

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : December 20, 2017

1. RSA No. 1265 of 1993

State of Punjab through Secretary PWD Appellant

versus

Ranjit Singh Electrician Respondent

2. CWP-19692-2001

Ranjit Singh Petitioner

versus

The State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Sahil Sharma, DAG, Punjab
for the appellant.

Mr.Sajjan Singla, Advocate
for Mr.Manu K.Bhandari, Advocate
for the respondent.

RAJ SHEKHAR ATTRI, J.

By this judgment this Court would like to dispose of above captioned Regular Second Appeal No. 1265 of 1993, titled as State of Punjab through Secretary PWD v. Ranjit Singh, Electrician and Civil Writ Petition No.19192 of 2001, titled as Ranjit Singh v. The State of Punjab and

another as common questions of law and facts are involved therein.

The Regular Second Appeal has arisen from the impugned judgment and decree of first appellate court dated 09.02.1993 vide which appeal preferred by plaintiff-Ranjit Singh was accepted and suit filed by him was decreed and the State was directed to place the appellant-plaintiff in the pay scale of Rs. 450-800 w.e.f. 1.1.1978; to fix his pay accordingly; further, to pay him arrears up-to-date; to give him seniority on the basis of length of service and promotion as he fulfilled the requisite qualification required for the placement in 'A' category.

Instant Civil Writ Petition No. 19692 of 2001 titled as Ranjit Singh v. The State of Punjab and another has also been filed by plaintiff-petitioner for refixation of his seniority, grant him promotion and consequential benefits together with interest.

The other facts necessary for the disposal of the appeal and writ petition are that petitioner-plaintiff joined the service as an Electrician in Public Works Department(B&R) on 08.07.1965. The first Pay Commission recommended the pay scale of Rs.100-160 to all the Electricians as at that time there was no classification of the cadre of Electricians having electrical certificate or that of a wire-man trade certificate.

However, the defendant-State categorised the cadre of Electricians in different segments w.e.f. 1.4.1975 and named them as category 'A', category 'B' and category 'C'. All the categories were given different pay scales. The Electricians having the certificate of wire-man were put in the pay scale of Rs. 120-250 (category B) whereas those having electrical trade certificate were given pay scale of Rs. 140-300 (category A); the defendants revised the pay scale of Electricians having electrical trade certificate from

Rs. 140-300 to Rs. 450-800 w.e.f. 1.1.1978 whereas the persons having wire-man trade certificate were put in the pay scale of Rs. 400-660/-.

However, in the year 1994, the defendants, while considering the similar nature of duties performed by all the Electricians, granted the pay scale of Rs. 1200-2130 to the petitioner-plaintiff. They also circulated a tentative joint seniority list.

On 27.10.1994 petitioner-plaintiff submitted representation to the defendants that his seniority should be fixed in accordance with the length of the service. He also served a legal notice upon them on 19.12.2000 with a special request to correct the seniority before his superannuation which has to fall on 31.03.2001 but his representation was kept in abeyance. Therefore, the plaintiff-petitioner filed CWP No. 2244 of 2001 which was disposed of by this Court vide order dated 16.2.2001(Annexure P-7 to CWP) with a direction to the defendants to consider and decide the legal notice, served by the petitioner by passing a speaking order within a period of three months. However, his representation was rejected vide order dated 17.08.2001. He served another notice on 31.10.2001 upon the dependants and ultimately filed the instant writ petition.

The civil suit, filed by the plaintiff-petitioner was dismissed on 09.05.1990 by the learned trial Court. However, the learned first appellate court accepted the appeal on 9.2.1993 and decreed the suit of the plaintiff and thereby directed the defendants to place the plaintiff in the pay scale of Rs. 450-800 w.e.f. 1.1.1978 (subsequently revised) and to fix his pay accordingly, and, further, to pay him arrears up to date and also to give seniority on the basis of length of service and promotion as he fulfills the requisite qualification required for placement in 'A' category. The judgment

and decree dated 09.02.1993 passed by the learned first appellate court has been impugned in RSA No. 1265 of 1993 by the respondents-State.

I have heard learned counsel for the parties and gone through the record.

