

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23346 of 2014 (O/M)
Date of decision : 15.9.2016

Darshan Singh

..... Petitioner (s)

Versus

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

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K. Walia, Advocate, for the petitioner.

Mr. P.S. Ghuman, Additional A.G. Punjab.

Mr. Manuj Chadha, Advocate, for respondent No. 3.

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 ?

:-

:-

KULDIP SINGH J. (ORAL)

The petitioner, while working as Revenue Accountant, was granted time bound higher pay scale with effect from 5.1.1997 after completion of nine years of service. Thereafter, on 17.12.2000, the petitioner was offered promotion to the post of Revenue Superintendent, but due to family circumstances, he is reported to have foregone the promotion. On 8.10.2009, he was again offered the promotion to the post of Revenue Superintendent and the same was availed by him. Therefore, respondent No.2 passed the impugned order dated 17.5.2011 (Annexure-P-4), whereby on account of foregoing of the promotion offered to the petitioner on completion of 9 years in the year 2000, the time bound pay scale granted

CWP No. 23346 of 2014 (O/M)

to him was kept in abeyance from 7.12.2000 to 7.10.2009 and restored on 8.10.2009 when he actually availed the promotion. Since the petitioner retired from service on 30.4.2014, he has impugned the order dated 17.5.2011 (Annexure-P-4). He has also challenged the order dated Nil (Annexure-P-5), vide which an amount of Rs. 1,34,422/- was ordered to be recovered from the salary of the petitioner during the period 01/2012 to 12/2012. The petitioner has requested for re-fixation of the pension and refund of the said amount, illegally recovered from him.

The stand of the respondents is that the petitioner had foregone his promotion on 17.12.2000. Therefore, in accordance of the circular dated 10.11.2004 (Anenxure-R-1), the benefit of time bound higher pay scale was rightly kept in abeyance from 7.12.2000 to 7.10.2009 and the amount was correctly recovered from him.

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

The matter has been examined by a Single Bench of this Court in Rattan Chand Versus Punjab State Electricity Board and others (CWP No. 2587 of 2009, decided on 12.8.2010), wherein this Court took the view that after availing the benefit on completion of 9 years of service, it would be absurd to deny him the time bound higher pay scale, if subsequent promotion is offered to him and he refused to accept the same.

In this case, the petitioner completed 9 years of service. He was not offered the higher post. Therefore, he was legally entitled to benefit of higher pay scale on completion of 9 years of service, which was given to him with effect from 5.1.1997. The clarification dated 10.11.2004 (Annexure-R-1) has no force of law and, therefore, the benefit could not be

CWP No. 23346 of 2014 (O/M)

withdrawn even temporarily when the next promotion was not availed by the petitioner for one or the other reasons.

The matter was examined by this Court in Raj Pal Singh Versus The Punjab State Power Corporation Limited and others, (CWP No. 26599 of 2013, decided on 21.7.2016), where in the similar circumstances, the instructions dated 10.11.2004 were considered and it was observed as under:-

“It goes to show that Annexure R2 is mere clarification. It does not amend the original circular Annexure P1. What has been given by the circular cannot be withdrawn by mere clarification. Therefore, the clarification Annexure R2 cannot be said to have amended the original circular No.19 of 1988 (Annexure P1) which provided time bound promotional scale to the employees. Once, the scale was granted, it cannot be withdrawn without instructions, having force of law, which in this case was circular No.19 of 1988. The clarification goes beyond the spirit of the circular and therefore, it is held to be illegal and not binding.”

In view of the matter, the present writ petition is squarely covered by the view taken by this Court in Raj Pal Singh's case (supra). Accordingly, the impugned order dated 17.5.2011 (Annexure-P-4) and the order dated Nil (Annexure-P-5) are hereby quashed. The respondents are directed to refund the amount illegally recovered from the petitioner with interest at the rate of 9% per annum within two months from the date of receipt of copy of this judgment. Needless to say that as a consequence of quashing of the impugned orders (Annexures-P-4 and P-5), the pay of the petitioner shall be re-fixed and the pension shall be accordingly released. The same shall also be done within two months from the date of receipt of

CWP No. 23346 of 2014 (O/M)

copy of this judgment.

The present writ petition is accordingly allowed.

(KULDIP SINGH)
JUDGE

15.9.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes