IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 27564 OF 2013
DATE OF DECISION : 22.01.2019

Hari Ram Gothwal

...Petitioner

versus

Punjab State Power Corporation Limited and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

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

Ms. Sarita Sangari, Advocate, for the respondent.

<u>ARUN MONGA, J.</u>

1. Petitioner has challenged an order dated 10.03.2006 (Annexure P/8), whereby the benefit of advance promotional increments granted to him, in the year 2002, on completion of 23 years regular service, has been withdrawn.

2. Factual backdrop, succinctly, is that the petitioner was initially appointed as Bill Distributor on 09.09.1975. The respondents introduced a scheme, with effect from 01.01.1986, for the grant of periodical time bound promotional scales to their employees, who remained deprived of promotions due to non-availability of promotional opportunities. The petitioner became eligible for his first promotion on 09.09.1984, when he completed

9 years' regular service. But he was not been promoted for want of promotional opportunities. He was, therefore, granted the first periodical time bound promotional scale from 01.01.1986.

3. Later, the petitioner was promoted as Lower Division Clerk with effect from 20.05.1987. He became eligible for second promotion on completion of 16 years of service with effect from 09.09.1991. However, due to non-availability of promotional opportunities, he was again not promoted. But, he was granted the time bound promotional scale of Lower Division Clerk.

4. When the petitioner became eligible for a third promotion on completion of 23 years regular service on 09.09.1998, yet again, due to non-availability of promotional opportunities, he was not promoted to the actual post of Upper Division Clerk. He was, therefore, vide order dated 06.11.2002, given the advance promotional increments w.e.f 09.09.1998.

5. However, vide the impugned order dated 10.03.2006 (Annexure P/8) the benefit of advance promotional increments allowed with effect from 09.09.1998 was withdrawn. The reason given for its withdrawal is that as per instructions dated 13.08.2004 issued by the Chief Auditor, PSEB, Patiala, the petitioner would become eligible for this benefit in case he clears the Departmental Accounts examination or is promoted to the post of Upper Division Clerk by granting exemption to pass the Departmental Accounts Examination.

6. The respondents version, in joint written statement, is that after 23 years of regular service , the advance promotional increment is granted to only those employees who fulfil the qualifications for the third promotional channel. They all must pass the Departmental Accounts examination. As per circular letter dated 17.03.2010 (Annexure R/1), note (ii) of the circular No. 62/1992 stands deleted, which means, that 23 years' promotional increment cannot be granted automatically after completion of 23 years' service. Per order dated 07.04.1998 (Annexure P/3), waiver of the condition of passing the Departmental Accounts Examination for promotion from LDC to UDC, in case of employees who had completed 50 years, is applicable only for the next promotion and not for granting 23 years' advance promotional increment. The Finance Section has clarified, vide memo dated 20.1.2008 (Annexure R-2), that the condition of passing the Departmental Accounts examination must be fulfilled for third promotion. It has been pleaded that the benefit of advance promotional increment from 09.09.1998 was erroneously given to the petitioner. The same was, therefore, rightly withdrawn.

7. Learned counsel for the petitioner contends that, as per office order dated 07.04.1998 (Annexure P/3), the condition of passing the Departmental Accounts Examination for promotion from LDC to UDC stood waived in the case of employees who had completed 50 years of age. He being above 50 years was/is

exempted from passing the Departmental Accounts Examination for promotion from LDC to UDC. The petitioner had become entitled to the time bound promotional scale with effect from 09.09.1998. The benefit was, thus, rightly granted vide order dated 06.11.2002 (Annexure P/7). Thereafter, the same could not be withdrawn on the basis of subsequent instructions dated 13.08.2004 issued by the Chief Auditor, PSEB, Patiala.

8. Learned counsel for the petitioner further submits that the petitioner had already become entitled to the benefit of time bound promotional increments, having attained the age of 50 years, when the circular letter dated 17.03.2010 (Annexure R/1) was issued for deletion of note (ii) of the circular No. 62/1992, purportedly to mean that 23 years' promotional increment cannot be granted automatically after completion of 23 years' service. He contends that on the basis of circular letter dated 17.03.2010 (Annexure R/1) the benefit which had already accrued and been granted to the petitioner could not be taken away and certainly not retrospectively.

