

Sr. No.217

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

**CWP No.14176 of 2014 (O&M)
Date of Decision: 16.07.2019**

Sudesh Bala

... Petitioner

Versus

Bhakra Beas Management Board and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Mani Ram Verma, Advocate,
for the petitioner.

Mr. Arun Nehra, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

Petitioner herein seeks issuance of a writ in the nature of certiorari to quash the order dated 29.05.2014 (Annexure P-4) vide which she was reverted from the post of 'Skilled Helper' to the post of 'Helper', Power Wing, BBMB/respondent No.1.

2. In the return filed on behalf of the respondent-Bhakra Beas Management Board (BBMB), a stand has been taken that the petitioner was wrongly designated as 'Skilled Worker' and in view of said inadvertence, it was only to rectify the anomaly that impugned order dated 29.05.2014 (Annexure P-4) was passed whereby the benefit of 'Skilled Worker' having been granted to the petitioner was withdrawn. However, a perusal of the impugned order read with the Circular/Order dated 19.06.2006 (Annexure P-6) as also the recommendations in the letter dated 16.02.2009

(Annexure P-3) of the Superintending Engineer addressed to Chief Engineer clearly bely the said stand taken in the pleadings.

3. It is only for the first time that the respondent-BBMB has taken a stand before this Court that the petitioner is not 'Skilled Helper'. It is not for this Court to decide the same and neither it is for the person who is deposing the affidavit before this Court to make such averment without there being any corroborating record of the same. Clearly, the opinion of Superintending Engineer, under whose jurisdiction petitioner has been working more than 15 years, matters the most as he is the competent person to opine whether the petitioner is skilled helper or not ? For ready reference, the recommendation/opinion of the Superintending Engineer addressed to Chief Engineer is reproduced hereinbelow:-

“Before their regularization these employees have served BCB and BBMB, for the last about 15 years and all the three are Matriculate. In the opinion of this office all the three employees are skilled helper and accordingly the pay scale of skilled helper of Rs.2930-5300 is payable to them from the date of their regular appointment in BBMB. On inquiry from the irrigation Wing of BBMB, it was found that the Chief Engineer has declared all helpers as skilled helper from the very beginning in the Irrigation Wing and they are being paid the pay scale of Rs.2930-5300.”

4. In view of the aforesaid, I am of the opinion that once it is held that the petitioner is Skilled Helper then there is no reason as to why she is not being given the benefit as envisaged in a Circular dated 19.06.2006 (Annexure P-6). The very subject of the

said Circular makes it amply clear that the pay scale of the Skilled Helper is to be granted to the employees entitled to it who are working in Irrigation Wing as well as Power Wing.

5. The said position is further amplified by letter dated 16.02.2009 (Annexure P-3) in which the Superintending Engineer while making recommendation has observed that the Board has given powers to the Chief Engineer to declare an employee to be a Skilled Helper and, therefore, the petitioner was recommended/requested to be declared as Skilled Helper with effect from the date of her regularization.

6. The argument of learned counsel for the respondent-BBMB that the decision contained at Annexure P-6 is to be confined only to the employees of the Irrigation Wing and not of the Power Wing and the same is a reasonable distinction and is not hit by Article 14 of the Constitution of India is left open to be decided in appropriate proceedings. Though, prima facie, I am of the opinion that, if one set of employees, who are to be declared as Skilled Helpers and are to be entitled to certain pay scale, in a particular division, there is no reason as to why other set of employees in other division who are also declared as Skilled Helper should be denied the same pay scale.

