

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

**R.S.A. No. 623 of 2013 (O&M)
Date of decision : 18.05.2015**

Punjab State Water Supply and Sewerage Board

...Appellant

versus

Er. D.S Bakshi & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Chandra Kumar Jha, Advocate
for the appellant.

Mr. Sharwan Sehgal, Advocate
for respondent No. 1.

Mr. Vaibhav Sharma, DAG, Punjab
for respondent Nos. 2 to 5

RITU BAHRI , J.

Plaintiff-appellant (herein after to referred as 'the appellant') has come up in Regular Second Appeal against the judgment and decree dated 23.11.2012 whereby the judgment and decree of the learned trial Court dated 24.02.2012 was upheld vide which the suit of the plaintiff-respondent No. 1 was decreed.

Initially, respondent No. 1 sought a relief of declaration to the effect that he is entitled to exercise, revised option for pay scale w.e.f 01.07.1987 and for grant of selection grade or with consequential benefits and arrears of salary with interest @ 18% per annum. During

the pendency of the suit, respondent No. 1 filed application 03.05.2005, seeking in the plaint to the effect that memo dated 11.01.2005 issued by respondent No. 2, vide which proposal made by respondent No. 5 for grant of permission to him, to exercise his fresh option, for payment of revised pay scales, was rejected, vide memo dated 09.01.2005 issued by respondent No. 5. The trial Court dismissed the suit of respondent No. 1 on the ground that he joined his services on 16.10.1970. He was promoted as an Executive Engineer in P.W.D Public Health vide order dated 25.05.1976 and continued as such with P.W.D Public Health and continued as such with defendant No. 1 and 4 upto 20.03.1977. Thereafter, he was taken on deputation as an Executive Engineer by the appellant vide defendant No. 1 order dated 18.02.1977. Defendant No. 1 vide his memo dated 22.08.1985 invited written options from the Public Health employees including respondent No. 1 for permanent allocation in the department of appellant and respondent No. 1 submitted his consent through proper channel, vide letter dated 25.10.1985, for permanent allocation in the appellant's department. Vide notification dated 30.09.1987, respondent No. 1 was allocated as an Executive Engineer on permanent basis in the appellant's department under the provisions of Section 29 of the Punjab Water Supply and Sewerage Board Act.

Thereafter, respondent No. 1 was granted selection grade by

defendant No. 1 vide order dated 16.05.1996, with retrospective effect i.e 24.07.1986. Respondent No. 1 was promoted as Supdt. Engineer and then Chief Engineer, During this period revised pay scales of all categories were made effective from 01.01.1986 but respondent No. 1 did not give his option and made a written request to the defendants to allow him to exercise his option but they had not allowed him. His last representation was declined on 25.07.1997. As per rules, he was to opt for option, within four months w.e.f 01.07.1986. The defendants raised an objection that at this stage, he cannot opt the option and further the Court at Ludhiana had no jurisdiction to try the suit. Another objection raised by the defendants is that since the last representation of respondent No. 1 was declined on 25.07.1997 and he challenged the order in the year 2005, the suit was barred by limitation. The trial Court dismissed the suit of respondent No. 1 and held that respondent No. 1 was to exercise his option within four months and in the absence of exercise of his option within a stipulated time, the suit was held to be barred by limitation, vide judgment dated 22.02.2007.

On appeal, the lower Appellate Court dismissed the judgment of the trial Court on 14.06.2008 and remanded the matter back to the trial Court to decide afresh by affording opportunity to the defendants to file amended written statements and after

settlement of additional issue regarding legality and validity of memo dated 20.04.2005 issued by defendant No. 5 and providing them opportunities to lead additional evidence.

Thereafter, the trial Court examined P.W.2 Subash Chand, Supdt. of Punjab Water Supply and Sewerage Board, Chandigarh who deposed on the line of the plaint and duly corroborated the version of respondent No. 1. He deposed that as per office record and as per Punjab Government Instructions and rules, on completion of 15 years of service, selection grade up to 20% of the sanctioned strength to the senior most executive engineers working in Punjab PWD Public Health Department was to be given including respondent No. 1. The selection grade in old pay scale of Rs.2000-2300 was sanctioned to respondent No. 1 vide Principal, Secretary to Punjab Government, P.W.D Public Health (Branch) with retrospective effect from 24.07.1986 vide order dated 16.05.1996. He further deposed that as per office record, the Punjab Government in the Finance Department vide its notification dated 30.01.1989 has revised the pay scales of all categories of the employees. These pay scales were effective w.e.f 01.01.1986 as per Rules 5 and 6 of the Punjab Civil Services (Revised Pay) Rules, 1988, notified by the Punjab Government vide notification dated 09.09.1988 and the option was to be exercised within four month from the date of publication of the notification, on the prescribed performs.

