

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 9161 of 2014(O&M)
Decided on: 30.10.2019

Bansi Lal

.... Petitioner

versus

Punjab State Power Corporation Limited & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Argued by : Mr. D.S. Gurna, Advocate
for the petitioner

Mr. R.L. Sharma, Advocate
for the respondents.

ARUN MONGA, J.

CM-16310 of 2019

Application is allowed and written arguments filed on behalf of petitioner are taken on record.

CM-16311 of 2019

Application is allowed, as prayed for and amended memo of parties is taken on record.

CWP-9161 of 2014

1. *Inter alia*, issuance of a writ in the nature of *certiorari* has been sought to quash order dated 10.04.2014(Annexure P-13), whereby an already granted promotion to the petitioner vide order dated 01.04.2005 was cancelled. Pursuant thereto, the pecuniary benefits of time bound promotional scales earlier granted to the petitioner on completion of 9/16/23 years of service were also contemplated to be withdrawn.

2. While issuing notice of motion, operation of the order impugned herein was stayed by this Court.

3. I have heard the rival contentions of learned counsel for the parties and conjointly perused the pleadings along with the record appended thereto.

4. Without delving too deep into the matter, *suffice* to notice that the petitioner has taken a specific stand in para No.15 of the writ petition and it would be apposite to reproduce the same for better appreciation:-

“15. That on 21.10.2003, shockingly the respondent authorities exchanged communication wherein it is stated that the petitioner already stood promoted vide office order No.283 dated 1.4.2005 from JE Sub Station to AAE. It was asked to be clarified if the petitioner had forgone the promotion at that time. An affidavit was also to be sought from the petitioner for not claiming promotion and consequent financial benefits from the deemed date i.e. 01.04.2005. Copy of the said correspondence is attached herewith as Annexure P-11.”

5. As against above, in return filed on behalf of respondents, it is stated thus:-

“15. Para 15 of the writ petition is admitted being matter of records. The original orders of promotion vide office order No.283 dated 1.4.2005 whereby the petitioner was to join the office of Chief Engineer(P&M) Ludhiana was communicated to the petitioner but the petitioner was interested to join in Distribution Circle Bathinda as such the office order was amended on 25.5.2005 at his instance but the Deputy Chief Engineer Distribution, Bathinda did not allow the petitioner to join and wrote back that there was no sanctioned post of Additional Assistant Engineer(Electrical) available in his Circle as such has requested to cancel the posting orders of the petitioner which was changed as per order dated 23.8.2005 by posting the petitioner with Chief Engineer(P&M) Ludhiana to which the petitioner never joined and was considered to be forgoing the promotion by the petitioner.”

A bare reading of para 15 of the writ petition and the

corresponding para of the written statement lead to the conceded position that the petitioner was indeed promoted and the same has been clearly admitted by the respondent. The ostensible reason of non-grant of benefit of promotion to the petitioner is stated to be that petitioner could not join and continue serving at Distribution Centre, Bathinda, since there was no sanctioned post of Additional Assistant Engineer(Electrical), the post on which the petitioner was promoted. Therefore, according to the respondents, he was not promoted.

7. The record produced with the written statement as also with the short affidavit filed by Er. Harjit Singh Saluja, Deputy Chief Engineer (Personnel), Punjab reflects otherwise. Though, it is deposed in the affidavit that the petitioner had himself forgone the promotion after the promotion order was conveyed to him vide endorsement No. 14240/57 dated 23.08.2005 (Annexure A-3), but a perusal of the photocopy of the original appended as Annexure A-3 reflects that neither there is any receipt by the petitioner of the said order nor even by his superiors in his office, who in turn could have conveyed it to him. There is a specific stand of non-conveying of his promotion order to the petitioner. In response thereto, it was averred that it was duly communicated to the petitioner, but without appending any proof thereof.

8. While on the other hand, the factual position is to the contrary as would be reflected from letter dated 14.07.2009 written by the petitioner to the Senior Executive Engineer, whereby he specifically stated that he had neither earlier nor at any stage later had objected to his promotion. He further stated that he had, on the contrary, throughout waited for his promotion from Junior Engineer to Additional Assistant Engineer and had also given consent for the same.

9. Be that as it may, I do not consider it necessary for the purpose of adjudication of the controversy of non-grant of promotion to give finding as to

whether or not the promotion order was conveyed to the petitioner. What is relevant is, whether the petitioner indeed had forgone his promotion. The record produced by the respondent and the affidavit deposed by the Deputy Chief Engineer, *ibid*, makes a bald assertion that the petitioner had forgone his promotion without there being any written communication by him.

10. In ordinary circumstances, it is hard to believe that an employee who looks forward to his career progression would verbally convey that he is not interested in promotion and a Department merely on such a verbal non-acceptance of promotion would proceed adversely against the employee.

11. In view of my discussion above and the reasoning contained therein, impugned order dated 10.04.2014(Annexure P-13) is quashed with all consequential benefits to the petitioner. Petitioner has since retired from service during pendency of the writ petition. It is made clear that he would be entitled to re-fixation of his pensionary benefits by granting him notional promotions in accordance with deemed date of promotion, to be reckoned from promotion order dated 01.04.2005, but without financial benefits for the period upto retirement.

12. As regards further promotion benefits, if available to petitioner pursuant to above direction, the respondents shall consider his case and pass appropriate order and in case he is found entitled to further promotion, notional benefits thereof will be similarly conferred to the petitioner without pecuniary benefits for the same. However, for the post retirement benefits, his pensionary benefits be recalculated on the basis of such promotion, in case he is granted further promotion.

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

14. Disposed of in above terms.

- 15. No order as to costs.
- 16. All the pending applications stand disposed of.

(ARUN MONGA)
JUDGE

October 30, 2019
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| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |