

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

RSA No.3301 of 2015 (O&M)

Date of Decision: 17.07.2015

Punjab State Transmission Corporation Ltd. & another

.....Appellants

Versus

Saroj Kanta & another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Roshan Lal Sharma, Advocate for the appellants.

RITU BAHRI, J.

CM Nos.7948-7949-C of 2015

For the reasons stated in the applications, same are allowed and delay in filing and re-filing of the appeal is condoned.

RSA No.3301 of 2015

Defendants-appellants have preferred the present second appeal against the judgment dated 15.01.2015 passed by the learned Additional District Judge, Patiala whereby the appeal filed by the defendants-appellants as well as cross objections filed by the plaintiffs-respondents were partly allowed modifying the judgment and decree dated 20.07.2013 passed by learned Civil Judge (Sr. Divn.), Patiala to the effect that the plaintiffs were entitled to get revised pension after grant of 9 years first time bound promotional scale w.e.f. 01.01.1986, 16 years promotional increment w.e.f. 1.1.1989 and 23 years promotional increment w.e.f. 1.1.1996 for the period

of three years preceding to the filing of the suit and in future they will not be entitled to get any pecuniary advantage for the period extending beyond three years of filing of the suit.

Brief facts necessary for disposal of the present second appeal are that Gurdas Ram, predecessor-in-interest of plaintiffs-respondent Nos. 1 and 2 had joined the service of PSEB (now PSTCL) i.e. appellants on 02.02.1966 as Regular Meter Reader. Later on, he was promoted to the post of Meter Inspector and had joined the said post on 29.06.1990. Gurdas Ram had retired from the services on 31.12.2004 on attaining the age of superannuation. Thereafter, he had expired on 18.09.2005.

Plaintiffs-respondents (widow and daughter of late Gurdas Ram) filed the suit seeking declaration that non granting of time bound promotional scale on completion of 9 years, 16 years and 23 years of service to Gurdas Ram by the appellants-defendants was illegal, null and void. It was stated that the plaintiffs were entitled to revised pension after grant of aforesaid time bound promotional increments to Gurdas Ram. The Scheme for grant of 9 years & 16 years promotional scale and 23 years promotional increment was introduced by PSEB vide circular No.17/90 dated 23.04.1990 w.e.f. 1.1.1986 and Gurdas Ram was entitled to 9 years and 16 years promotional scale w.e.f. 1.1.1986 and 1.1.1989. He was also entitled to promotional increment w.e.f. 1.1.1996 on completion of 23 years of service from the date of joining on the induct post but the same was not granted to him which led to the filing of representations before the appellants-defendants (department). In response to the application submitted by the plaintiffs-respondents under the RTI Act, appellants-defendants had intimated, vide memo dated 14.08.2008 that case of Gurdas Ram for grant

of 9 years first time bound promotional scale would be considered on receipt of ACRs. They pleaded that Gurdas Ram was not entitled to 23 years promotional scale increment because he had not passed departmental accounts examination. According to the plaintiffs, Gurdas Ram was getting lesser pay till his retirement and consequent to the same, plaintiffs are getting lesser family pension every month which gave cause of action to the plaintiffs to institute the present suit.

Upon notice, defendants-appellants filed written statement stating therein that 9 & 16 years benefits had already been given to the deceased employee-Gurdas Ram. It was further averred that Gurdas Ram was not entitled to 23 years advance promotional increment as the said benefit was available to the employee only when he had got third promotional channel. The said increment was allowed to the employee only if, he was eligible for the third promotional post. Gurdas Ram had admittedly, joined at the post of Meter Reader and was promoted to the post of Meter Inspector. Since Gurdas Ram was not holding basic qualification for promotion to the post of Assistant Engineer, therefore, he was not entitled to grant of 23 years advance promotional increment. Gurdas Ram had not passed Subordinate Engineers Examination for becoming eligible to the post of JE-1.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. *Whether the plaintiff is entitled to declaration as prayed for? OPP.*
2. *Whether the plaintiff is entitled to mandatory injunction as prayed for?OPP.*
3. *Whether the plaintiff has got no locus standi to file the present suit?OPD.*

4. *Whether the suit is time barred?OPD.*
5. *Relief.*

Trial Court, after going through the evidence led by the parties, decreed the suit of the plaintiffs-respondents to the effect that Gurdas Ram was entitled for 9 years first time bound promotional scale w.e.f. 01.01.1986 and 16 years time bound promotional scale w.e.f. 01.01.1989 with all consequential benefits along with interest @ 6% per annum from the date of filing of the suit till realization. However, he was not held entitled to 23 years advance promotional increments w.e.f. 01.01.1996.

Aggrieved against this judgment and decree, defendants-appellants filed an appeal. Plaintiff-Saroj Kanta also filed cross-objections. In appeal, the claim of the plaintiffs was restricted to grant of 23 years of promotional increment.