Respondent No. 1 gave his option on the pay scale, which he was drawing at the time of enforcement of these rules, which were notified by the Punjab Government on 09.09.1988 and the selection grade was sanctioned to respondent No. 1 vide order dated 16.05.1996. Respondent No. 1 submitted his representation dated 30.05.1997, requesting defendant No. 5 that his pay may be fixed in the old scale of Rs.2000-23000 w.e.f 01.10.1992, which was rejected vide letter dated 25.07.1997 on the ground that as per Punjab Revised Pay Scale Rules, 1988, Government Employees staff have the option to come over to the revised scale from the date of his next increment or subsequent increment failing after the first day of Jan, 1986 but not later than 31st day of December, 1987 in request of the post held by him on the first day of Jan, 1986. **The Managing Director, Punjab Water Supply and Sewerage Board had sent a letter to the Principal Secretary vide memo dated 23.08.2001 duly requesting to accord approval to respondent No. 1 for exercising revised option w.e.f 01.07.1987. Further the Managing Director issued reminders to the Principal Secretary vide memo dated 07.01.2004 and 19.04.2004 requesting to allow respondent No. 1 for exercising revised option w.e.f 01.07.1987. Copies of the said reference were also endorsed to respondent No. 1 at his residential address i.e 40B, Raj Guru Nagar Ferozepur Road,**

Ludhiana. Thereafter, the Principal Secretary vide his memo dated 19.01.2005 to The Managing Director, Punjab Water Supply and Sewerage Board rejected the request of respondent No. 1 for granting permission to exercise revised option by him. As per office record, no opportunity of hearing was according to respondent No. 1 while rejecting his claim to exercise his revised option w.e.f 01.07.1987.

D.W.1 Rajinder Singh Cheema, Manager Personnel and General Administration in the appellant department tendered his sworn affidavit in which he reiterated the version narrated in the written statement. In cross examination, she deposed that respondent No. 1 had filed an application for exercising his option for Punjab Revised Pay Scale after grant of sanction selection grade in the year 1996, but the same was rejected in the same year. As per record, no opportunity was given to respondent No. 1 being hear and no personal explanation was given to him before rejecting his application.

D.W.2 Gurbachan Singh Randhawa, Supdt. Grade-I deposed exactly on the line of written statement filed by defendants and during cross examination, he admitted that respondent No. 1 was sanctioned selection grade with retrospective effect from 24.07.1986 vide order dated 16.05.1996 and could not exercise the option.

The trial Court observed that respondent No. 1 had joined the appellant-department and as per Punjab notification and rules, on

completion of 15 years of service, selection grade upto 20 years was to be given and respondent No. 1 was also supposed to be given this selection grade in the year 1986 but the same was given to him vide order of department dated 16.05.1996 w.e.f 24.07.1996, thus he was given the selection grade after a lapse of 10 years with retrospective effect and during this period, the Punjab Government vide notification dated 20.01.1989 had revised the pay scales and as per rules of Punjab Civil Services revised pay scales rules, option had to be exercised within four months from the date of notification, but respondent No. 1 was given selection grade at the time in the year 1989, therefore, he could not exercise the option under notification of 1989 for revised pay scale. Respondent No. 1 was given selection grade in the year 1996 with retrospective effect.

Further, the Court had observed that though the representation of respondent No. 1 was rejected on 25.07.1997 but thereafter, he again moved representation on 12.02.1998 which is Ex P2/11 on record to the Managing Director of appellant-Board, which was put up on 31.08.2000 in 132nd Meeting of Punjab Water Supply Board and in the said meeting, it was concluded that respondent No. 1 was entitled to exercise fresh option w.e.f 01.07.1987 in relaxation rules and reference was made to the concerned authorities for taking immediate decision on representation made by respondent No. 1 (Ex

P2/12). Thereafter, vide Ex P2/14, the Managing Director wrote a letter to the Chief Engineer PWD that the request of respondent No. 1 for change of option is not time barred and thereafter, Managing Director rejected the claim of respondent No. 1 vide letter dated 20.04.2005. Thereafter, respondent No. 1 moved an application for amendment in the plaint and he added para 9A in which it has been mentioned this order dated 20.04.2005 is null and void.

The trial Court decreed the suit of respondent No. 1 for declaration to the effect that respondent No. 1 is declared to be allowed to exercise his revised option w.e.f 01.07.1987 and also entitled to the Selection Grade and all arrears along with 12% interest annually compounded and all consequential relief.

On appeal, the lower Appellate Court affirmed the findings of the trial court.

After going through the judgments passed by both the Courts below, one thing is clear that the Managing Director, Punjab Water Supply and Sewerage Board had sent a letter to the Principal Secretary vide memo dated 23.08.2001 duly requesting to accord approval to respondent No. 1 for exercising revised option w.e.f 01.07.1987. Thereafter, the Managing Director issued reminders to the Principal Secretary vide memo dated 07.01.2004 and 19.04.2004 requesting to allow respondent No. 1 for exercising revised option

w.e.f 01.07.1987. Further, in 132nd Meeting of Punjab Water Supply Board and in the said meeting, it was concluded that respondent No. 1 was entitled to exercise fresh option w.e.f 01.07.1987 in relaxation rules and reference was made to the concerned authorities for taking immediate decision on representation made by respondent No. 1 (Ex P2/12). Thereafter, vide Ex P2/14, the Managing Director wrote a letter to the Chief Engineer PWD that the request of respondent No. 1 for change of option is not time barred.

After going through the judgment passed by both the Courts below, no substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

(RITU BAHRI)
JUDGE

18.05.2015

G Arora