Undisputedly, the petitioner-plaintiff was recruited into the service as an Electrician on 08.07.1965 though he was having a wireman trade certificate. It seems that at that time there was a common cadre of the Electricians in accordance with their basic qualifications and the different categories were not set up. It is also admitted fact that distinct categories were introduced w.e.f. 01.04.1975 when the services of the Electricians were regularised vide office order No. 162 dated 18.02.1977(Ex.D-2). This time, the petitioner-plaintiff was kept in the category ('B') in the pay scale of Rs. 120-250 whereas the various Electricians, though junior to him, were kept in category 'A' in the pay scale of Rs. 140-300.

It is also not in dispute that vide order No. 130 dated 17.08.2001 pay of the petitioner-plaintiff was refixed w.e.f. 1.1.1978 in the scale of 450-15-525-15-600-20-700-25-800, further, his salary was again refixed w.e.f. 1.1.86 due to revision of pay grade and he was also given proficiency step up on completion of 8/18 years service.

Vide Ex.D-2, which is office order No. 162 dated 18.2.1977, the classification of the post of Electricians was first time created. This order provides regularisation of the members of the work charged establishment, who have completed 5 years service on 01.04.1975 and those were brought on regular establishment w.e.f. 01.04.1975 in the order of their original seniority in accordance with the instructions contained in letter dated 17.12.76. However, in category 'A' those Electricians were kept who were

having diploma in electrical and they were given pay scale of 140-300. Category 'B' is meant for those Electricians who were having wire-man trade diploma. It is undisputed fact that the nature of their job and functioning was similar for both the categories and plaintiff was appointed as an Electrician. DW1-Sh.D.R.Jain, Executive Electrical Engineer has unequivocally admitted that petitioner-plaintiff was appointed as an Electrician and the nature of job of all the Electricians is similar. Thus, the petitioner-plaintiff is entitled to the pay grade as well as the seniority as given to his juniors. However, one more category of the Electricians was cropped up through said letter Ex.D2 and those were given the pay scale of Rs.100-160 but this category is not within the arena of discussion in the instant litigation.

Petitioner-plaintiff entered into service on 08.07.1965. Those Electricians who joined after him were made senior to him. Their names are mentioned from serial No. 9 to 25 of Ex.D-2. There is no reasoning or intelligible differentia for allocating seniority to those persons who were junior to the petitioner-plaintiff.

Now coming to CWP No. 19692 of 2001. Through this writ petition, petitioner Ranjit Singh is claiming seniority as well as promotion. His first appeal was accepted on 09.02.1993. Although the petitioner-plaintiff himself has not filed any counter appeal/cross objection yet, similar claim regarding seniority and promotion has been raised in the writ petition. His claim in the suit is reproduced here as under:-

“ Suit for declaration to the effect that the plaintiff is entitled to the pay scale of Rs. 400-800(instead of 400-660) of the post of Electrician and all the arrears of pay up-to-date and further entitled to seniority on the basis of length of service as

electrician without regard whether the plaintiff is holding the certificate of wire-man or electrician and entitled to promotion.”

However, learned Additional District Judge in his judgment dated 09.02.1993 has already given him the benefit of seniority as claimed in the writ petition and direction is given to the defendants-State to fix salary and to pay him arrears of salary up-to-date and also to grant him seniority on the basis of the length of service. The first appellate court has also held that the petitioner-plaintiff is entitled to promotion as he fulfils the requisite qualifications as required for placement in 'A' category but these findings of the first appellate court are contrary to law and facts. The first appellate court failed to mention in its judgment the requisite qualifications for the promotion of Junior Engineer. However, the respondent-State, in the written statement filed in the writ petition, has taken a specific plea that the petitioner does not fulfil the requisite qualification for the promotion of Junior Engineer as required under Rule 5A(i) of the Punjab Department of Public Works (Buildings & Roads) Junior Engineer(Class-III) Service Rules 1964 (in short Rules of 1964) and 8B(iii) of the Punjab Department of Public Works (Buildings & Roads) Junior Engineer(Class-III) Service Rules 1993, therefore, cannot be promoted as Junior Engineer (Electrical).

At the time of appointment of the petitioner-plaintiff, he was governed by the Rules of 1964. Rule 5A of the said Rules reads as under:-

“5-A Recruitment to service (i) appointment to service shall be made by the Superintending Engineer by any one of the methods indicated below:

- a) by direct appointment or*
- b) by transfer of a Sectional Officer already in the service of Govt. of India or of a State*

Government.

c) by promotion, i.e.

