

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

**Cross Objection No.13-C of 2013 in/and
RSA No.2253 of 2013 (O&M)**

Date of Decision: September 19, 2015

The Punjab State Electricity Board and others Appellants

vs.

Fazal Masih

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Adarsh Malik, Advocate for the appellants.

Mr. O.P. Gabha, Advocate for the respondent.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment dated 01.02.2013 passed by learned Addl. District Judge, Ferozepur, reversing the judgment and decreed dated 24.07.2012 passed by learned Civil Judge (Jr. Divn.), Ferozepur, vide which the suit of the plaintiff was decreed and the appeal was allowed holding that the defendants will calculate the salary of the plaintiff by including the promotional increment on completion of 23 years service with the defendants but the arrears shall be payable for a period of thirty eight months prior to the suit dated 13.05.2008, which includes the thirty six months of the period of limitation and two months of the period of notice served upon the defendants by adding the same as to the benefit of the plaintiff in future till he is entitled to the pension and related benefits.

Brief facts of the case, which are required to be noticed for the purpose of disposal of the appeal are that the plaintiff had joined the Punjab State Electricity Board as Assistant Lineman on 18.04.1970 and was later on designated as Lineman on 15.11.1981. He was designated as Foreman in April, 2004 and retired from the service on 31.08.2004 on attaining the age of superannuation. On 13.05.2008, the plaintiff filed a suit for declaration to the effect that he had not been granted promotional increment on completion of 23 years service w.e.f. 01.01.1996. The scheme was introduced by the Punjab State Electricity Board vide Finance circular No.17/90, issued on 23.04.1990.

The suit was resisted by the defendants on the ground that the plaintiff had filed the suit after three years of his retirement. It was stated that he was not granted 23 years promotional increment on account of the fact that he did not qualify any departmental exam, which was required to earn promotion. It was further stated that as per circular dated 28.07.2000 vide office order No.384/Fin.PRC-121 of 09.11.1999, certain conditions were laid down.

The plaintiff was not eligible for promotion as he did not pass the departmental examination as required for promotion under Rule 8 of the Technical Service Rules Clause 3 framed by the Punjab State Electricity Board.

The lower court took the view that the plaintiff was not granted the benefit of promotional increment after completion of 23 years of service. Reference was made to the judgment dated

09.09.2008 passed in RSA No.2726 of 2008 titled as “Punjab State Electricity Board and others vs Jiwan Singh” of this Court. However, the plea of the plaintiff was declined on the ground that the suit was filed after three years of retirement and is time barred.

In appeal, the first appellate court reversed the findings regarding the limitation and restricted to the arrears of 38 months as discussed above and relief was given to the plaintiff.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the appellant has argued that in the circular dated 28.07.2000, five conditions were laid down, which are as under:

“i) He/she has the avenue of three promotions but has not earned three regular promotion in his/her regular 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 year 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 increments are in the nature of advance promotional benefits to the absorbed in the next regular promotion.

(v) Those who forego the promotion shall not be entitled for this benefit.”

It has been argued that the plaintiff did not fulfill the condition Nos.1, 3 and 4.

It has been further argued that the plaintiff was not eligible for promotion as Junior Engineer on account of the fact that he had not passed any departmental examination. Therefore, he did not have the avenue of third promotion. It is further stated that after completion of 23 years of service, he was placed in higher scale and that increment was not an advance increment but was only promotional benefit to those, who are absorbed in the next regular promotion.

After going through the impugned judgment, I am of the view that there is no evidence that the plaintiff was ever placed in the next higher scale after completion of 23 years of service. No order in this regard was placed on the file during the trial. So far as the eligibility of the plaintiff to the post of Junior Engineer is concerned, it is stated that he did not have the avenue of third promotion as he has not passed the departmental examination. The matter has been settled in ***Jiwan Singh's case (supra)***, wherein it was held that the promotion is possible only when the departmental examination is passed. However, this is not a condition precedent for granting proficiency step after completion of 23 years of service. Actually the proficiency step is not a promotion, it is a benefit.

I am of the view that the findings of the facts have been recorded by the lower court in favour of the plaintiff and it is held that he is entitled to promotional increment after completion of 23 years of

service. The lower court had declined the relief on the ground of limitation, which has been rightly reversed in appeal.

No substantial question of law arises in the present appeal.

Hence, the present appeal as well the cross objections stand dismissed.

September 19, 2015
sarita

(KULDIP SINGH)
JUDGE