IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 22955 of 2011 (O/M)
Date of decision : 5.12.2016

Raj Gopal .... Petitioner (s)

Versus

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

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Bansal, Advocate, for the petitioner.

Ms. Meena Bansal, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner, who retired as a Junior Engineer from respondent No. 1-Corporation, seeks the writ of mandamus, directing the respondents to grant him 23 years promotional increments. He also seeks mandamus that the recovery from his leave encashment, as disclosed in letter dated 17.8.2011 (Annexure-P-5 and Annexure-P-7), be withdrawn and the recovered amount be paid back to him with 18% per annum interest.

The petitioner claims that he joined the respondent-Corporation as a Sub Station Assistant on 21.12.1978. He completed 23 years of service on his induction post on 21.12.2001. The petitioner superannuated from service on 30.9.2007 as JE S/S from the office of City Division Tarn Taran of Punjab State Power Corporation Limited. It is stated that the petitioner has been repeatedly representing the authorities for grant of promotional increments on completionof 23 years of service. He addressed such letters on 24.11.2008, 18.3.2009, 16.1.2010 and 16.5.2011 after his retirement. Now, the replies dated 17.8.2011 (Annexure-P-5 and P-7) have been sent. The petitioner claims that from the reply dated 17.8.2011 (Annexure-P-7), it comes that he was entitled to arrears of Rs. 89,112/-. The first 40% installment of his arrears were Rs. 35,645/-, out of which Rs. 3,600/- have been deducted as income tax. An excess payment of Rs. 42,100/- was made on account of leave encashment. Therefore, Rs. 32,045/- have been deducted out of this amount and rather the petitioner is liable to pay Rs. 10,055/- to the department. The petitioner claims that he is not liable to pay income tax being a senior citizen as his annual income is less than Rs. 2,40,000/-. He was not given any notice regarding the excess payment of leave encashment.

In the reply, the respondents have pleaded that the petitioner was appointed as Sub Station Assistant (SSA) on 21.12.1978. He completed 23 years of service on 21.12.2001. As per the criteria for promotion, the next promotional post was Sub Station Operator (SSO), which was granted to the petitioner. The next promotion was AAE/JE-I, for which the petitioner did not qualify as he was not a diploma holder and did not have 10 years of experience as a Junior Engineer. The criteria for grant of 23 years of promotional increments was laid down in Finance Circular No. 20/2000 dated 28.7.2000 (Annexure-R-1/Annexure-P-3).

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

Admittedly, the petitioner was granted first promotion from Sub Station Assistant to Sub Station Operator. The promotion from Sub Station Operator to AAE/JE-I was not granted on the ground that the petitioner does not have requisite qualification of having a diploma having 10 years experience as JE. The said promotion is stated to have been denied in the year 2001. The petitioner claims that he had completed 23 years of service on the induction post. To become eligible for 23 years' promotional increments, the criteria was laid down in Finance Circular No. 20/2000 dated 28.7.2000 (Annexure-R-1/Annexure-P-3), which is reproduced as under :-

> "Issued vide Secretary Finance Section, PSEB, Patiala Office order No. 392/Fin./PRC-121 dated 28th July, 2000.
>
> The Punjab State Electricity Board is pleased to decide that the grant of benefit of promotional increment (s) to an employee on completion of 23 years service as envisaged in its O/O No. 384/Fin./PRC-121 dated 9.11.99 will be governed by the following conditions :-
>
> i) he/she has the avenue of three promotions but has not earned three regular promotions in his/her regular service from the date of joining on the induction post/ or any other post specifically declared as induction post for granting time bound promotional/devised promotional scale.
>
> ii) He/she has not earned third promotion in his/her regular service between 16th and 23rd years of service.
>
> iii) He/she has not placed in a scale which is higher than the scale of his/her next higher post.
>
> iv) The increment (s) are in the nature of advance promotional benefits to be absorbed in the next regular promotion.
>
> v) Those who forego promotion shall not be entitled for the benefit.
>
> 2. This order will be effective from 1.1.96 without prejudice to the Assured Career Progression Scheme to be devised consequent upon revision of pay scales."

It goes to show that an employee must have the avenue of three promotions, but has not earned three regular promotions in his/her regular service from the date of joining of induction post. Further, he/she has not earned third promotion in his/her regular service between 16^{th} and 23^{rd} years of service.

According to the petitioner, he was granted first promotion. The second promotion was available to him since he was a diploma holder. He has already submitted the copy of the diploma to the respondents. However, there is nothing on file to show that during his service till retirement on 30.9.2007, the petitioner could get third promotion also.

The learned counsel for the petitioner has argued that since the petitioner was denied second promotion wrongly, therefore, had he got the second promotion, he would have got the third promotion also ?

In the present writ petition, it is claimed by the petitioner that he should be given notional promotion to the post of AAE/JE-I. Then the next promotion depends upon the seniority and number of persons. Therefore, merely on the basis of assumption, this Court cannot assume that before the retirement of the petitioner, he had third promotion avenue also. Since the petitioner is not proved to have fulfilled the first condition, therefore, he is not entitled to 23 years promotional increments in terms of Finance Circular No. 20/2000 dated 28.7.2000 (Annexure-R-1/Annexure-P-3).

Now, coming to the information obtained by the petitioner under the Right to Information Act, 2005, regarding deduction from the leave encashment, it comes out that the same was due to excess payment made to the petitioner. Therefore, the same was adjusted while releasing the leave encashment. The leave encashment was released to the petitioner after his retirement in the year 2007. The petitioner did not challenge the same till the year 2011. He got information under the RTI Act, 2005 only on 17.8.2011 (Annexure-P-7) and thereafter filed the present writ petition. The plea of the learned counsel for the petitioner is that he should have been issued a show cause notice before effecting the recovery.

I am of the view that the imposition of penalty and adjustment in the retiral dues are two different things. Here, the respondents claim that excess payment was made. The petitioner does not show that the said excess payment does not exist and the deduction from the leave encashment amounts to penalty. Therefore, no show cause notice was required to be issued. It being so, there is no ground to issue the writ of mandamus.

Regarding the income tax, which is allegedly stated to have been deducted from the dues, the petitioner can always claim the refund from the income tax authorities.

With the aforesaid observations, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

5.12.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No