

CWP-22484-2014 (O&M)

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

CWP-22484-2014 (O&M)
Date of Decision: April 30, 2019

Engineer Dharampal Sandhu

... Petitioner

vs.

Punjab State Power Corporation Ltd. and Ors.

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. K.S.Dadwal, Advocate, for the petitioner.

Mr. D.S.Gurna, Advocate for
Ms. Jaspal Kaur Gurna, Advocate, for the respondents.

ARUN MONGA, J (ORAL)

Prayer in the present writ petition is for quashing of letter dated 09.03.2014 (Annexure P-8) issued by respondent No.4 as well as the circulars dated 17.11.2011 and 04.07.2013 (Annexures P-9 and P-10, respectively). A further prayer has been made to direct the respondents to remove the anomaly created in the pay scale of the petitioners.

2. Short controversy is whether the petitioner, who at the relevant time was serving as Assistant Engineer by virtue of having been promoted from the post of Junior Engineer, is entitled to seek pay parity with his counter part who was directly appointed as Assistant Engineer subsequent to the promotion of petitioner.

3. Learned counsel for the petitioner contends that one Mr. Sarabjeet Singh, joined the cadre of Assistant Engineer on 10.01.1994. However, prior thereto the petitioner was promoted from Junior Engineer-I to Assistant Engineer on 01.12.1993. The petitioner was drawing a salary of Rs.44,100/- as on 01.10.2013, whereas, Mr. Sarabjeet Singh, who was admittedly junior to the petitioner, was drawing more salary than

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the petitioner i.e. Rs.57,310/- w.e.f. 01.04.2013. He further contends that despite various representation/legal notice/reminders, respondents failed to redress the grievance of the petitioner. Hence, the present writ petition. The petitioner is stated to have retired during the pendency of the writ petition.

4. The stand of the respondent-Corporation in negating the pay parity to the petitioner is that the direct recruit so appointed was beneficiary of Career Progression Scheme by virtue of which he was granted promotional scale as per 9/16 time bound promotion scale. Whereas, the petitioner was not conferred any such benefit as he was a promotee officer, owing to which, there was a justified pay anomaly between the two officers.

5. The stand of the respondent-Corporation does not with-stand judicial scrutiny and is untenable in view of judgment rendered by this Court in CWP 17005 of 1989, titled as **Rawail Singh and others vs. State of Punjab and another**, reported as **1995 (4) S.C.T. 481**. The relevant extract whereof is extracted herein below:-

“Learned counsel for the State does not dispute that all Masters and Mistresses, whether they joined service with Post-Graduate qualifications before 1.1.1978 or acquired the Post-Graduate qualifications before that date, and all the Masters & Mistresses who joined service with Post-Graduate qualifications or acquired the same after 1.1.1978, but before 19.2.1979, belong to one class of Masters & Mistresses with common seniority and cadre and are performing the same duties. The resultant effect is that the Masters and Mistresses working on the same very post, having the same very qualification and performing the same

functions, are getting different pay. This Court had an occasion to deal with some-what similar matter in Dharam Pal and others v. State of Punjab and others 1994(2) SCT 336 (P&H) Civil Writ Petition No. 10506 of 1989, decided on 15.12.1993 wherein the instructors working in various Institutes in the State of Punjab, though were imparting training in various trades, but instructors imparting training in some trades were getting higher pay compared to the others who were imparting training in other trades. Resultantly, some of the instructors junior to the petitioners therein started getting more pay and in these circumstances, it was held that "the grievance of the petitioners is legitimate. The disparity cannot be allowed to be continued for the reason that the qualifications for appointment to all the posts of Instructors are the same and they are governed by same service conditions and there is a joint seniority list of all the Instructors. Further, their seniority is depending on the date of appointment irrespective of the pay drawn. In this view of the matter, senior persons are certainly entitled to all those benefits which their juniors in the same cadre are getting i.e. the pay of a senior cannot be less than that of a junior." In this case too, the persons who joined service with Post Graduate qualifications or acquired these qualifications after 1.1.1978, have started getting more pay compared to those who joined service with Post Graduate qualifications on or before 1.1.1978 or acquired the said qualifications before 1.1.1978. Respondents have not pointed out any reason for creating and not removing the anomaly in question, except the ground that the petitioners have been granted two or three increments, as the case may be, in the unrevised pay scale and cannot be given the same benefit for the second time. This stand of the State has

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resulted in an anomalous situation, i.e. juniors have started getting more pay compared to their seniors, which is wholly unjust, unfair and inequitable. Fixing of pay of the juniors in a higher scale than that of seniors, is clearly discriminatory and violative of Article 14 of the Constitution of India, and the action of the State in depriving the petitioners of their justifiable right cannot be sustained. Petitioners, thus, are entitled to be brought at par with that of their juniors.”

6. The principle enunciated in the judgment, *ibid*, is applicable to the present case also and, therefore, the petitioner is entitled to seek pay parity by correcting the anomalous situation where his junior was getting more pay than him.

7. Accordingly, the impugned order dated 09.03.2014 (Annexure P8) is set aside. The respondents are directed to correct the anomalous situation by bringing the pay of the petitioner on par with his junior from the date when anomaly came into existence. Respondents are further directed to grant arrears of pay alongwith interest @ 6% per annum w.e.f the date of his entitlement till the actual date of realization.

8. Since, the petitioner has been retired during the pendency of the writ petition, therefore, he shall also be entitled to all consequential pensionary benefits after re-fixation of his pay, as directed above.

9. Let the needful be done within a period of three months from the date of receipt of certified copy of this order.

10. Disposed of.

April 30, 2019
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No