

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3327 of 2015

Date of Decision: 19.01.2017

Punjab State Electricity Board now
Punjab State Power Corporation Limited
and others

... Appellants

Versus

Trishan Singh

... Respondent

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

Present: Mr. Y.P. Khullar, Advocate,
for the appellants.

Mr. Harshit Jain, Advocate,
for Mr. Sumit Jain, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.

1. Heard Mr. Khullar for the appellant Corporation and Mr. Jain for the respondent retired employee who was denied benefit of promotional increments during service and claimed them by way of a suit instituted in the trial Court at Gurdaspur in 2008. He lost in the trial Court but succeeded in first appeal.

2. The short question falling for consideration in this second appeal against the judgment of reversal is; whether the respondent is or is not entitled to promotional increments on completion of 23 years of service along with consequential benefits. This was the specific question framed by this Court when notice of motion was issued in this appeal against the judgment of reversal passed by the Lower Appellate Court at Gurdaspur.

3. Rules permit additional/promotional increments to be granted

on completion of specified periods of service. These fall due on completion of 9, 16 and 23 years of regular service from the date of induction.

4. To consider this issue in its proper perspective, a few dates are important. The plaintiff-respondent (hereinafter plaintiff) joined service of the Punjab State Electricity Board as Assistant Lineman on October 12, 1966. He was lucky when he got promotion as Lineman within a year on December 22, 1967 (first promotion). After waiting for eighteen years after the first promotion he was promoted as Junior Engineer on February 15, 1985, which was his second promotion. He retired from service on March 31, 2004 albeit as a Junior Engineer.

5. The learned trial Court dismissed the suit by the judgment and decree dated May 04, 2011 holding that by the time the petitioner had retired he did not have a third avenue of promotion during his entire service rendered from the date of joining. This order has been reversed by the First Appellate Court. The controversy rests on the interpretation of Finance Circular No.20/2000 of the PSEB. The circular prescribes that the grant of benefit of promotional increment (s) to an employee on completion of 23 years of service will be governed by the following conditions:-

“(i) If he/she has the avenue of three promotions but has not earned three regular promotions in his/her regular service from the date of joining on the induction post or any other post specifically declared as induction post for granting time bound promotional/devised promotional scale;

(ii) if he/she has not earned third promotion in his/her regular service between 16th and 23rd years of service.

(iii) if he has not been placed in a scale which is higher than the scale of his/her next higher promotion.

(iv) the increments are in the nature of advance

promotional benefits to be absorbed in the next regular promotion.

(v) those who forego promotion shall not be entitled for this benefit.”

6. This case turns on interplay of conditions (i) and (ii) above. Plaintiff earned two promotions before he retired but could not earn the third promotion for lack of seniority and vacancy in the promotional post from Junior Engineer. However, he had three or more “avenues” of promotion available to him in his career with the Board had he been lucky but his turn did not come before he superannuated and in case, he did not earn the third promotion in regular service between the 16th and 23rd years of service as per condition (ii) of the moot Circular he would become entitled to the promotional increment on completion of 23 years of service from the date of induction without earning actual promotion and to be placed in the “devised promotional scale”. There is a vast difference between actual promotion and “avenue” of promotions. The circular is built on a legal fiction to tide over stagnation and, therefore, we will have to imagine all the legal consequences the steps entail as real when taken to their logical conclusion. In the case of the plaintiff, the 16th year would fall in 1982 and the 23rd year in 1989. By 1985 the plaintiff had earned his second promotion as Junior Engineer. He could not earn his third promotion between 1982 to 1989 because a lack of opportunity or availability of vacancy etc. since quite possibly, the cadre may have been heavy but still he had an “avenue” of promotion which did not fructify till he retired on March 31, 2004. Quite obviously the plaintiff's case fell in condition (ii) read with condition (i) in conjunction as part of the scheme devised by the Board for its employees.

7. Interestingly, Finance Circular No.20/2000 speaks of 'avenue' of three promotions but not actual earning of three regular promotions, as is the case of the plaintiff, and condition No.(ii) amplifies the right and guarantees benefit of promotional/additional increment on completion of 23 years of service in 1989. The last promotion earned was in 1985 as a Junior Engineer which was the second promotion. This is how the learned Additional District Judge (Adhoc) Fast Track Court, Gurdaspur in his judgment dated September 08, 2014 decided the matter to which legal proposition there can be no quarrel.

8. The only other impediment in the way of the plaintiff from securing promotion was passing of a prescribed departmental examination which he could not clear and the Lower Appellate Court found that the PSEB Order No.333 dated April 08, 1993 Ex. DW1/A had come to the rescue of the plaintiff when the respondent Board deleted the condition of passing the departmental accounts examination by granting exemption to Engineering Officers who had crossed the age of 54 years. The petitioner had crossed the age of 54 years in the year 2000. With the removal of this obstacle, the benefit of promotional increment to the plaintiff on completion of 23 years of regular service would flow naturally and thence deserves to be guaranteed and paid to the plaintiff by way of the difference of pay and allowances and arrears thereof. The right being a continuing one in nature as it would lead to re-fixation of pay and pension, if any, on the date of retirement. This is how the suit was decreed.

9. On the question of relief, the learned First Appellate Court took into consideration the delay factor in filing the suit on September 18, 2008

and directed recovery of arrears restricted for the period of three years preceding the date of filing the suit along with interest @6% per annum till realization.

10. The judgment in appeal, appeals to reason and is found sound in law when it correctly interprets the moot circular to bring home the relief as decreed, which I fully support and endorse as the correct position in law on the interpretation of Finance Circular No.20/2000 of the appellant Board.

11. Accordingly, the appeal has no life and is dismissed with costs throughout in favour of the plaintiff. The monetary consequences and adjustments would follow suit.

(RAJIV NARAIN RAINA)
JUDGE

19.01.2017
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Whether speaking/reasoned Yes

Whether reportable Yes