

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12877-2013 (O&M)
Date of decision: 29.07.2016

Naresh Kumar Julka

.....Petitioner

versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.C.M.Chopra, Advocate for the petitioner
Mr.Vivek Sharma, Advocate for the respondents

- 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)

The petitioner was appointed as Junior Engineer/ Line Superintendent on adhoc basis w.e.f. 3.9.1974. He was granted annual grade increments from time to time. His service was continued and was without any break. He was appointed on regular basis w.e.f. 18.10.1978 without any break. Petitioner retired on 31.12.2010 on attaining the age of superannuation from the post of Assistant Executive Engineer. Petitioner states that adhoc service rendered from 3.9.1974 to 17.10.1978 was not counted towards retiral benefits. The increments granted for the adhoc period were withdrawn in 1981 without affording any opportunity of hearing to the petitioner and by just making an entry in the service book. On 4.3.2009, his stepping up of pay w.e.f. 1.10.1999 was withdrawn and changed to 1.10.2000 and recovery of Rs.34082/- from 1.10.1999 to 30.5.2006 was calculated without hearing the petitioner.

It also comes out that petitioner previously approached this

Court by filing CWP No.11149 of 2012 which was decided in limine on 31.5.2012, directing the respondents to pass a speaking order on the representation of the petitioner. Accordingly, a speaking order dated 22.11.2012 (Annexure P4) was passed wherein adhoc service was counted for grant of retiral benefit. However, increments for adhoc service were declined and similarly withdrawal of stepping up of second time bound scale was also declined.

Respondents have taken the stand that the order of withdrawal of increments was passed in the year 1981 and stepping up was declined on 21.11.2007. These were not challenged within time. The pay was rightly re-fixed.

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

In the present petition, now only the following two claims of the petitioner survive for consideration:-

- (i) Whether the increments for the adhoc service of the petitioner were rightly withdrawn and claim in this regard was rightly rejected vide speaking order (Annexure P4)?
- (ii) Whether the withdrawal of stepping up of second time bound scale was rightly withdrawn and claim in this regard was rightly rejected vide speaking order (Annexure P4)?

Learned counsel for the petitioner has relied upon circular of the respondents dated 29.3.1957 (Annexure P5), which was duly adopted by the Punjab State Electricity Board. As per the said circular, which is not disputed by the respondents, it was the policy of the Board that the benefit of previous temporary service is to be counted towards increments and

leave. The said policy has not been withdrawn so far. Therefore, for the adhoc service, increments were to be granted and were wrongly withdrawn and are contrary to the circular Annexure P5. As such, it is held that the petitioner is entitled to increments for the period of his adhoc service and his pay is liable to be accordingly re-fixed.

Now, coming to the second part regarding withdrawal of stepping up of second time bound scale. It comes out that the same was granted but withdrawn on 21.11.2007. However, the respondents do not claim that any order was passed for withdrawing the said stepping up of the pay. It is established law that if stepping up of second time bound scale is granted and same is sought to be withdrawn the employee is to be given an opportunity of hearing and order in this regard was required to be passed. Undoubtedly, the petitioner, after completion of 16 years of service and when he passed the required departmental accounts examination, he was granted stepping up of second time bound scale i.e. the requisite little higher scale, as stipulated under the rules. Once, the scale is granted, it cannot be arbitrarily withdrawn without assigning any reason. Therefore, withdrawal of stepping up of second time bound scale in the year 2007 is also found to be illegal and is set aside.

Learned counsel for the respondent has relied upon the authority of Hon'ble Supreme Court Bhakra Beas Management Board vs. Krishan Kumar Vij and another, (2010) 8 Supreme Court Cases 701 and request that the petition should be dismissed on the basis of laches.

I am of the view that in fact while withdrawing the increments for the adhoc period of service, no order was passed and just an entry was made in the service book. Said withdrawal was against the circular of the

department. Also withdrawal of increments is a continuous cause of action. Even when a legal notice was issued, the claim was rejected on merits and now a speaking order Annexure P4 passed by the respondents has been challenged before this Court without any delay. Similar is the case of withdrawal of stepping up of second time bound scale granted after completion of 16 years of service. Such benefits cannot be withdrawn without passing a speaking order. The petitioner retired in the year 2010 and had approached this Court earlier also after his several representations made to the departmental failed. It was in pursuance to the directions given by this Court in the previous writ petition that a speaking order was passed which was promptly challenged. Hence, in this case, the said authority is not applicable.

As a result of the foregoing discussion, the present writ petition is allowed. The respondents are directed to grant the increments for the adhoc service of the petitioner and also restore the stepping up of second time bound scale given to the petitioner and accordingly recalculate the pension and other retiral benefits and pay the same within three months. However, the arrears shall be restricted to 36 months on account of grant of increments for the adhoc service. Petitioner shall also be entitled to interest @ 6% per annum on the said arrears released to him.

Petition is accordingly allowed.

29.07.2016
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes/ No

Whether Reportable:

Yes/No