

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

RSA No.4160 of 2014 (O&M)

Date of Decision : 20.11.2018

Jallandhar Singh

.....Appellant

Versus

Punjab State Power Corporation Limited, through its Secretary
and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. S.S. Gurna, Advocate
for the appellant.

Mr. Vikas Chatrath, Advocate
for the respondents.

SUDIP AHLUWALIA, J. (ORAL)

This appeal is directed against the judgment of the Ld. Additional District Judge, Bathinda vide which the earlier judgment and decree passed in favour of the appellant by the Ld. Additional Civil Judge (Senior Division), Bathinda in Civil Suit No.98 of 2007 on 31st August, 2012 was set aside.

2. It may be mentioned that the appellant had filed the suit seeking a declaration to the effect that letter No.1384 dated 5th February, 2007 issued by the Chief Engineer, Thermal GNDTP, Bathinda and office Order No.392/CE/TH dated 17th April, 2007 issued by the Chief Engineer, Thermal GNDTP, Bathinda whereby the appellant had been declined the benefit of 23 years promotional

increment which was allowed to him vide order No.1110 dated 9th September, 2003 was cancelled, and recovery of benefits allowed during the said period was envisaged. The appellant claims that he is entitled to said service/promotional increment on completion of 23 years of service as he is fulfilling the qualification of service and other service conditions. He had also filed the suit for permanent injunction to restrain the defendants from implementing their Office Order dated 17th April, 2007 and further restraining the defendants from effecting any recovery from the salary of the appellant on the basis of the above office order.

3. The appellant's suit was originally decreed by the Ld. Trial Court, but such judgment and decree passed in his favour were set aside by the Ld. Lower Appellate Court since it was of the view that as per PSEB Class III Regulations, 1996, for such promotional increments the concerned incumbents have to pass the departmental accounts examination, and, as per Finance Circular No.20/2000 an employee has the avenue of three promotions but he has not earned three regular promotions, only then he is entitled to 23 years of promotional increment, but the plaintiff has no avenue of three promotions and he is not eligible for the third promotion of AEE as he has not passed the departmental accounts examination and consequently, the Trial Court wrongly decreed the suit of the plaintiff.

4. The aforesaid reasoning of the Ld. Lower Appellate Court

has been assailed by Ld. Counsel for the appellant who submitted that by now the law is well settled, that subject to an employee fulfilling the basic qualifications and minimum experience, he would certainly be entitled to further promotion on completing the requisite length of service since the requirement of passing of examination essentially for promotion had been specifically done away by the respondent-Corporation (PSPCL) itself, and consequently the benefit of further promotion on completion of 23 years of service subject to fulfillment of the basic qualifications had been granted to several other similarly placed employees of the respondent-Corporation, both by the Division Benches and Single Benches of this Court in various civil writ petitions and Letter Patent Appeals. In a bunch of 121 LPAs preferred by the respondent-PSPCL, the lead case being ***LPA No.997 of 2016 (O&M)-Punjab State Power Corporation Limited, Patiala through its Secretary and others vs. Nirmla Rani***, this Court itself, in a Division Bench had pronounced the detailed judgment and dismissed the aforesaid appeals of the respondent-PSPCL by observing *inter alia* -

*“13. However, the Division Bench in previous LPA Nos.883 to 886 of 2012 had rightly observed that the judgment in **Krishan Kumar's case (supra)** is not applicable to the present case since, “The eligibility of the writ petitioners have to be examined in terms of the circular. There is no condition in the circular which restricts the right of promotional increments to a person who has not passed the examination. Such is the*

view of this Court in RSA No. 2726 of 2008 titled as Punjab State Elec. Board & Ors. vs. Jiwan Singh decided on 09.09.2008 and RSA No.4046 of 2005 titled as Chaman Lal vs. Punjab State Elec. Board & Ors. decided on 03.04.2006.”

14. *Even otherwise in the concluding portion of the SLP judgment, the Hon'ble Supreme Court while setting aside the relief granted to the respondent on the ground that he had not yet fulfilled the pre-requisite qualifications for further promotion had observed:-*

“41. At the cost of repetition, we may reiterate that the effect of the Order of 1990 read with the Regulations would be that only those employees who fulfilled the pre-requisite qualification for further promotion along with certain length of service as required would only be entitled to the benefit as per the Order of 1990. The other Assistant Engineers, even though they had completed the requisite length of service would not be entitled to claim the benefit, unless they had fulfilled the basic qualifications and minimum experience as required.”

15. *This observation conclusively implies that where the employee concerned has fulfilled the basic qualifications and minimum experience, then he would certainly be entitled to further promotion on completing the requisite length of service. It needs to be remembered that in the present case Feature No. 7 in the original circular had specifically done away with the requirement of fulfilling the qualifications/passing of examination essentiality for promotion to the concerned employees, on account of which undisputedly they became entitled to the benefit of promotional increment of the requisite length of service. As such, the decision in **Bhakra Beas Management Board's case***

(supra) ironically goes against the appellants, who have cited the same. They even appear to have lost sight of the fact that all the proceedings in this regard prior to disposal of the SLP had virtually been decided before the impugned Financial Order dated 17.03.2010 had itself come into operation.”

5. The facts and circumstances of the present case are squarely covered by the aforesaid judgment pronounced by this Court while sitting in a Division Bench.

6. In the circumstances, the setting aside of the decree passed by the Ld. Trial Court in favour of the appellant originally is clearly unsustainable. Consequently, the appeal is allowed after setting aside the impugned judgment of the Ld. Additional District Judge, Bathinda, and restoring the original judgment and decree passed in favour of the appellant.

7. It is however made clear that the consequential arrears/benefits admissible to the appellant shall be disbursed to him with interest @ 6% per annum but only for a period of 38 months prior to filing of the suit, till realization, within 02 months. Parties to bear their own costs.

November 20, 2018

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No