

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16169-2013

Date of Decision : July 11, 2018

Jagdish Ram

.... Petitioner.

Versus

Bhakra Beas Management Board and
another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Raman Sharma, Advocate
for the petitioner.

Mr. Sachin Mittal, Advocate
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Article 226/ 227 of the Constitution of India is for declaring the action of the respondents in not upgrading the pay of the petitioner at par with his junior, Bhupinder Singh, in consonance with law settled by this Court.

2. The grievance of the petitioner in the present writ petition is that he has not been granted time bound promotional scale on completion of 9 years service before his promotion to the higher post and the person junior to him, namely, Bhupinder Singh having been granted this scale, the junior started getting higher pay and thus, an anomaly came to exist, which the respondents refused to rectify by upgrading the pay of the petitioner at par with the pay being drawn by his junior.

...

3. As per the petitioner he was appointed as Chowkidar-cum-Cook w.e.f. 30.09.1987 in the pay scale of Rs.300-430 and the was was revised to Rs.750-1350. Subsequently, the petitioner was promoted as Khansama-cum-Chowkidar w.e.f. 01.04.1989 in the pay scale of Rs.830-1560 (revised to Rs.830-1600).

4. Since respondent No.1-Bhakra Beas Management Board (for short, 'BBMB') adopted the pay pattern of Punjab State Electricity Board (for short, 'PSEB'), office order No.197 dated 23.04.1990 issued by PSEB was adopted by BBMB w.e.f. 11.06.1990.

5. As per scheme of time bound promotional scales (for short, 'TBPS') an employee would be entitled to promotional scale on completion of 9 years, 16 years and 23 years of service. Since the petitioner was already promoted as Khansama-cum-Chowkidar w.e.f. 31.03.1989, i.e. prior to the date of introduction of the TBPS Scheme, he was not granted promotional scale on completion of 9 years of service. He was, however, granted promotional scale of Rs.3300-6100 w.e.f. 01.10.2003 on completion of 16 years of service by considering his initial post of Chowkidar-cum-Cook as induction post. The grievance of the petitioner arose when one Bhupinder Singh, a person junior to him, was granted both promotional scales on completion of 9 years and 16 years of service and thereby said Bhupinder Singh started getting higher pay than the petitioner. Said Bhupinder Singh was appointed as Khansama-cum-Chowkidar w.e.f. 12.04.1989 in the pay scale of Rs.830-1560 and got TBPS scale of Rs.3370-6100 on completion of 9 years of service w.e.f. 12.04.1998 and got the second bound promotional scale of Rs.4300-7500 on completion of

...

16 years of service w.e.f. 12.04.2005. Since the TBPS scheme had been adopted by BBMB vide letter dated 11.06.1990 and Bhupinder Singh was granted first TBPS scale of Rs.3370-6100 on completion of 9 years of service w.e.f. 12.04.1998 and got the second bound promotional scale of Rs.4300-7500 on completion of 16 years of service w.e.f. 12.04.2005, on that day the pay anomaly occurred and the person junior to the petitioner started getting higher pay.

6. The petitioner had made various representations from time to time for upgrading his pay at par with his junior, but the same were not redressed. A legal notice dated 21.01.2009 was issued by the petitioner.

7. At the time of arguments, learned counsel for the petitioner contended that it is settled proposition of law that a junior person cannot draw higher pay. Reliance in this regard was placed upon the decision dated 05.10.2009 of this Court in LPA No.327 of 2009, titled as **PSEB Vs. Ashwani Kumar Mehta and others** in which decision of learned single Judge of this Court in CWP No.16142 of 1999 was upheld in which reliance was placed on the decision of this Court in CWP No. 1925 of 2004 – **Didar Singh Vs. PSEB and another** and CWP No. 13466 of 1999 – **Jeet Singh Vs. PSEB & another**. The decision in **Didar Singh's case (supra)** was challenged in LPA No. 72 of 2009, but the same was dismissed and the view taken by learned Single Judge was upheld. PSEB further challenged the decision of LPA Bench before Hon`ble Supreme Court in SLP (Civil) 14632 of 2009 and the same was also dismissed vide order dated 26.07.2012. The case of the petitioner is also on the same lines, but still the petitioner has been denied his legal right.

...

8. While arguing on this point, learned counsel for the respondents fairly conceded that SLP was filed against the decision of LPA Bench and the same was dismissed by Hon`ble Supreme Court.

9. Having considered the submissions made by learned counsel for the parties and the undisputed factual position that the petitioner was appointed as Chowkidar-cum-Cook w.e.f. 30.9.1987 and was promoted as Khansama-cum-Cook w.e.f. 1.4.1989, however, he was not granted promotional scale on completion of 9 years of service though BBMB had adopted the pay pattern of PSEB w.e.f. 11.6.1990. Consequently, Bhupinder Singh, person junior to the petitioner was granted both TBP scales on completion of 9 years and 16 years of service thereby getting higher pay than the petitioner.

10. The case of the petitioner is squarely covered as per view taken by this Court in **Jeet Singh and Didar Singh's cases (supra)**. The petitioner cannot be denied the relief of upgradation of his pay to the same level as that of his junior, Bhupinder Singh on the day, he completed the said period.

11. On this point, Hon`ble Supreme Court in SLP © No.9615 of 2000, **Punjab State Electricity Board & Anr. Vs. Ajit Singh Aujla and Anr.**, decided on 14.07.2000, held as under:-

“ In view of the law laid down by this Court in Jaipal & Ors. Vs. State of Haryana & Ors. 1968 (3) SCC 354 that the mode of recruitment could not be a basis for discrimination and also in view of the fact that no point has been raised in the counter affidavit that the discrimination is made because of the difference of educational qualifications, we are of the view that

...

the High Court was right in holding that the promotees after completing 16 years of service as a Lineman will be entitled to the same benefits as the direct recruits who put in 16 years of service.

With these observations, the SLP is dismissed.”

12. This Court is of the considered view that the *ratio descendi* of the said judgment covers the controversy in this case completely.

13. Resultantly, the present writ petition is allowed and the respondents are directed to step-up the pay of the petitioner equal to that being drawn by his junior, Bhupinder Singh from the due date.

(SHEKHER DHAWAN)
JUDGE

July 11, 2018.
som

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes