IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10822 of 2012
Reserved on: 18.03.2016
Date of decision: 12.04.2016

Ghumanda Singh ....Petitioner(s)

Versus

Punjab State Power Corporation Ltd. and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. J.S. Virdi, Advocate,
for the petitioner.

Ms. Geeta Sharma, Advocate,
for the respondents.

G.S.SANDHAWALIA, J.

The direction sought in the present writ petition is for grant of equal pay as drawn by respondent no. 5 who is stated to be junior to the petitioner but getting more pay than the petitioner. The order dated 08.03.2011 (Annexure P-3) whereby, the case of the petitioner had been rejected by respondent no. 2 has also been challenged and the quashing of the same has been sought for.

The petitioner had approached this Court earlier in CWP No. 12687 of 2010 that the petitioner's representation dated 08.03.2010 was pending, which was disposed of on 31.07.2010 with a direction that since both the employees were working as Desk Controllers to redress the grievance of the pay anomaly pointed out by the petitioner. The relief being sought was of equal pay for equal work and in the impugned order, reliance has been placed upon the instructions dated

15.04.2002 that the employees should be identical and belong to the same cadre and posts in which they had been promoted. Where the senior government employee opts to get his pay fixation/promotion postponed or opts for revised scale from a day other than the normal appointed day, no relief was to be granted in that case.

It has been noticed that the petitioner was promoted from skilled worker to junior plant attendant and thereafter to the Auxiliary Plant Attendant (APA) and thereafter to Desk Controller. In contrast, the respondent was working as work charge chargeman and appointed as Instrument Supervisor and then as APA through direct recruitment and finally promoted as Desk Controller. On 23.05.1998, at the time of the promotion of respondent no. 5, the petitioner was drawing ₹7500/- on the post of Desk Controller whereas respondent no. 5 was also drawing the same amount though on the lower rank of APA. However, the said respondent had been given the benefit of the decision of the Supreme Court of the work charge service rendered by him and, therefore, the petitioner's case was rejected.

The petitioners specific and pleaded case is that he was appointed as a skilled worker in the year 1975 and was promoted as APA on 10.07.1990 whereas respondent no. 5 was appointed on 19.10.1993. Pay scale of both of them was ₹1800-3200 and the said respondent was drawing ₹1,850/- on 01.05.1994. As per the seniority list of APA dated 13.05.1993, the petitioner was at Sr. No. 216 whereas the respondent was at Sr. No. 270. In April, 1994, the petitioner was getting higher pay of ₹1,960/- whereas the respondent was getting ₹1,850/- and on 01.06.1995, he was getting ₹1,850/- and the respondent from 01.08.1995 was also getting the same amount.

Thereafter on 01.05.2009, the respondent was granted the scale of ₹26,930/- whereas the petitioner was granted the scale of ₹25,580/-. Resultantly, the representation had been made.

The respondents, in their written statement, admitted the factum that the petitioner was promoted as APA on 10.07.1990 whereas, respondent no. 5 was promoted on 12.05.1993. However, he had joined as work charge on 01.05.1972 and worked upto 11.05.1993 and was appointed on regular basis on 05.05.1993 after completion of 9 years of regular service on 12.05.2002, he was granted the benefit of first time bound 9 years scale. In view of his first promotion, two increments were given to him and his basic pay was raised to ₹8,275/-. Thereafter, he was promoted as Desk Controller on 20.12.2003 and his basic scale was fixed at ₹8,825/- and the scale of ₹7,000-11,750. Accordingly, it was pleaded that they belong to different cadre and their promotional channels were also different from the date of appointment.

Respondent no. 5 had filed civil suit before the Additional Civil Judge, Patiala for grant of regular scales of ₹700-1200 w.e.f. 01.01.1978 and ₹1800-3200 from 01.01.1986. The decree was passed on 08.06.2002 and which was upheld till the Apex Court in SLP (C) No. 16138 of 2008 decided on 15.12.2008. The said respondent's pay was fixed at ₹2,100/- in view of the Court orders and the petitioner was promoted as APA on 10.07.1990. The factum of the petitioner drawing ₹1,960/- on 01.04.1994 and the respondent was drawing ₹1,800/- on 12.05.1993 on selection as APA was admitted and plea taken was that pay was protected as per the orders of the Apex Court. It was further averred that the said respondent had retired on 31.10.2010 after serving from 1972 and the petitioner had retired on 30.06.2012 after serving from 1975.

