IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11612 of 2014 (O/M)
Date of decision : 30.3.2017

Sewa Singh .... Petitioner (s)

Versus

The Punjab State Power Corporation Limited and another
.... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Singh, Advocate, for the petitioner.

Mr. Mukul Aggarwal, Advocate, for respondents.

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

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<u>KULDIP SINGH J. (ORAL)</u>

The petitioner was working as a Personal Assistant in the erstwhile Punjab State Electricity Board (now succeeded by the Punjab State Power Corporation Limited) since 1992. On account of some adverse remarks for the period from 1.4.1990 to 10.9.1990, the petitioner was not promoted, whereas his junior, namely, Kuldeep Singh, was promoted as Personal Assistant, vide order dated 3.11.1992. The adverse remarks against the petitioner were expunged on 27.1.1998. The petitioner had been performing the duties of Personal Assistant with effect from 17.5.1995. Aggrieved by the promotion of his junior (Kuldeep Singh), the petitioner raised an industrial dispute. The said industrial dispute was decided by the Industrial Disputes Tribunal, Punjab, Chandigarh, vide award dated

27.9.2007, wherein it was held that the action of respondents in ignoring the petitioner for promotion with effect from 16.11.1992 is illegal and accordingly, the petitioner was held entitled to all the financial benefits for the period from 16.11.1992 to 17.5.1995 and was also held entitled to pay for the post of Personal Assistant. However, before the passing of the said award, the petitioner already superannuated on 30.6.2002. After the passing of the said award, respondents fixed the pay of the petitioner, vide order dated 20.2.2009 (Annexure-P-1) with effect from 16.11.1992. He was earlier getting the pension of Rs. 4,730/- per month with effect from 1.7.2002 plus DA, vide Pension Payment Order dated 16.8.2002 (Annexure-P-2). However, after the revision of the pay in terms of order dated 20.2.2009 (Annexure-P-1), the pension of the petitioner was reduced from Rs. 4,730/- per month to Rs. 4,525 per month with effect from 1.7.2002, vide Pension Payment Order dated 17.1.2014 (Annexure-P-3) and recovery of Rs. 70,050/- was ordered to be made from his pension. The petitioner has challenged the said order dated 17.1.2014 (Annexure-P-3) and also claims that after his promotion, he should be allowed to exercise fresh option.

In the reply, respondents have not denied the litigation and the other factual position. However, it is stated that the pay of the petitioner was fixed in terms of the award of the Industrial Disputes Tribunal, Chandigarh, by granting him two increments on 16.11.1992 with the next date of increment as 1.11.1993 i.e. after one year. The petitioner never submitted any option to fix his pay on his promotion as a Personal Assistant in terms of the Financial Circular No. 9/1991, dated 15.1.1991 (Annexure-R-3) .

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

The factual position is not disputed. It is also not disputed that after the passing of the award of the Industrial Disputes Tribunal, Chandigarh, the pay of the petitioner was re-fixed, vide order dated 20.2.2009 (Annexure-P-1) with effect from 16.11.1992. The petitioner has already retired from service on 30.6.2002 on attaining the age of superannuation. The petitioner was aggrieved, when the amended Pension Payment Order dated 17.1.2014 (Annexure-P-3) was issued, reducing the pension of the petitioner from Rs. 4,730/- per month to Rs. 4,525/- per month with effect from 1.7.2002 and a recovery of Rs. 70,050/- was ordered from his pension. The plea of respondents is that he did not submit option in terms of Financial Circular No. 9/1991, dated 15.1.1991 (Annexure-R-3). The relevant clause of the said financial circular is reproduced as under :-

> "2. In the Punjab State Electricity Board (Revised Pay) Regulations, 1988, in Regulation-8, after the existing provisio the following shall be inserted namely :-
>
> Provided further that a PSEB employee may give option for fixation of his pay on promotion to the effect that :-
>
> (a) His initial pay may be fixed by giving the benefit of two increments in the scale of pay of the higher post as provided under this regulation and subject to the provisions contained in the first provisio, without any further review on accrual of increment in the scale of the lower post: or"

I am of the view that in this case, the petitioner has already retired from service on 30.6.2002 on attaining the age of superannuation. However, after the amended Pension Payment Order was issued on

17.1.2014 (Annexure-P-3), re-fixing his pension, which was infact reduced from Rs. 4,730/- per month to Rs. 4,525/- per month with effect from 1.7.2002 and a recovery was ordered. Thereafter, the petitioner was apparently aggrieved and came to know about the reason for reduction in the pay. The pay of the petitioner was revised on account of promotion as Personal Assistant with effect from 16.11.1992. As per the Financial Circular No. 9/1991, dated 15.1.1991 (Annexure-R-3), the petitioner was to exercise the option for fixation of his pay. Since the petitioner has already retired from service in the year 2002 on attaining the age of superannuation, when the award was passed by the Industrial Disputes Tribunal, Chandigarh, and in the year 2009 when the pay was re-fixed and was infact reduced on account of promotion and thereafter, the amended Pension Payment Order dated 17.1.2014 (Annexure-P-3) was issued, the petitioner felt the pinch. In these circumstances, the petitioner had no reason to know after his retirement that his pay will be reduced on account of promotion on account of a technical glitch, whereby he was required to exercise his option in terms of the Financial Circular No. 9/1991, dated 15.1.1991 (Annexure-R-3).

In view of the exceptional circumstances and keeping in view the fact that the pay and pension of the petitioner has infact been reduced after his promotion from back date as a Personal Assistant in terms of the award passed by the Industrial Disputes Tribunal, Chandigarh, the present writ petition is liable to the allowed. The impugned Pension Payment Order dated 17.1.2014 (Annexure-P-3) alongwith pay fixation order dated 20.2.2009 (Annexure-P-1) are hereby quashed. Respondents are ordered to allow the petitioner to exercise fresh option for fixation of his pay after his promotion. The petitioner is given two months' time to submit such option in terms of the Financial Circular No. 9/91, dated 15.1.1991 (Annexure-R-3) and thereafter, the pay of the petitioner shall be re-fixed and accordingly, the pension shall also be re-fixed.

With the abovenoted observations, the present writ petition is allowed.

(KULDIP SINGH)
JUDGE

30.3.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No