

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23112-2014 (O&M)

Date of Decision:-15.01.2019.

Warjinder Singh

.....Petitioner

Versus

The Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jasleen Singh, Advocate for the petitioner.

Ms. Geeta Sharma, Advocate for the respondents.

ARUN MONGA, J. (Oral)

This petition has been filed *inter alia* for issuance of a writ in the nature of *certiorari* seeking to partly quash order dated 15.11.2011 (Annexure P-1) vide which the petitioner has been denied arrears of his pay for the period from 12.06.2010 to 15.11.2011 owing to his promotion as Assistant Engineer, which was ordered w.e.f. 12.06.2010. Petitioner also seeks to quash order dated 05.04.2013 (Annexure P-4) whereby representation of petitioner dated 22.11.2011 was dismissed.

2.) The petitioner was promoted retrospectively w.e.f. 12.06.2010 subject, however, to the condition that he shall not be entitled to any arrears for the past, on the ground that he had not worked on the post of Assistant Engineer w.e.f. 12.06.2010 till his actual joining as Assistant Engineer.

3.) Learned counsel for the petitioner contends that vide order

dated 30.09.2009 (Annexure P-2), concededly, the petitioner was directed to take over/work as Assistant Executive Engineer, Sub Division, Lakha in place of Sh. Varinder Kumar, Assistant Executive Engineer who retired on 30.09.2009. Learned counsel contends that the petitioner continued to work on the said post of Assistant Executive Engineer w.e.f. 30.09.2009 until the date of his promotion vide order dated 15.11.2011 and, therefore, the impugned orders are based on wrong premises.

4.) The petitioner represented to the respondents but to no avail. Necessitating filing of an earlier writ petition before this Court vide CWP No.1443 of 2012. This Court directed the respondents therein to pass a speaking order qua the grievances of the petitioner. Pursuant thereto impugned order dated 05.04.2013 (Annexure P-4) has been passed, which is now the subject matter of present proceeding.

5.) Learned counsel for the respondents, per contra, points out that the main reason for denial of the arrears of salary with retrospective effect in the impugned order is that even though, admittedly, the petitioner was directed to work with retrospective effect from 30.09.2009 as Assistant Executive Engineer till the date of his promotion but, he was functioning on a post which was vacant for want of appropriate officer. The further reason given for denial of benefits of arrears is that appointment of the petitioner as Assistant Executive Engineer prior to his actual promotion was purely of temporary nature and he was required to be relieved from the said post in the event of posting of a regular Assistant Executive Engineer and, therefore, he was not entitled to the salary of Assistant Executive Engineer.

6.) Learned counsel for the respondents further contends that even

though the petitioner was directed to take over charge as Assistant

Executive Engineer at Lakha but the said charge was given to him without any financial powers.

7.) Having gone through the contents of the pleadings as also the record appended therewith and after hearing the rival contentions of both the sides, I am of the view that the petitioner is entitled to arrears of salary on the principle of equal pay for equal work. It is the conceded position, as reflected from the impugned order itself that the petitioner indeed did work as Assistant Executive Engineer under the orders of the respondents w.e.f. 30.09.2009 till the actual date of his promotion. Therefore, to hold that the petitioner would not be entitled to the arrears of salary on account of having not worked as Assistant Engineer is completely out of place. The artificial distinction created by the respondents, that since the petitioner worked as Assistant Executive Engineer against a post which was lying vacant for want of appropriate officer and the same was a temporary arrangement, is also misplaced, in view of the fact, that the order directing the petitioner to take over charge as Assistant Executive Engineer is completely silent qua the same. The petitioner was directed to take over as Assistant Executive Engineer till further orders with no riders attached to it.

8.) I am not in agreement with the contention of the learned counsel for the respondents that the petitioner was given charge of Assistant Executive Engineer without any financial powers. The same is neither borne out from the order dated 30.09.2009 (Annexure P-2) directing him to join as Assistant Executive Engineer nor even from the speaking order passed pursuant to the directions of this Court. None of these orders mention that the petitioner discharged his duties as Assistant Executive

Engineer without any financial powers. The said stand, for the first time,

has been taken up in the written statement filed in this Court. It is a settled position of law that the parties cannot be allowed to improve their case through pleadings and it is the record preceding to the pleadings that should speak for itself. In any case, even otherwise, the said argument of the learned counsel for the respondents is of no significance in view of the conceded position that the petitioner had indeed worked as Assistant Executive Engineer and the sole ground of denial of arrears of salary is that he had not worked as Assistant Executive Engineer.

9.) In view of the reasons recorded above, the present writ petition is, accordingly, allowed. The impugned order dated 05.04.2013 (Annexure P/4) is quashed and the promotion order dated 15.11.2011 (Annexure P/1), to the extent of denying the salary to the petitioner as Assistant Executive Engineer w.e.f. 12.06.2010 is also quashed, while the promotion of the petitioner as Assistant Executive Engineer is upheld w.e.f. 12.06.2010. The respondents are directed to calculate the arrears of salary of the petitioner w.e.f the date he was retrospectively promoted as Assistant Executive Engineer i.e. 12.06.2010 until the date his promotion order was passed i.e. 15.11.2011. The petitioner shall be entitled to interest @ 9% on the arrears of salary.

(ARUN MONGA)
JUDGE

January 15, 2019.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.