IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 8347 of 2012 (O/M)
Date of decision : 11.7.2016

Smt. Rajinder Kaur .... Petitioner

Versus

Punjab State Electricity Board and others .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.P. Thukral, Advocate, for the petitioner.
Ms. Promila Nain, Advocate, for respondent No. 1 and 2.
Mr. Sumit Gupta, Advocate, for respondents No. 3 and 4

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH J. (ORAL)

Petitioner-Rajinder Kaur, a retired Lower Division Clerk, was appointed on adhoc basis by Bhakra Beas Management Board (for short 'BBMB') on 27.1.1972 against the share quota of Punjab State Electricity Board (for short 'PSEB'). Later on, PSEB called for the applications from the adhoc employees for regularization of their services. The interview was held on 29.7.1980 and accordingly, the services of the petitioner were regularized with effect from 4.8.1982. She continued to work with BBMB. She was given second time bound pay scale of Rs. 1640-40-2000-2400-60-2700-2925 with effect from 26.2.1988 with next date of increment as 1.2.1989, vide order dated 26.5.1992 (Annexure-P-12). The petitioner retired from service while working in BBMB on 30.4.2006. At that time, she was drawing the basic pay of Rs. 9,100/-. The retirement order dated 24.3.2006 (Annexure-P-5), issued by the PSEB, shows that she retired from BBMB. Thereafter, while fixing the pension, the Punjab State Power

Corporation Limited (the successor in interest of PSEB) passed the order dated 28.11.2011 (Annexure-P-19), whereby after seeking the legal opinion, it was stated that the higher time bound pay scale was granted considering the period i.e. 31.1.1972 to 3.8.1982 as regular service whereas the said period was to be considered for pensionary benefits only as per PSCL letter No. 21064/21114 dated 23.1.2001. Consequently, it was ordered that the said period is only to be considered for the pensionary benefits and, therefore, for the purpose of grant of pension only, the pay was reduced to Rs. 8,275/-. Therefore, the PSPCL was of the view that the said time bound pay scale is not to be considered for grant of pension as it was wrongly granted. The petitioner by way of present petition has challenged the said order, stating that her pay could not be reduced for the purpose of pension as done by the respondent-PSEB.

Respondents No. 1 and 2, in the reply, have taken the stand that the petitioner was working as LDC with effect from 31.1.1972 to 3.8.1982 in BBMB on adhoc basis and subsequently, she worked against the share quota of PSEB in BBMB from 4.8.1982 to 30.4.2006. The second time bound promotion was granted by BBMB on 26.5.1992 and it was mentioned in the said order that this benefit would be admissible to her so long as she remained in BBMB. She was admittedly drawing the basic pay of Rs. 9,100/- at the time of her retirement from BBMB. As far as the second time bound promotion was concerned, the same was granted to her taking into account her adhoc service from 31.1.1972 to 3.8.1982, subject to the condition that her pay will be admissible to her so long as she remains in BBMB. Therefore, this pay is not applicable to her on repatriation to parent department i.e. PSEB. Therefore, her pension has been fixed on her basic pay of Rs. 8,275/- and not on Rs. 9,100/-.

I have heard the learned counsel for the petitioner, the learned counsel for respondents No. 1 and 2 (PSEB), the learned counsel for respondents No. 3 and 4 (BBMB) and have also carefully gone through the file.

Admittedly, at the time of her retirement, the petitioner was getting the basic pay of Rs. 9,100/-. She was getting the second time bound pay scale of Rs. 1640-40-2000-2400-60-2700-2925 in BBMB with effect from 26.2.1988. The order dated 26.5.1992 (Annexure-P-12), passed by the BBMB is reproduced as under :-

> " The terms of Secretary/Finance, PSEB Patiala Office Order No. 267/FIN/PFC-1988 dated 27.11.1991 as adopted by the BBMB vide Additional Secretary BBMB Chandigarh letter No. 707-807/R-R/130/86/4 dated 6.1.1992 Smt. Rajinder Kaur LDC working in this office is hereby allowed the 2nd time bound scale of Rs. 1640-40-2000-2400-60-2700-2925 with effect from 26.2.1988 with next date of increment as 1.2.1989.
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> The above benefit of time bound promotional scale after completion of 16 years service in the BBMB will be admissible to her so long as she remain in the Bhakra Beas Management Board as she was initially appointed by the BBMB on 31.1.1972 FN and subsequently appointed by the Punjab State Electricity Board and joined the BBMB on 4.8.1982."

The perusal of the said order shows that the condition in the said order was complied with by the petitioner and she continued to work in BBMB till her retirement on the share quota of the PSEB. Now, the question would arise whether the parent department i.e. PSEB could reduce the pay for the purpose of pension, stating that the second time bound pay scale was wrongly granted to the petitioner ?

I am of the view that since the second time bound pay scale was granted to the petitioner considering her service and it was never challenged by anybody, and she continued to work in BBMB and received salary as per the second time bound scale till her retirement, therefore, after the retirement of the petitioner from BBMB, while working on the share quota of PSEB, for the purpose of her pension, her pay could not be reduced. The impugned order dated 28.11.2011 (Annexure-P-19) is against law and against the principles of natural justice and is liable to be quashed. The petitioner was never repatriated to the parent department till her retirement. Had she been repatriated to the parent department, her pay was required to be re-fixed by PSEB, which was never done by it. Therefore, it is held that the petitioner has to be paid pension as per the last drawn pay in the BBMB.

The authority of the Hon'ble Supreme Court of India in *State of Punjab Versus Nirmal Singh,* 2002 (2) SCT 723, produced by the learned counsel for respondents No. 3 and 4, is not attracted in the present case as the facts of the present case are totally different and it is not the case prior to appointment on 1.11.1966.

It being so, the present petition is allowed. The impugned order dated 28.11.2011 (Annexure-P-19) is hereby quashed. It is ordered that the pension of the petitioner shall be fixed at her last drawn pay i.e. Rs. 9,100/-, which was drawn by her in the BBMB. The arrears with interest at the rate of 9% per annum will be paid to her within three months from the date of receipt of certified copy of this order.

(KULDIP SINGH)
JUDGE

11.7.2016
sjks