9. In support of his contentions, learned counsel for the petitioner has relied upon a judgment rendered by a co-ordinate Bench of this Court titled as "Rattan Chand v. Punjab State Electricity Board and others" 2011 (1) SCT 833, relevant whereof is reproduced herein below :

> " *The impugned action of the respondents deserves to be struck down also being violative of the*

> *principles of natural justice. The withdrawal of the promotional pay scales has far-reaching civil consequences including reduction in the petitioners pension and other retiral dues. Unfortunately, the respondents have acted with such a closed mind that they did not deem it proper to hear the petitioner before passing the order under challenge and that too at the time of his farewell on retirement."*

10. Per contra, the learned counsel for respondents has argued that as per order dated 07.04.1998 (Annexure P/3), waiver of the condition of passing the Departmental Accounts Examination on attaining 50 years, is to be given only for the next promotion and not for granting 23 years' advance promotional increment. He further contends that this position is duly clarified in the Finance Section memo dated 20.01.2008 (Annexure R-2). The said memo, per his interpretation, envisages that condition of passing the Departmental Accounts examination must be fulfilled for third promotion. It was argued that the benefit of advance promotional increment from 09.09.1998 had been erroneously given to the petitioner and was rightly withdrawn.

11. Having considered the rival contentions, I am inclined to hold that the stand of the respondents is untenable.

12. Before proceeding further, it would be instructive to reproduce the relevant part of the Finance Circular No. 17/90 issued vide office order dated 23.04.1990 (Annexure P/1) and

the office order dated 07.04.1990 (Annexure P/3) issued by the erstwhile Punjab State Electricity Board.

(a) Finance Circular No. 17/90(Annexure P/1):

> "2. The Punjab State Electricity Board has further decided to allow benefit of promotional increment(s) to an employee on completion of 23 years of regular service provided:-
>
> ...xxxx
>
> iii) He has not earned third promotion in his regular service between 16th and 23rd years of service.
>
> ...xxxxxxx"

b) Office Order dated 07.04.1990 (Annexure P/3) .

> "The Punjab State Electricity Board is pleased to waive off the condition of passing the Departmental Accounts Examination for promotion from JE-II to JE-I and LDC to UDC with the stipulation that the incumbent has completed 50 years of age irrespective of the fact that he has availed of six attempts to clear the Departmental Accounts Examination.
>
> xxxxx."

13. It is not disputed that the petitioner had already attained the age of 50 years, when the circular letter dated 17.03.2010 (Annexure R/1) was issued. This being the factual position, I am of the opinion that the petitioner stood exempted from the condition of passing the Departmental Accounts Examination for promotion from LDC to UDC. Admittedly, he fulfilled all other conditions for the grant of advance promotional increments on completing 23 years regular service.

14. There seems nothing in the order dated 07.04.1998 (Annexure P/3), qua the view, as canvassed by the learned counsel for respondents, that the waiving the condition of passing the Departmental Accounts Examination for promotion from LDC to UDC on completion of 50 years age, is applicable only for the next promotion. Plain and simple language of the order dated 07.04.1990 (Annexure P/3) clearly indicates, that the same covers the past cases of employees, who had become eligible to the benefit of the promotional increments, and had completed 50 years of age. The contrary view canvassed by the learned counsel for respondents is, therefore, to be repelled.

15. It follows from the above discussion that the Finance Section memo dated 20.01.2008 (Annexure R-2) is contrary to the order dated 07.04.1990 (Annexure P/3), in so far the former states that the condition of passing the Departmental Accounts examination must be fulfilled for third promotion. The respondents cannot, therefore, rely upon the aforesaid Finance Section memo dated 20.01.2008 for withdrawing the benefit of promotional increments granted to the petitioner.

16. As a result of the above discussion, the writ petition is allowed and the impugned order dated 13.03.2006 (Annexure P/8) is quashed. Being a recurring cause of action, the respondents are directed to release benefit of advance promotional increments to the petitioner with effect from the date of completion of 23 years of regular service along with

interest @ 8% per annum from the due date till actual payment. The petitioner shall also be entitled to all consequential benefits arising out of quashing of impugned order dated 13.03.2006 (Annexure P-8).

(ARUN MONGA)
JUDGE

JANUARY 22, 2019
shalini

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No