7. The petitioner was declared Skilled Helper in view of letter of Special Secretary, BBMB, Chandigarh dated 19.06.2006 and the recommendation of Superintending Engineer (O&M), Circle Bhiwani vide letter dated 02.03.2009 since her regular appointment as helper i.e. 24.10.2000. The petitioner has been

ordered to be reverted without issuing any show cause notice to her. The order passed without hearing her is against the principle of natural justice and cannot be sustained. The petitioner has been working since 1986 in BCB and thereafter in BBMB, as contingent helper and thereafter regular helper and she was ordered to be declared as Skilled Helper in view of the letter of Special Secretary dated 19.06.2006 and the recommendation of the Superintending Engineer (O&M) dated 16.02.2009. No order can be passed adversely affecting the employee behind her back. Therefore, the order/letter dated 29.05.2014 (Annexure P-4) is liable to be quashed on this ground alone.

8. In letter dated 29.05.2014 (Annexure P-4), it is written that letter dated 19.06.2006 was implemented qua the employees of Power Wing negligently. Not quite so. I am of the view that there is no negligence in implementing the letter dated 19.06.2006 to the employees of the Power Wing. From the perusal of the letter dated 02.03.2009 (Annexure P-2), it is clear that the petitioner was declared Skilled Helper in view of the letter dated 19.06.2006 and the recommendation of the Superintending Engineer (O&M), Circle, BBMB, Bhiwani. Letter of recommendation dated 16.02.2009 clearly shows that the petitioner along with others has been working since 1986 in BCB and thereafter in BBMB, for about 15 years and is matriculate and as per the recommendation she is Skilled Helper. It was also mentioned in the recommendation that in the Irrigation Wing, all helpers have been declared as Skilled Helper who were taking the scales of Rs.2930-5300/- from the very

beginning and it was mentioned that to remove anomaly in the pay scales of two wings i.e. Irrigation Wing and Power Wing, it was recommended to give the pay scale of Rs.2930-5300/- to the employees of the Power Wing. Therefore, it is clear that the petitioner was declared Skilled Helper considering the service period and work and to remove the anomaly in the pay scales of two wings. The recommendation was accepted by the competent authority.

9. Be that as it may, I am of the opinion that it is not for this Court to decide as to how, who is to be declared as a Skilled helper or not. Once a competent authority having jurisdiction has declared a worker as Skilled Helper, then regardless of being from Irrigation Wing or the Power Wing, he/she is entitled to said benefit as is borne out from the Circular/order dated 19.06.2006 (Annexure P-6).

10. Further more, the letter dated 19.06.2006 itself talks about the employees of both the wings i.e. Irrigation Wing and Power Wing. This letter also refers to the letters dated 13.08.2003, 12.05.2004 and 12.10.2004. Whereas, the letter referred in the order dated 29.05.2014 refers to letter dated 25.04.2014 in which reference was made of letter dated 12.10.2004 which was meant for Irrigation Wing only. The authorities conveniently failed to notice that the letter dated 12.10.2004 also refers to letter dated 04.07.2003 and letter dated 13.08.2003 and, these letters refer to the rationalization of pay scales-revision thereof for the employees working in both the wings. It is thus apparent that the employees

working in Power Wing are also entitled to the same scale as were given to the employees working in Irrigation Wing. The letter dated 04.07.2003 is specifically referring to the employees of Power Wing and it is mentioned therein that Chairman BBMB, has conveyed adoption of PSEB, office order dated 28.08.2002 regarding improvement of pay scales qua the employees drawn from State Electricity Board and qua regular employees working in Power Wing, Board Secretariat and General Branch of the office of FA & CAO, BBMB on the same terms and conditions on which the pay scales have been improved by the PSEB subject to the stipulations mentioned therein.

11. Even otherwise, I am of the opinion that procedure adopted by the respondents, withdrawing the benefit of the petitioner after her having been declared as Skilled Helper, vide impugned order dated 29.05.2014 (Annexure P-4) is not in accordance with law as the petitioner was neither given any opportunity of being heard nor any show cause notice was issued to her before withdrawing the said benefit.

12. In the aforesaid circumstances, writ petition is allowed. Impugned order dated 29.05.2014 (Annexure P-4) is, hereby, quashed with all consequential benefits to the petitioner.

16.07.2019

vandana

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No