The comparative chart of the service record of both the employees which has been reproduced by the respondents in their written statement, reads as under:-

Ghumanda Singh, Dest Controller (Petitioner)			*Krishan Kumar, Desk Controller (Respondent no. 5)*		
Year	Basic Pay	Desg.	Year	Basic Pay	Desg.
23.05.75	Rs.85/- P.M.	Skilled Helper	01.05.72 to 11.05.93	Rs.75/- P.M.	Work charge man
30.06.83	Rs.400/- P.M.	JPA	--	--	--
10/07/90	Rs.1640/- P.M.	APA	12/05/93	Rs.1800/- P.M.	APA
01/04/98	Rs.7250/- P.M.	Desk Controller	12/05/02	Rs.7750/- to 8275/- P.M.	Nine Years First time bound promotion scale
23.05.98	Rs.7750/- P.M.	23 Years Financial Benefits in lieu of promotion	20.12.03	Rs.8825/- P.M.	Desk Controller
			As per decision of Supreme Court the pay of respondent No. 5 was fixed in the Scale of Rs.700-1200/- from 01.03.80 to 01.03.85 and 01.03.86 to 01.03.93 Rs.2100/- P.M. instead of Rs.1560/- P.M. as mentioned above.		
Date of retirement 30.06.2012			Date of retirement 31.10.2010		

From a perusal of the above, it would be clear that though the petitioner and the respondents had come from different promotional avenues. However, the petitioner admittedly on 10.07.1990 had been promoted as APA, the respondent no. 5 only joined in the said cadre on 12.05.1993 and was at that point drawing more pay than the petitioner to the tune of ₹1,800/- whereas, the petitioner was only drawing ₹1,640/-. Thereafter also, the petitioner was promoted as a Desk Controller on 01.04.1998 and was drawing ₹7,250/- whereas, the said respondent was promoted only on 12.05.2002 more than 4 years later and was drawing ₹7,750/-. Even on 23.05.1998, the petitioner was getting ₹7,750/- whereas respondent no. 5 was drawing ₹8,825/-.

The defence of the respondent-Board is that the said respondent was granted a higher pay on the basis of the orders passed by the Apex Court which could be of no help as the dispute therein was regarding the grade of charge man in the scale of ₹700-1200 and the revised scale of ₹1800-3200. At the time of promotion as APA of respondent no. 5 on 12.05.1993, admittedly his pay was higher at that point of time than the petitioner as per the table reproduced, though he had joined the said post almost 3 years later. Similarly, the petitioner earned promotion as Desk Controller 4 years prior at that point of time to the said respondent but continued to draw less pay. It is not disputed that in the cadre of APA, the petitioner was senior and the said respondent was junior as per the seniority list. In such circumstances, the grouse of the petitioner is well justified and he is accordingly entitled for the benefit of stepping up on the principle of equal pay for equal work and the fact that he was senior to the said respondent. The principle of stepping up of pay of removing the pay anomaly of the senior employee is as per the circular dated 15.04.2002 and is to be given which reads thus:-

> *"i) The junior and senior government employee should belong to the same cadre and the posts in which they have been promoted, should also be identical and in the same cadre."*

The Apex Court in ***Savita vs. Union of India, AIR 1985 SC 1124*** laid down the principles regarding the right of the senior employee to get a pay equal to his junior. The said view was reiterated in ***Union of India vs. P. Jagdish, 1997 (3) SCC 176.*** The relevant portion reads thus:-

> *"7. So far as the second question is concerned it depends upon the applicability of the principle of stepping up. Admittedly, the respondents has been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs. 35/- per month on being promoted to the post of Head Clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly*

the respondents being seniors to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the post to which Rs. 35/- special pay was attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39(d) of the Constitution, it

> *would be applicable only prospectively from the date of the promotion and the fixation of the scale stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed but in the circumstances there would not no order as to costs.*
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> *Appeal dismissed."*

Accordingly, keeping in view the above discussion and the facts, the impugned order is not justifiable and is accordingly quashed. The respondents are directed to refix the pay of the petitioner w.e.f. 12.05.1993 equal to that of the respondent no. 5. The necessary arrears be paid to the petitioner within a period of 3 months. The said exercise be completed within a period of 3 months from the date of receipt of certified copy of the judgment and the arrears be paid to the petitioner. Accordingly, further last pay drawn be refixed and necessary requirements be worked out regarding his right of pension on account of benefit granted above. In case the arrears are not paid within the above said period, the Board will pay interest @ 8% per annum.

12.04.2016 (G.S. SANDHAWALIA)
shivani JUDGE