IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CWP No.17185 of 2014** (O&M)
Date of Decision: 17.08.2016

Madan Mohan Gupta and others **.... Petitioners**

vs.

Punjab State Power Corporation Ltd. and others **.... Respondents**

(2) **CWP No.779 of 2014** (O&M)

Malkiat Singh and another **.... Petitioners**

vs.

The Punjab Power Corporation Ltd. and another **.... Respondents**

(3) **CWP No.22688 of 2014** (O&M)

Kushal Singh Pathania **.... Petitioner**

vs.

Punjab State Power Corporation Ltd. and others **.... Respondents**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Munish Dadwal, Advocate
for the petitioner (in CWP Nos.17185 and 22688 of 2014)

Mr.A.K.Walia, Advocate
for the petitioners (in CWP No.779 of 2014)

Mr. Vikas Chatrath, Advocate
for the respondent (in CWP No.779 of 2014)

Mr. Parminder Singh-I, Advocate
for the respondent (In CWP Nos.17185 and 22688 of 2014)

<u>Kuldip Singh J.(Oral)</u>

This order of mine shall dispose of CWP Nos.779, 17185 and 22688 of 2014. The facts are extracted from CWP No.17185 of 2014.

There are seven petitioners in this petition, who were promoted to various posts i.e Assistant Engineer as well as Assistant Executive Engineers from the department of Punjab Power Corporation Limited. They have retired from their duties on different dates between 30.09.2006 to 30.09.2010. They seek the quashing of Circular dated 18.11.2011 issued by respondent No.2 (Annexure P-3) as well as Circular dated 20.09.2012 (Annexure P-6) regarding the fixation of date for the purpose of grant of benefits, which is contrary to the Regulations dated 15.10.2009 framed under Section 79 (C) of the Electricity (Supply) Act 1948 (Annexure P-2) as well as subsequent communication dated 10.05.2013 (Annexure P-8). They also seek quashing of the order dated 23.07.2014 passed by respondent No.4 (Annexure P-12), whereby their representations were rejected. They further seek writ of mandamus directing the respondents to grant the grade pay as well as revised pay in view of Regulations (Annexure P-2) as they are fulfilling the eligibility criteria laid down in the said regulation.

Petitioners claim that respondent-department issued a Circular dated 15.10.2009 framing certain Regulations, known as Punjab State Electricity Board (Revised Pay) Regulation 2009 (for short ' the Regulation 2009') in the exercise of powers under Section 79 (C) of the Electricity (Supply) Act 1948 (for short 'the Act'). The Regulations 7 stipulates as to how the fixation of pay in revised pay structure is to be made and sub Regulation (3) of Regulation 6 provides that in case no option is given, the employee shall deem to have given options to be regulated by such regulations. As per regulation (Annexure P-2), the regulation shall deem to have come into effect before 01.01.2006. However, subsequently the finance Circular No.54/2011 dated 18.11.2011 (Annexure P-3) was issued which is stated to be in continuation of the office order dated 24.05.1990 and the said Regulation dated 15.10.2009. It was stated in the circular that now the matter has again been considered and it has been decided that the aforesaid benefits will be allowed to all the AE/AEEs/Sr. Xens, Aos/Sr.AO and Deputy CAOs of PSPCL from 15.10.2009 onwards in the Erstwhile PSEB revised pay to the subject to certain conditions laid therein.

The grouse of the petitioners is that the cut off date has been changed from 01.01.2006 to 15.10.2009 vide which the petitioners except Kalash Kumar has been deprived of the benefit as they had retired after 01.01.2006 to 14.10.2009. Petitioner-Kalash Kumar is stated to have not been given benefit of revised pay scale even though he had retired after the Circular dated 15.10.2009.

Coming to the Writ petition No.779 of 2014, the two petitioners, in this case, were retired as Assistant Executive Engineer respectively between 28.02.2006 and 31.01.2008. The Regulation (Annexure P-2) in CWP No. 779 of 2014 is Annexure P-3 in this case and the impugned Regulation is Annexure P-5 and clarification letter Anneuxre P-7.

The petitioner in CWP No. 22688 of 2014 retired as Assistant Executive Engineer on 31 January 2007. The plea of the learned counsel for the petitioner is that the Board of Financial (Annexure P-3) is without any force since in case Annexure P-3 does not amend the original regulation 2009 in the exercise Power of 79 (C) Electricity (Supply) Act 1948.

A plea was taken by respondents that the employer can decide the cut of date. It was stated that it is a case of re-revision of the pay and the cut off date was re-fixed by the department and the grade pay of Rs.6,850/- was applicable w.e.f. 15.10.2009. The time gap for promotion was also modified from three years to four years.

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

It comes out that finance Circular dated 15.10.2009 (Annexure P-2) frames certain regulations in the exercise of powers conferred under Section 79 (C) of the 1948 Act which empowered the Punjab Electricity Board to frame regulations. Therefore, power of framing rules and regulations flows from Section 79 (C) of the Electricity (Supply) Act 1948. In the exercise of these powers, the Board of Directors framed the regulations (Annexure P-2) dated 15.10.2009 and the financial Circular dated 15/2009 was issued. The said regulation is called the Punjab State Electricity Board revised pay Regulation 2009 and is deemed to come into force w.e.f. 01.01.2006. Regarding the exercise of option regulation 6(3) lays down as under :-

> " (3) If the intimation regarding option is not received within the period as specified in sub-regulation (1), the Board employee shall be deemed to have elected to be governed by the revised pay structure with effect from the First day of January, 2006."

It would mean that if the option called for is not exercised, the employee is deemed to be governed by the revised pay structure w.e.f. 01.01.2006. Now, if the impugned circular No.54/2011 dated 18.11.2011 (Annexure-P-3) is examined, it comes out that it is in continuation of one circular dated 24.05.1990 and the Regulation 2009 dated 15.10.2009.

Through this circular, matter was reconsidered and it was decided that the aforesaid benefits will be allowed to all the AE/AEEs/Sr. Xens and Aos/Sr.AO/ Dy. CAOs of PSPCL from 15.10.2009 onward in the Erstwhile PSEB Revised Pay Regulation 2009 subject to certain conditions mentioned therein. The grade pay of Rs.6,850/- was to be given. Now the legal question arising for consideration is whether the regulation (Annexure P-2) would be amended by simply issuing Circular at Annexure P-3? The reply is in negative. The regulation (Annexure P-2) dated 15.10.2009 is statutory in nature. The Regulation 2009 was framed in exercise of powers under Section 79 (C) of the Electricity (Supply) Act 1948, therefore, the Regulation Annexure P-2 is a statutory in nature and framed in pursuance to Section 79 (C) of the Electricity (Supply) Act 1948 (Annexure P-2). However, Annexure P-3 is the financial circular issued on the administrative side. Therefore, by way of administrative circular, the regulations could not be amended. For amendment in Circular (Annexure P-2) an amendment of Regulation was required, which was to be done by the authority competent to frame the said regulation.

Therefore, financial Circular (Annexure P-3) whereby the cut off date was changed from 01.01.2006 to 15.10.2009 being contrary to the Regulation (Annexure P-2) is liable to be quashed so far as it is contrary to the Regulation (Annexure P-2). The grade pay granted vide Annexure P2 also could not be amended by Annexure P3. Consequently, Writ Petition No. 17185 of 2014 is allowed to the extent that the Circular (Annexure P-3) so far as it is the change of application of Regulation (Annexure P-2) from 01.01.2006 to 15.10.2009 and so far as it is contrary to and amends the

Regulation 2009 (Annexure P-2) is hereby, quashed. However, it is always open to the concerned department to decide as to what other supplementary benefits are to be given to the employees and if so, whether same is to be given from retrospective date or from prospective date and also as to which grade pay is to be given. Consequently, the impugned order (Annexure P-12) is also quashed. However, respondents can always amend regulation Annexure P2 in accordance with law.

Consequently, all petitions are allowed. Respondents are directed to re-fix the pay of the petitioners and release the arrears within a period of three months from the date of receipt of certified copy of this order.

(KULDIP SINGH)
JUDGE

August 17, 2016
hemlata/rishabh

Whether speaking / reasoned Yes / No

Whether reportable Yes / No