

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 731 of 2012 (O&M)
Date of Decision: 18.10.2016

Pritpal Singh

... Petitioner

V/s

Punjab State Power Corporation Ltd. and Ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Sandeep Arora, Advocate,
for the petitioner.

Mr. B.S. Taunque, Advocate,
for the respondents.

KULDIP SINGH, J (ORAL)

The petitioner by way of this writ petition filed under Article 226/227 of the Constitution of India seeks issuance of writ of certiorari for quashing of impugned order dated 18.07.2007 (*Annexure P-1*) with regard to withdrawal of the proficiency step up and for directing the respondent to refund an amount of Rs. 1,33,246/- so recovered from the petitioner.

Brief facts of this case are that Pritpal Singh-petitioner was earlier working as Internal Auditor in Punjab State Electricity Board which has now been succeeded by the Punjab State Power Corporation Ltd. (for short 'PSPCL'). He was granted proficiency step-up in scale of ₹1800/- - ₹3200/- w.e.f. 1.12.1993 on completion of 8 years of service. Accordingly, the petitioner was paid a sum of ₹1,33,246/- for the period from 01.12.1993 to 30.04.2007 towards that proficiency step up.

It comes out that later on the petitioner was offered the promotion to the post of Revenue Accountant w.e.f. 10.03.1995. The petitioner declined the said promotion which was accepted by the competent

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authority and accordingly the office order No. 435 dated 20.04.1995 was passed. Later on, vide order dated 18.07.2007 (*Annexure P-1*), the proficiency step-up in the form of one additional increment was withdrawn and recovery of ₹1,33,246/- was ordered. The said orders have been impugned by the petitioner in the present writ petition. He also seeks issuance of writ of mandamus for directing the respondents for the refund of amount 1,33,246/- deducted from the gratuity of the petitioner alongwith interest w.e.f. 01.07.2007 till payment.

I have heard learned counsel for both the parties.

It comes out from the pleadings of both the parties that the petitioner who was working as Internal Auditor was granted proficiency step-up on completion of 8 years of service w.e.f. 01.12.1993. Later on, he was offered the promotion of Revenue Accountant from 10.03.1995 which was declined by the petitioner. Later on, vide the impugned order dated 18.07.2007, the said proficiency step-up was withdrawn. The stand of the respondents is that it was withdrawn in terms of the clarification in view of the finance circular No. 64/89 in which clarification was given in such like cases.

Now, the question would arise as to whether after the grant of proficiency step-up, on completion of 8 years of service, the same could be withdrawn if subsequently the employee declines the offer for promotion. The matter was considered by this Court in CWP No. 2587 of 2009 titled as Rattan Chand Vs. Punjab State Electricity Board and others decided on 12.08.2010, wherein this Court held that the time bound promotion scale cannot be withdrawn if subsequently the employee declined the promotion.

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The matter also came up for hearing before this Court in CWP No. 26599 of 2013 titled as Raj Pal Singh Vs. Punjab State Power Corporation Limited decided on 21.07.2016, wherein similar question arose. This Court, after considering the original circular and subsequent clarification, took the view that the benefit of ACP cannot be withdrawn if the employee later on refuses the promotion. This particular circular was also considered by this Court in CWP No. 13449 of 2011 titled as Om Parkash Vs. Punjab State Power Corporation Limited and others decided on 01.06.2016, wherein same view was expressed by the co-ordinate Bench.

In view of the matter, I am of the view that the impugned order dated 18.07.2007 (*Annexure P-1*) is not sustainable in the eyes of law and hereby quashed. Consequently, a sum of ₹ 1,33,246/- so recovered from the gratuity of the petitioner, shall be refunded to the petitioner alongwith interest @ 9 % per annum w.e.f. 01.07.2007 till payment. Needless to say that the pay of the petitioner shall also be restored and the pension be accordingly fixed. Needful be done within two months from the date of receipt of copy of this judgment.

In view of the above, the present petition is allowed.

October 18, 2016
Suresh Kumar

(KULDIP SINGH)
JUDGE

	✓	
<i>Whether speaking / reasoned</i>	<i>Yes</i>	<i>No</i>
		✓
<i>Whether Reportable</i>	<i>Yes</i>	<i>No</i>