

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.23433 of 2011

Teja Singh and others ... Petitioners

Versus

The Punjab State Power Corporation
Limited and others ... Respondents

2. RSA No.848 of 1993 (O&M)

D.R.S. Thakar and others ... Appellants

Versus

Punjab State Electricity Board,
Patiala and others ... Respondents

Date of Decision: 12.05.2017

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jaspal Singh Maanipur, Advocate,
for the appellants in RSA No.848 of 1993
for the petitioners in CWP No.23433 of 2011.

Mr. Vikas Chatrath, Advocate,
for the respondents in CWP No.23433 of 2011.

Mr. Sanjeev Sharma, Advocate,
for the respondents in RSA No.848 of 1993.

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of CWP No.23433 of 2011 titled *Teja Singh and others v. The Punjab State Power Corporation Limited and others* & RSA No.848 of 1993 titled *D.R.S. Thakar and others v. Punjab State Electricity Board, Patiala and others* as they are clubbed for hearing being disputes between the same parties on identical issue.

2. From both these two connected cases, one arising out of a suit which failed before the learned Additional District Judge, Bathinda observing that relief was not claimed against the scheme which placed Fire Fighting Scheme in Group-II Non-Operating Staff, while the other is a writ petition does this appeal arise. The plaintiffs in the suit and the petitioners in the writ petition belong to the Fire Fighting Staff of the same employer, the Guru Nanak Dev Thermal Bathinda, which is the respondent in both the cases.

3. As a result of the failure of the appeal, the plaintiffs have come up to this Court in Second Appeal.

4. Another set of Fire Fighting Staff approached the High Court in the present writ petition praying for a writ of certiorari for quashing the impugned order dated February 16, 2011 (Annex P-10) whereby the 100% Generation Incentive have been denied to them. They have been given only 60% of the total formula prescribed for awarding the benefit to different classes of employees as explained further. In the writ petition a mandamus was sought directing the respondent-Thermal Plant, Bathinda to give the petitioners 100% Generation Incentive monetary benefit in terms of Finance Circular dated April 06, 1986.

5. The crux of the issue lies in the classification made by the Thermal Plant, Bathinda amongst its employees. The 'Punjab State Electricity Board Generation Incentive Scheme' was made applicable to the Guru Nanak Dev Thermal Plant Project w.e.f. November 01, 1980. The PSEB scheme was revised and updated and enforced in the respondent

project w.e.f. January 01, 1986. The scheme envisages incentive on monthly generation of power to different categories of employees who are broadly classified into Operational Staff and Non-Operational Staff.

6. Group-II Non-Operative Staff has been defined to include among other categories of employees the Fire Fighting Staff to which cadre the plaintiffs in the suit belong and the petitioners in the writ petition. Since the plaintiffs/petitioners have been classified as Fire Fighting Staff, the scheme denies them 100% Power Generation Incentive and restricts it to 60% ceiling. In terms of relief claimed there is no difference between both these cases which can be conveniently decided by one order, the law point involved. The facts are not in dispute.

7. There can hardly be any doubt that classification by grades and rationalisation are industrial rights in 'The Third Schedule' of the Industrial Disputes Act, 1947 which go for determination to Tribunals. If a claim is made the remedy must lie in an appropriate forum. The Civil Court was not the best place to sue. It has refused to interfere in the matter when the first Appellate Court set aside the judgment and decree of the trial Court and remitted the matter to erstwhile PSEB for consideration. The lower Appellate Court has done precisely what the Writ Court would have done had a writ been filed on the date when the suit was brought. The appeal has been pending since 1993 gathering dust because of the route taken. The writ petition was filed in 2011 by another set of employees asking for the same thing after the fate of the appeal was known for 18 years to them. This catch 22 situation is a green stick fracture. Because an appeal is pending, a writ on

the same point when comes up for motion hearing and pointed out gets clubbed with the old appeal and together they gather dust for another 6 years even when ironically I propose to send the matter back to PSPCL for its consideration afresh for which purpose the end part of this order may be read without reading attentively what lies between, which are only compulsions on the High Court to record reasons for its decisions.

8. I have no doubt that the Civil Court was not the real place to sue for the relief claimed as the issues touch upon concessions and grants involving financial implications to be paid by tax payers money, a case to be tried and tested on constitutional parameters involving rules, regulations, schemes, instructions, Finance Circulars and the guarantees in Article 14 and directive principles in Article 39 (d) of the Constitution of India since the two set of employees claim parity of treatment and equal share in incentives on par with their counterparts working in the Operational Staff. The erstwhile PSPCL is the mother organization of the Power Generation Plants built in the State of Punjab to generate electricity for the State and the National Grid.

9. Whether the petitioners are entitled to Generation Incentive benefit to the extent of 100% or 60% is an executive function and a matter falling within jurisdiction of expert bodies of erstwhile PSEB [presently PSPCL]. Whether the benefit should be given or not would depend on many factors including the nature of the duties performed by the Non-Operational Staff *viz.-a-viz* the Operational Staff and the degrees of responsibilities in the main activity of power generation. The Writ Court would not be the

suitable place to examine these issues in the first instance unless the view of erstwhile PSPCL is put on paper as to the basis of classification in Group-II Non-Operative Staff at least so far as the litigating Fire Fighting Staff is concerned. It would serve the ends of justice if the matter is remanded to the erstwhile PSPCL to re-examine the issues involved in these cases and come out with its final decision as to whether the plaintiffs and petitioners have an existing right to the difference of percentage of Generation Incentive benefit as they would be best judges of all the facts involved which are incapable of being decided by the Writ Court except upon evidence which is impermissible to be recorded in writ proceedings. The evidence in the suit is too thin to apply in second appeal.

10. In the circumstances, the appeal and the writ petition is disposed of with a direction to PSPCL to form a Committee of Experts for which purpose the plaintiffs/petitioners would make a comprehensive representation reducing the crux of the case in the suit and in the petition by way of a charter of demand and present the same to PSPCL for its consideration. On receipt of representation PSPCL would constitute the Expert Committee to hear the petitioners in a representative capacity from among the plaintiffs and the petitioners [office bearers in case of Union] and give them adequate and reasonable opportunity to present their cases, and their view points by helping the Committee to take a final decision in the matter preferably within four months not from the date of receipt of certified copy of this order but from the date of presentation of the comprehensive representation. The final decision may be conveyed to the representationists

after the decision is taken.

11. These directions are issued in the spirit of the orders passed by the Supreme Court in *State of Punjab and another v. Surjit Singh and others*, (2009) 9 SCC 514. The directions issued by the Supreme Court in para.47 were as follows:-

“47. We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the respondents herein by appointing an Expert Committee as to whether the principles of law laid down herein, viz., as to whether the respondents satisfy the factors for invocation of the decision in Charanjit Singh (supra) in its entirety including the question of appointment in terms of the recruitment rules have been followed. It has a positive concept.”

12. Reference to *Charanjit Singh's* case in *Surjit Singh's* case is not relevant to this case and may be disregarded since it relates to some other department, on some other issue but where such directions have been issued to constitute an Expert Committee to examine the cases of the aggrieved parties. If relief is admissible, the date from which the relief is to be given lies within jurisdiction and discretion of PSPCL used in accordance with law.

13. The appellants and the petitioners would have the liberty to seek legal redress in case the decision goes against them. The Committee will take an independent decision without fear or favour in terms of the

remand mandate by keeping alive to principles in Articles 14 and 39(d) apart from the cadre and technical issues involved which PSPCL knows best.

14. Accordingly, the appeal and the writ petition stand disposed of with the above observations and directions. The decree in appeal shall stand merged with this order.

(RAJIV NARAIN RAINA)
JUDGE

12.05.2017
manju/neeraj

Whether speaking/reasoned *Yes*

Whether reportable *No*