in the RSEB and was serving in BBMB on deputation.

He unfortunately died on 16.11.1994 while coming to his residence at Sunder Nagar from Dehar Power House at Slapper (Himachal Pradesh). The deceased-official is survived by his wife-respondent, two minor daughters and one minor son.

[3] It may be noticed at this stage that the man-power is drawn by BBMB from the sharing states of Punjab, Haryana, Rajasthan and Himachal Pradesh.

[4] RSEB being the principal employer appointed the respondent as a Junior Accountant under its ex-gratia policy, vide order dated 30.12.1995. She was then sent on deputation to BBMB and was posted at Chandigarh against the post of Key Punch Operator.

[5] The post of Junior Accountant in RSEB was in the pay scale of Rs.1400-40-1800-50-2300. There was no post of Junior Accountant in the BBMB. Due to this reason, the respondent was not being paid salary to which she was entitled to as Junior Accountant in RSEB. She was, in fact, being paid the salary in the lower pay-scale of Lower Division Clerk (LDC). It was in this backdrop that the respondent requested vide application dated 30.12.1995 (Annexure R-1) to adjust her against the post of Upper Division Clerk (UDC) which too was in the lower pay-scale of Rs.1200-2100, i.e., still lower than the Junior Accountant of RSEB. In her written request, the respondent further stated that "I hereby undertake that I am accepting the lower post of UDC in BBMB of my own will and will not stake any claim whatsoever later on against RSEB/BBMB".

[6] The respondent was eventually adjusted as UDC and was granted the pay-scale of that post.

[7] It further appears that even after adjusting the respondent as UDC, the BBMB authorities continued correspondence with RSEB to find out a post equivalent in rank and status to that of Junior Accountant, i.e., the pay-scale of Rs.1400-2300 (which was revised to Rs.5000-8000 w.e.f. 1.1.1996). It is in this context that BBMB informed the RSEB vide letter dated 16.10.2007 (Annexure R-2) that there were posts like Office Superintendent Grade-II which were equivalent to the post of Junior Accountant in RSEB.

[8] The respondent was then adjusted against the post of Assistant Librarian for which she gave her consent on 28.05.2009 (Annexure R-3) with a further request that post of Assistant Librarian, which was otherwise meant for direct recruitment, may be equated against the post of Junior Accountant held by her and she may then be granted the pay-scale admissible to Assistant Librarian. It is mentioned here that even after adjusting her as Assistant Librarian, the respondent continued to draw the revised pay-scale of UDC only as she was never granted the pay-scale of Junior Accountant of Rs.5000-8000 and/or further corresponding revised pay-scale.

[9] The respondent, thereafter, submitted some representations and then approached this Court in the year 2012 seeking a direction that she may be adjusted on a post equivalent to that of Junior Accountant in RSEB and be granted the pay-scale to which she was entitled to as a Junior Accountant in RSEB with all consequential benefits.

[10] Learned Single Judge has vide order under appeal directed the appellant-Board-BBMB to equate the post of Superintendent Grade-II with that of Junior Accountant in RSEB

and adjust the respondent against such equated post with all consequential benefits.

[11] It is pertinent to be noticed at this stage that the respondent has since retired from service on attaining the age of superannuation w.e.f. 31.05.2013, i.e. the day on which the judgment was delivered by learned Single Judge.

[12] The questions that arise for consideration are (i) whether the respondent, having regard to her written consents dated 30.12.1995 and 28.05.2009 (Annexure R-3), was estopped from claiming adjustment against the higher post of Superintendent Grade-II or any post equivalent to that of Junior Accountant in RSEB? (ii) whether the respondent, notwithstanding the nomenclature of the post against which she was adjusted on deputation in BBMB, was entitled to be paid her salary and emoluments in the pay scale of the post of Junior Accountant held by her substantively in RSEB?

[13] Having heard learned counsel for the parties at a considerable length and after going through the record, we are satisfied that no interference with the order passed by learned Single Judge, except a clarificatory modification of its operative part, is called for. We say so for the reasons that the respondent was concededly appointed as a Junior Accountant in RSEB on regular basis. The said post was in the pre-revised pay scale of Rs.1400-2300 followed by further revision of Rs.5000-8000 w.e.f. 1.1.1996. It may be true that there was no post of Junior Accountant in BBMB, however, having brought the respondent on deputation, it was imperative upon the appellants to adjust her on a post carrying the pay-scale equivalent to that of Junior Accountant in RSEB and/or protect her pay and pay-scale while adjusting against a lower post. The

letter dated 16.10.2007 (Annexure R-2) does reveal that there were posts in the appellant-Board carrying the pay scale of Rs.5000-8000 though these posts were either to be filled up by direct recruitment or the respondent was ineligible to hold those posts. But in such a case, the appellants could have repatriated the respondent to her parent cadre or assign the duties of any post with protection of the pay-scale she held substantively on the post of Junior Accountant in RSEB.

[14] The consent given by the respondent or her undertaking that she will not raise any claim against RSEB/BBMB, in our considered view, does not invoke the principles of estoppel. The respondent was in no position to bargain with the appellant-authorities. She was keen for her posting in Chandigarh to pursue the academic career of her minor children. That keenness cannot legitimize an action which is ex-facie violates Articles 14 & 16 of the Constitution. The respondent was entitled to as a matter of right to seek the pay-scale attached to the post of Junior Accountant as it was a condition of her service. It was a legally enforceable right which cannot be taken away by applying the principle of estoppel.

[15] The things would have been different if the respondent was to be adjusted against a higher post, say like that of Superintendent Grade-II and if she would have raised the claim for higher pay-scale of that post. Contrarily what she has been claiming is the pay-scale to which she was appointed in RSEB.

[16] To say it differently, we hold that even if the respondent was asked to work as LDC, UDC or Assistant Librarian, she was entitled to the pay-scale attached to the

post of Junior Accountant in RSEB which she held on regular basis and is deemed to have acquired lien in due course of time.

[17] For the reasons afore-stated, we dismiss this appeal and hold that the respondent is entitled to the pay-scale of Rs.1400-2300 and corresponding revised pay-scales admissible on the post of Junior Accountant in the RSEB, for the period she served the BBMB. The arrears of difference of pay shall be released to the respondent within a period of four months from the date of receiving a certified copy of this order. The retiral benefits shall also stand revised accordingly, if need be.

[SURYA KANT]
JUDGE

May 06, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE