

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

Date of decision: 26.02.2016

CWP No.3984 of 2012

Yousaf Masih (since deceased) through his LRs ...Petitioner

Vs.

Punjab State Power Corporation Ltd. & another ...Respondents

CWP No.4196 of 2012

Gopal Singh & others ...Petitioners

Vs.

Punjab State Power Corporation Ltd. & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. B.D.Sharma, Advocate, for the petitioner(s).

Mr. Gursimranjit Singh, Advocate, for
Mr. Amit Aggarwal, Advocate, for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

1. This order will dispose of above cases bearing CWP Nos.3984 of 2012 & 4196 of 2012, as common questions of law and facts are involved in them, which can conveniently be decided by a common order. The facts are taken from CWP No.3984 of 2012 for the sake of convenience.

2. Petitioner – Yousaf Masih died during the pendency of this writ petition in July, 2015. His sons and wife of his pre-deceased son have been impleaded as legal representatives. Yousaf Masih was appointed as daily-wage employee in the erstwhile Punjab State Electricity Board (PSEB) (now known as 'Punjab State Power Corporation Limited') in September, 1986. His

services were terminated on 1st January, 1989. Yousaf Masih raised an industrial dispute, which was referred for adjudication before the Labour Court, Gurdaspur. The Labour Court held the termination illegal and awarded reinstatement with continuity of services, but restricted arrears to 25% back-wages from the date of demand notice i.e. 10th September, 1994. The award was passed on 17th March, 2003. Aggrieved against the said award, PSEB carried a writ petition to this Court, which was dismissed on 14th March, 2005. The order has attained finality as no further Special Leave Petition/Appeal was filed in the Supreme Court. The petitioner was reinstated in service vide order dated 29th August, 2006 and posted at Sub Division Jauran. The back-wages as awarded were paid.

3. By a subsequent order dated 1st August, 2007, the petitioner was offered the post of Work Charge T-Mate in the pay scale of Rs.2720-4300/-. He was also granted allowances which had accrued to employees of his category of post, who was serving in the Board. However, the order recited that the nature of appointment was temporary and his services can be terminated by giving one month's notice along with pay as per standard orders.

4. The complaint in the petition is that despite reinstatement and change of designation from daily-wager to Work Charge T-Mate, the benefit of his past service has not been given to him as ought to be in terms of the award of the Labour Court, which would relate back to the date of his original appointment in the year 1986. If the benefit of continuity was given to him, he would be required to be declared a regular Work Charge T-Mate from the date his juniors pre 1989 were later made regular, who were retained in service and did not suffer the agony of litigation. PSEB/PSPCL has not passed an order recognizing benefits of the order of the Labour Court, which grants reinstatement with continuity. With the setting aside of the termination order, it

would be result in deeming fiction as though the order was never passed and the petitioner would have a right to all service benefits falling due to him till he died in harness.

5. Learned counsel for the petitioner relies on a ruling of this Court in CWP No.2522 of 2010 titled 'Punjab State Electricity Board Workers Union, Distt. Gurdaspur Vs. The Industrial Tribunal, Chandigarh & others' decided on 23rd August, 2010 in much the same factual background as presented in this petition. There also rights were claimed through awards passed by the Industrial Tribunal setting aside termination orders of the disputing workman on 1st January, 1989. Again there also back-wages were restricted from the date of reference, but not from the back date. The Court issued directions to the Board to reconsider the claim of the workman for his promotion to the post of T-Mate by taking him to be in service with continuity from the date of his appointment and not to count his seniority with effect from 29th November, 1995 restricting back-wages but from the back date. The situation in the instant case is identical and I cannot see my way in distinguishing in principle that decision from the instant case.

6. As a result, this petition is accepted. The petitioner is held entitled to seniority/priority with effect from the original date of appointment in 1986 as daily-wager. The respondents are directed to consider the claim of the petitioner in the light of this order and re-determine his dates of appointment/promotion/regularization with effect from the date when his juniors were granted benefit, which is being claimed by the petitioner herein. This consideration is directed to take place within two months from the date of receipt of certified copy of this order. If the impleaded legal representatives make a request for personal hearing or through an authorized representative, the same will be allowed within the time frame. The final order be

communicated to the legal representatives, whose names are borne on the record of this case and to do so soon after the same is passed. In case the order to be passed is adverse to their interest, the legal representatives shall be at liberty to approach this court again claiming monetary benefits as may naturally flow through their late father being part of estate left behind.

[RAJIV NARAIN RAINA]
JUDGE

26.02.2016
Vimal