

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

RSA No.700 of 1999

Date of Decision:23.11.2016

Amar Nath

... Appellant

Vs.

The Punjab State Electricity Board and others now Punjab State Power

Corporation Limited

... Respondents

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

Present : Mr. Harinder Sharma, Advocate for the appellant.

Mr. Vinod S. Bhardwaj, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant appeal, the appellant has questioned the validity of the appellate court order dated 25.9.1998 passed in Civil Appeal No.13 of 1997.

On 30.3.1990 and 20.4.1990, respondents No.6 and 7, who were juniors to the appellant, were promoted to the post of Assistant Engineer with reference to the amended rules of recruitment which has been given effect from 2.11.1988. Suit was decreed on 30.10.1996. The respondent-Punjab State Electricity Board preferred an appeal before the appellate court. The appellate court reversed the decree passed by the trial court on 25.9.1998. Thus, the present appeal has been presented.

The trial court framed the following issues:

“i. Whether the order dated 30.3.1990 and 20.4.1990 are illegal, wrongful and void and malafide against the rules and against the principles of natural justice? OPP

2. Whether the plaintiff is entitled to mandatory injunction prayed for? OPP

3. Relief.”

While decreeing the suit, it was held that office order dated 30.3.1990 and 20.4.1990 passed by defendant No.2 promoting the juniors to the appellant are illegal. It is further directed the defendants No.1 to 5 to consider the name of the appellant for promotion to the post of Assistant Engineer as prayed for.

The appellate court while considering the appeal held in para-3 as follows:

“3. The Punjab State Electricity Board contested the case pleading that he has misled the facts to the court and concealed the true facts, which are:-

“The plaintiffs case for promotion is not covered under Regulation No.10.9. The plaintiff has passed the Departmental Accounts Examination on 14.3.1989. As such, the plaintiff was not eligible for promotion as per regulation No.10.9 existing prior to 2.11.1988 as the plaintiff was not fulfilled the requisite eligibility conditions of passing the D.A.E. Of Engineering Subordinate. The plaintiff is also not eligible for promotion as per amended regulation No.10.9 effective from 2.11.1988 as the plaintiff has passed the A.M.I.E during service while working as S.S.A on 23.3.1985. The provisions of regulation of 10.9 existing prior to 2.11.1988 and amended w.e.f. 2.11.1988 are reproduced below:-

Existing prior to 2.11.1988

“9% of the posts of Assistant Engineers Electrical/Mechanical may be reserved for promotion from amongst the graduates in Electrical/Mechanical Engineering/AMIE qualified hands who possess this qualification at the time the appointment as Technical Subordinate in the Board, after completion of 3 years service in that capacity. (This amendment takes effect from 17.11.81).”

After amendment w.e.f. 2.11.1988:

“9% of the posts of Assistant Engineers (Elect/Mech.) shall be reserved for promotion from amongst the graduates in Elec./Mech. Engineering/AMIE qualified hands who possess this qualification before joining the service of the Board and have completed three years service as technical subordinates.”
It is also alleged that the suit is barred by limitation. On merits of the case, it is admitted that the plaintiff had joined the service, but he passed section (A) & (B) AMIE during the service while working on SSA whereas the other defendants No.6 and 7 had already passed the examination before joining their services. Therefore, they were entitled to the promotion and they were promoted in accordance with law. Other allegations have been denied.”

The reasons for reversing the decree of the trial court is that (i) the appellant has not passed the prescribed Departmental Accounts Examination and he has passed said examination only on 14.3.1989; (ii) The appellant has acquired AMIE qualification while he was in service whereas amended rules of recruitment stipulate that one must have acquired the qualification before joining the service of the Board.

In this background, learned counsel for the appellant submitted that the amended rules of recruitment w.e.f. 2.11.1988 cannot be given effect in view of the decision passed in LPA No.89 of 1995; decided on 23.11.2005 read with judgment passed in CWP No.3112 of 1994; decided on 3.2.2006. In the case of Meharban Singh, the said decision was implemented by the respondent-board on 21.10,2008. It is further contended by the learned counsel for the appellant decision passed in Meharban Singh's case by this Court has been affirmed by the Supreme Court while dismissing Civil Appeal No.4556 of 2007 on 28.8.2014. Therefore, the appellate court erred in reversing the order of trial court. Hence, the

appellant is entitled to relief granted by the trial court.

Per contra, learned counsel for the respondent-board vehemently contended that the case of the appellant was considered with reference to the juniors for the purpose of promotion to the post of Assistant Engineer. As on the date of juniors' promotion, the appellant did not have the qualification of Departmental Accounts Examination and he has acquired the qualification of AMIE while he was in service, juniors were promoted with reference to the amended rules of recruitment which stipulates that one must have AMIE and other relevant qualification prior to joining the service of the board. Since the appellant did not have the qualification prior to joining the service of the board, therefore, rightly respondent-board has overlooked/ignored the claim of the appellant for promotion to the post of Assistant Engineer on par with the juniors.

Heard learned counsel for the parties.

The appellate court has examined rules of recruitment prior to 2.11.1988 and subsequent to 2.11.1988 and the fact that the appellant has passed Departmental Accounts Examination on 14.3.1989. However, as on the date of disposal of appeal, decision passed in LPA No.89 of 1995 was not available for the reasons that LPA No.89 of 1995 was decided on 23.11.2005 and further decision in Meharban's case was decided on 3.2.2006 and implementation of the judgment in Meharban's case was made on 21.10.2008 and the civil appeal filed by the respondent-board was decided on 25.9.1998.

In view of the above new developments, the appellant's grievance is squarely covered by the decision of this Court in LPA No.89 of 1995 and in the case of Meharban Singh's case. In other words, the

amendment to the rules of recruitment which has been given effect on 2.11.1988 insisting that passing of AMIE and equivalent qualification before joining service of the board cannot be given effect unless and until, it has been notified under Section 79-C of the Electricity Supply Act, 1949 and it has been notified only in the year 2005. As such, the promotion of the appellant is required to be examined from 30.3.1990 and 20.4.1990 when juniors of the appellant were promoted with reference to the un-amended rules. On 30.3.1990, the appellant fulfill the qualification of Departmental Accounts Examination as he has passed the said examination on 14.3.1989 and he has acquired AMIE while he was in service. Therefore, un-amended rule is required to be applied for the purpose of eligibility and promotion of the appellant as well as respondents No.6 and 7 who are juniors to the appellant.

Having regard to the facts and circumstances, the appellate court order dated 25.9.1998 is set aside. The respondent-Board is directed to re-examine the appellant's case for promotion with reference to the decision passed in LPA No.89 of 1995 and in the case of Meharban Singh's case and promote the appellant from the date his juniors' promotion i.e., 30.3.1990 or 20.4.1990 and extend all monetary service benefits. Such exercise shall be undertaken by the respondent-board within a period of three months from today.

The appeal stands allowed.

23.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No