1. 5% from Electricians and who have passed 2 years course as trademan in Electrical trade having passed electrical supervisor competency certificate examination held by the Electrical Inspector to Govt. Punjab possessing 5 years experience in the Department and are considered suitable to perform the duties of the sectional officers(Electrical).

5% from Electricians who are Matriculate having the technical qualifications but have passed electrical supervisor competency certificate examination held by the electoral Inspector to Govt. Punjab possessing ten years electrical inspector to Govt. Punjab possessing ten years practical experience in the Department and are considered suitable to perform the duties of Sectional Officer(Electrical).

2. out of a cycle of 20 vacancies, the 10th vacancy to the official to be promoted under sub rule 1 (c) (i) and the 20th vacancy shall go to the official to be promoted under sub Rule (1) (c) (ii).”

Even under Rules of 1993 plaintiff Ranjit Singjh is not entitled for promotion. Rule 8 of Rules of 1993 reads as under:-

*“8. Method of appointment and qualifications -
(I) All appointments to service shall be made in the following manner, namely:-*

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(B) In the case of Junior Engineers in the Electricity Wing :-

(a) Seventy-five per cent by direct appointment from amongst the candidates who possess a Diploma in Electrical Engineering of a recognised institution;

(b) Twenty-five per cent by promotion as under :-

(i) Ten per cent from amongst the Electricians working under the control of the Chief Engineer and who possess Diploma in Electrical Engineering of a recognised institution.

Provided that if no suitable person is available for appointment by promotion from amongst the aforesaid category of persons, then an Electrician working under the control of the Chief Engineer and who possess a National Trade Certificate of Electrician of a recognised institution and has obtained a certificate of competency issued under Rule 45 of the Indian Electricity Rules, 1956 and who has an experience of working as such for a minimum period of five years, shall be considered for promotion.

(ii) Five percent from amongst the Draftsmen and Tracers working under the control of the Chief Engineer who possess the qualifications specified in sub clause (a) above; and

(iii) 10 percent from amongst the Electricians working under the control of the Chief Engineer, who are matriculates and who have obtained a certificate of competency issued under rule 45 of the Indian Electricity Rules, 1956 and who have an experience of working as such for a minimum period of ten years and have also passed the qualifying examination specified in rule 9.”

A glance over the rules quoted above makes it abundantly clear that the petitioner-plaintiff did not fulfil the requisite qualification to be promoted as a junior engineer. Even he does not possess

certificate of competency issued under rule 45 of Electricity Rules. If he is not eligible for promotion as such, then such relief cannot be granted to him.

Even from a bare perusal of the writ petition, it is very much clear that the petitioner has concealed the fact of passing of the decree in this case by the first appellate court. The writ petition has been filed much after passing of the respective decrees by the courts below. Therefore, it was the duty of petitioner-Ranjit Singh to bring to the notice of this Court regarding decision of previously instituted suit. In this view of the matter the petitioner-plaintiff is only entitled to the pay grade as well as seniority as awarded to his immediate Junior Electrician but he is not eligible for promotion to the post of Junior Engineer.

Thus, on the independent appraisal of the evidence on record, this Court is of the considered opinion that findings of the learned first appellate court in judgment dated 09.02.1993 are based on proper appreciation of evidence to the extent of grant of pay scale and seniority. However, the petitioner-plaintiff is not entitled to promotion in view of the Rules of 1964 as well as Rules of 1993, as discussed above.

As a result the Civil Writ Petition No. 19692 of 2001 stands dismissed. However, Regular Second Appeal No.1265 of 1993 is partly allowed holding that the plaintiff is entitled to the pay scale of Rs. 400-800 w.e.f. 1.1.1978 and seniority as awarded by the learned first appellate court. So far as promotion to the post of Junior Engineer is concerned, he is not entitled for the same being not eligible. The State is directed to release the arrears of salary and other consequential benefits within a period of three months from the date of receipt of a certified copy of this judgment and on

their failure, plaintiff Ranjit Singh shall be entitled to interest at the rate of 6% p.a. from the date of decree till realisation.

**(RAJ SHEKHAR ATTRI)
JUDGE**

December 20, 2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No