Relevant portion of circular with regard to grant of promotional increment on completion of 23 years of service, is reproduced as under:-

“The Punjab State Electricity Board has further decided to allow benefit of promotional increment(s) to an employee on completion of 23 years of regular service provided:

- (i) He has not been benefited by the scheme of 9/16 years time bound promotional scale.
- (ii) He has not earned three regular promotions in his career.
- (iii) He has not earned third promotion in his regular service between 16th and 23rd years of service.
- (iv) The increments referred to in para 2 are in the nature of advance promotional benefit to be absorbed in next regular promotion.”

This circular was further amended by Finance Circular No.62/96, Ex.P25, which is as under:-

“In continuation to this office order No.281/Fin/PRC-1988/Vol. IV dated 13.10.1992, the Punjab State Elect. Board is pleased to add the following notes under para 2 (iv) of office order No.197/Fin.PRC-1988 dated

23.04.1990: Note:

- (i) The benefit of promotional increment(s) on completion of 23 years service is to be granted under Regulation-4.10 of PSEB MSR Vol. 1 Part 1. The authority competent to grant this benefit shall be the promoting authority of the employee concerned.
- (ii) Feature No. 7 and 8 shall also applicable in toto for the grant of promotional increment(s) on completion of 23 years of regular service.”

Reference was made to another circular dated 09.11.1999, Ex.P26, which provided that proviso 1 appearing in para 2 of circular dated 23.04.1990, Ex.P24, would stand deleted with suitable stipulations w.e.f. 01.01.1996. Hence, vide circular dated 09.11.1999 (Ex.P26), the condition that 23 years promotional increment was to be only granted to the employee who had not been benefited by Scheme of 9/16 years, had been deleted and this circular was implemented w.e.f. 01.01.1996. Clause 7 of circular dated 23.04.1990 (Ex.P24) reads as under:-

“7. In case of employees who do not fulfill the qualification/passing of examination essential for their promotion to the next higher post, they shall also be placed into schedule as referred in para 5 (above).”

The above clause provides that the employees, who do not fulfill the qualification/passing of examination essential for their promotion to the next higher post, would also be placed into time bound promotional scale. In this circular, it was not clear, as to if the promotional increment would be admissible to the employees, who are not having requisite qualification to get promotion. This fact was further clarified vide circular No.62/92 (Ex.P25), whereby it was specifically provided that feature 7 and 8 of circular dated 23.04.1990 (Ex.P24) will be applicable in toto for grant of increment on completion of 23 years of service. Hence, clarification (Ex.P25) made it clear that even if, Gurdas Ram was not eligible for

promotion to the post of Additional Assistant Engineer on account of not passing the examination of Subordinate Engineers, still he was entitled to get promotional increment on completion of 23 years of service. A Division Bench of this Court in **Executive Engineer, Punjab State Electricity Board Vs. Paul Singh**, LPA No. 883 of 2012 (decided on 03.07.2012) has upheld the clarification given by circular dated 23.04.1990 that there was no pre condition of passing any examination for grant of promotional increment. The lower appellate Court further referred to a judgment passed by this Court in **Dhanna Singh Vs. PSEB**, CWP No.18576 of 2008 (decided on 30.10.2008) and held that in the said judgment circular No.62/92 and circular dated 09.11.1999 (Ex.P26) were not considered, as they were not brought to the notice of the Court. Circular No.62/96 (Ex.P25) and circular 09.11.1999 (Ex.P26) had clarified that the benefit of 23 years promotional increment would be admissible to the employees, who had been benefited by 9/16 years time bound promotional scale as well. The clause that this benefit will not be admissible to the employees who had got 9/16 years benefit, was deleted and the said circular was to be implemented w.e.f. 01.01.1996. Gurdas Ram had retired from service on 31.12.2004. Accordingly, for all intents and purposes, since the circular dated 09.11.1999 (Ex.P26) was to be implemented w.e.f. 01.01.1996, the suit was decreed to the effect that after getting benefit of 9 years first time bound promotional scale w.e.f. 01.01.1986, 16 years of promotional increment w.e.f. 01.01.1989, he would be entitled to 23 years promotional increment w.e.f. 01.01.1996. The revised pensionary benefits were restricted for three years preceding to the filing of suit.

After going through the judgment passed by this lower

appellate Court, this Court is of the view that the same has been passed on correct interpretation of the aforesaid circulars issued by the defendant-board, which had clarified that an employee, who does not fulfill the qualification of passing of the examination essential for promotion, shall also be placed into time bound promotional scale. The suit of the plaintiffs-respondents has been rightly decreed. No illegality, much less perversity, has been found in the impugned judgment(s) warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

17.07.2015
ajp

(RITU BAHRI)
JUDGE