IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.204 of 2015 (O&M)
Date of Decision:-18.11.2016.

Punjab State Power Corporation Ltd.

.....Appellant

Versus

J.P. Makol

.......Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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Present: Mr. Rajeev Malhotra, Advocate for the appellant.

Mr. Anil Malik, Advocate for the respondent.

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P.B. BAJANTHRI, J. (Oral)

1.) In the instant appeal, the appellant has questioned the validity of Appellate Court order dated 6.9.2014 passed in Civil Appeal No.579 of 2014. Appellant had declined promotional increment to the respondent on completion of 23 years of service on 5.11.2002. In this regard, the respondent filed suit for declaration. Suit was decreed in favour of the respondent. Feeling aggrieved by the order of the decree, appellant has filed an appeal. The Appellate Court rejected the appeal. Thus, the present appeal has been filed.

2.) Brief facts of the case are that the respondent was appointed as Upper Division Clerk on 10.3.1970. He has earned promotion to the post of Divisional Accountant on 6.6.1974. Having passed SAS examination, he was appointed as an SAS Accountant on 5.11.1979 in the scale of ₹ 2000-3500/-. Further he was promoted to the post of Accounts Officer on

12.1.1988 in the scale of ₹ 2400-4250. Policy of the Government is to grant increment to its employees who have stagnated in a particular post for 9, 16 and 23 years. The respondent completed 9 years of service on 5.11.1988, 16 years on 5.11.1995 and 23 years on 5.11.2002. Policy of the Department is that the Accounts Officers would be accommodated to the extent of 20% in the post of Senior Accounts Officers if they are not promoted to the post of Deputy Chief Accounts Officer. However, source cadre for the post of Deputy Chief Accounts Officer is Accounts Officer/Senior Accounts Officer. Admittedly post of Senior Accounts Officer is not part and parcel of the Rules of recruitment. In other words, the post of Senior Accounts Officer would be filled up among Accounts Officer to the extent of 20% with additional pay.

3.) For the purpose of granting benefit of 23 years of service promotion increment would be a hurdle to the respondent just because he is occupying the post of Senior Accounts Officer or not. Perusal of records, it is evident that Senior Accounts Officer post is not a promotional post which is undisputed. Therefore, the respondent holding post of Accounts Officer w.e.f. 12.1.1988 and the induction post of SAS Accountant is w.e.f. 5.11.1979. If the induction post is taken into consideration for the purpose of counting 23 years service, he is entitled to 23 years increments on 5.11.2002. In the meanwhile, petitioner was posted as a Senior Accounts Officer on 23.8.1996 w.e.f 1.5.1996. The respondent was promoted to the post of Deputy Chief Accounts Officer on 9.5.1998.

4.) In this background, the Finance Department Circular No.20/2000 dated 28.7.2000 for the purpose of granting 16 and 23 years one of the condition is that *"he/she has not earned third promotion in* *his/her regular service between 16th and 23rd years of service".* Whereas, in the present case, the induction post is SAS Accountant and next promotion post is Accounts Officer and then Deputy Chief Accounts Officer. Thus, the respondent has earned two promotions from the induction post. Therefore, the respondent is entitled to increment for completing 23 years of service.

5.) Learned counsel for the appellant submitted that induction post is SAS Accounts Officer. Thereafter, the respondent has earned three promotions, namely, Accounts Officer, Senior Accounts Officer and Deputy Chief Accounts Officer. According to him even assuming that Senior Accounts Officer is not a promotional post to Accounts Officer but still in view of the Supreme Court decision in the case of ***State of Rajasthan Vs. Fateh Chand Soni reported in (1996) 1 SCC 562*** in para 8 the Supreme Court has held that a person who gets higher pay scale amounts to promotion. Therefore, the respondent has earned three promotions from the induction post, namely, Accounts Officer, Senior Accounts Officer and Deputy Chief Accounts Officer on 12.1.1988, 23.8.1996 and 9.5.1998, respectively. Therefore, the respondent is not entitled for increment after completion of 23 years of service. Trial Court erred in considering the fact that the respondent has earned higher scale on 23.8.1996 and further he was promoted to the post of Deputy Chief Accounts Officer on 9.5.1998. Hence, he is not entitled for the increment for completing 23 years of service.

6.) Admittedly the post of Senior Accounts Officer is not a promotional post. The respondent by virtue of seniority and the policy of the Department he has been posted within the 20% quota to the post of

Senior Accounts Officer and he has earned higher scale than the post of Accounts Officer that does not mean that he was promoted. The Finance Circular No.20/2000 dated 28.7.2000 is very specific that for the purpose of earning increment for completing 23 years of service one must have not earned third promotion in the regular service. Whereas, the respondent has earned two regular promotions. Though he held the post of Accounts Officer, Senior Accounts Officer and Deputy Chief Accounts Officer, the post of Senior Accounts Officer is not a promotional post. Decision of the Supreme Court that merely getting a higher pay scale amounts to promotion is distinguishable in the present case for the reasons that Finance Department Circular is very specific that third promotion should not have been earned for the purpose of granting increment for completing 23 years of service. The Supreme Court in the case of ***Nair Service Society vs T. Beermasthan 2009 (2) SCT 625*** in para 45 held that how the Rules are required to be interpreted stating that differs from State to State. Extract of para 45 reads as under:-

> *"45. Different State Governments in the country may have different methods for providing reservations, and these will be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for this Court to decide on the wisdom or otherwise of the said method of reservation. This Court should exercise judicial restraint and not interfere with the same unless there is some clear illegality. In our opinion the method prescribed by the Rules made by the State Government suffers from no infirmity or illegality, and hence the High Court acted wrongly in allowing the Writ Petition. We are clearly of the*

opinion that the High Court has placed a wrong interpretation on the relevant Rules."

Therefore, the Rules or circular which are required to be interpreted in the present case is only the Finance Circular No.20/2000 dated 28.7.2000 and admittedly the post of Senior Accounts Officer is not a promotional post to Accounts Officer. Therefore, the appellant has not made out a case so as to interfere with the Appellate Court order.

7.) Appeal stands dismissed.

(P.B. BAJANTHRI)
JUDGE

November 18, 2016.
sandeep sethi

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.