

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26599-2013 (O&M)
Date of decision: 21.07.2016

Raj Pal Singh

.....Petitioner

versus

The Punjab State Power Corporation Limited and others

.....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr.A.K.Walia, Advocate for the petitioner
Mr.Vishal Chaudhary, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **Yes***
- 2. To be referred to the Reporters or not ? **Yes***
- 3. Whether the judgment should be reported in the Digest? **Yes***

Kuldip Singh, J. (Oral)

Petitioner who retired as Upper Division Clerk from the Punjab State Electricity Board (in short, 'the Board') has filed this writ petition praying for issuance of a writ of mandamus directing the respondents to re-fix / revise the pension and other retiral benefits of the petitioner on the basis of letter dated 13.3.2013 (Annexure P12) issued by respondent No.4 and to release arrears of pay and allowances and further issuance of writ of certiorari for quashing order, withdrawing time bound higher pay scale granted to the petitioner after completion of 16 years of service and further restoring the benefits of 16 years time bound higher pay scale to the petitioner from the date it was withdrawn and also refund the amount already recovered with interest @ 12% per annum.

Petitioner joined as Lower Division Clerk in the Board on 7.8.1970. On account of instructions Annexure P1 bearing Circular No.19 of

1988 issued on 23.4.1990, the Board, in view of the stagnation prevailing in various cadres of regular employees, decided to grant time bound higher pay scale to the employees at two stages i.e. after completion of 9 and 16 years service . Accordingly, the petitioner was granted second time bound higher pay scale after completion of 16 years w.e.f. 22.6.1987 vide order dated 15.12.1992 (Annexure P2/T). On 6.11.2001, the petitioner was offered the post of Upper Division Clerk but he forego the promotion. Therefore, vide order 7.7.2003, the order Annexure P5/T was passed withdrawing (keeping in abeyance) the benefit of second time bound higher pay scale granted to the petitioner. Vide order dated 9.12.2003 (Annexure P6/T), the pay of the petitioner was accordingly refixed.

On 17.6.2005, the petitioner was again offered the promotion to the post of Upper Division Clerk, which he accepted. The benefit of second time bound higher pay scale was not restored. Vide order dated 18.2.2008 (Annexure P8/T), the benefit of second time bound higher pay scale was withdrawn w.e.f. 6.11.2001 in place of 7.7.2003 as the petitioner has foregone his promotion on 6.11.2001. According to the petitioner, this was also done without hearing him. Respondent further sought the recovery of Rs.39,692/- against the petitioner vide Annexure P9/T. The petitioner ultimately retired from service on 31.5.2008 and kept sending the representations.

In the reply, the Board, which is now succeeded by Punjab State Power Corporation (in short, 'PSPCL) stated that the promotional scales to the employee was given on completion of 9, 16 and 23 years of service to avoid stagnation and maintain productivity. The idea was that if they are not promoted after 9, 16 and 23 years, the employees be given time bound

promotional scale. This was done to avoid stagnation. The idea will be defeated if the employee forego promotion. The promotion of the petitioner is not denied and it is stated that as per instructions dated 20.10.1993 (Annexure R1), followed by instructions dated 10.11.2004 (Annexure R2), the second time bound promotion was held in abeyance and was restored from 29.6.2005, the date when the petitioner joined the promotional post.

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

Admittedly, time bound promotional scale was granted in pursuance to circular No.19 of 1988 dated 23.4.1990 (Annexure P1). The circular talks of stagnation in the employees and therefore, time bound higher scales to the employees at two stages of their service career were allowed on completion of 9 years and 16 years of service. In the said circular, there is no mention that if later on an employee is sought to be promoted and he declined/ forego the offer for promotion, then the said benefit will be withdrawn. The respondents have heavily relied upon the instructions Annexure R1 and R2 to justify their orders. The perusal of R1 shows that it is an amendment in Memo dated 23.5.1986. The instructions dated 23.5.1986 (Annexure R1) lays down as under:-

“An employee who foregoes his promotion shall be eligible for reconsideration for promotion after being debarred for three years for promotion as well as for the grant of 9/16 years time bound promotional / devised promotion scales and if he still foregoes his promotion after three years, it shall make him permanently ineligible for promotion as well as for the grant of 9/16 years time bound promotional/ devised promotion scales.”

Contents of instructions dated 10.11.2004 (Annexure R2) are reproduced as under:-

*“Subject : Grant of time bound promotional scale – clarification
regarding foregoing promotion.*

Will the Chief Accounts Officer, PSEB, Patiala kindly refer to the subject cited above?

2. The matter regarding grant of Time Bound Promotion Scales to the employees who have foregone their promotion after/ before availing the same (Time Bound Promotional Scale) has been reconsidered and the points raised are clarified as under:-

<i>1)</i>	<i>Where the officials were promoted from LDCs to UDCs after availing 2nd TBPS and the promotion was foregone by them. After three years they were again promoted as UDCs and they availed the promotion.</i>	<i>The benefit should be held-in-abeyance and be restored from the date of joining the promoted post instead of the date it was due.</i>
<i>2)</i>	<i>Where the officials were promoted from LDC to UDC before completion of 16 years but promotion was foregone by them for three years. They were again promoted after three years and they availed the promotion as UDCs.</i>	<i>Time Bound Promotion Scale should be granted from the date of joining the promoted post or 16 years whichever is later.</i>

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 sprit of the circular and therefore, it is held to be illegal and not binding.

Learned counsel for the petitioner has relied upon the authority of this Court in Rattan Chand vs. Punjab State Electricity Board and others, (CWP No.2587 of 2009) decided on 12.8.2010.

After considering the aforesaid authority and facts of this case, the impugned order dated 18.2.2008 (Annexure P8), withdrawing the benefit of second time bound higher pay scale and the subsequent order dated 13.3.2013 (Annexure P12) re-fixing/ revising the pension and other retiral benefits are hereby quashed and the benefit of 16 years time bound higher pay scale granted to the petitioner is restored with consequential benefits. Respondents are directed to refund the amount already recovered from the petitioner with interest @ 9% per annum within three months from the date of receipt of a certified copy of this order.

The petition is accordingly allowed.

21.07.2016
gk

(Kuldip Singh)
Judge