

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.8062 of 2016

Date of Decision: March 29, 2019.

Raj Kumar Chandel

.....Petitioner

versus

Punjab State Power Corporation Limited and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE ARUN MONGA.

Present: Mr.Namit Kumar, Advocate, for the petitioner.

Mr.Vinod S.Bhardwaj, Advocate, for the respondent-PSPCL

Mr.Ranvijay Singh, Advocate, for

Mr.Sudhanshu Makkar, Advocate, for respondent No.2.

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Arun Monga, J. (Oral)

1. The present writ petition has been filed seeking writ in the nature of mandamus, directing the respondents to grant benefit of promotion to the petitioner, as Assistant Engineer, w.e.f. the deemed date he became eligible, alongwith consequential benefits, in the light of the judgment passed by a Division Bench of this Court in LPA No.89 of 1995, titled as 'Surjit Singh and another v. Nirmal Singh and others', dated 23.11.2005 (Annexure P-1), which has been upheld by the Hon'ble Supreme Court vide order dated 28.08.2014 (Annexure P-2).

2. Briefly, the factual background of the case is that the petitioner joined as Junior Draftsman, in the erstwhile Punjab State Electricity Board (hereinafter PSEB), now Punjab State Power Corporation Limited (for brevity PSPCL), on 11.10.1979 and was deputed to the Bhakra Beas Management Board. While holding this post, he cleared the AMIE

Examination in the year 1985, and consequently, posts of Junior Engineer-II were advertised by PSEB. On applying for the same, he was directly recruited as Junior Engineer-II on 31.07.1986. The petitioner became eligible for promotion to the post of Assistant Engineer on 18.09.1989. This promotion was governed by the Punjab State Electricity Board (Service of Engineers Electrical) Regulations, 1965. Regulations 10.7 and 10.9 provide for a separate criteria for promotion of persons who possess qualification of AMIE at the time of recruitment and for those who acquire the same during their service. The relevant have been reproduced herein below:-

“Regulation 10.7 – 9% of the cadre posts of Assistant Engineers Electrical/Mechanical shall be reserved for Departmental Employees (Technical Subordinate and Drawing Staff) who while in the service of the Board have qualified Section (A) and (B) of AMIE examination and have completed three years service. (This amendment takes effect from 15.04.1983).

Regulation 10.9 – 9% of the cadre posts of Assistant Engineers Electrical/Mechanical may be reserved for promotion from amongst the graduates in Electrical/Mechanical Engineers/AMIE qualified hands who possess this qualification at the time of appointment as Technical Subordinates in the Board, after completion of 3 years service in that capacity.”

3. PSEB circulated a letter dated 10.10.1989, wherein, persons who fulfilled the criteria for promotion were asked to state whether they had acquired the AMIE qualification prior to or subsequent to their recruitment as Junior Engineer-II. In the meanwhile, the above mentioned Regulations were amended w.e.f. 02.11.1988. However, the amendment was not notified, as per law. The amended Regulation 10.9 stood as herein below:-

“Regulation 10.9 – 9% of the posts of Assistant Engineers (Electrical/Mechanical) shall be reserved for promotion from amongst the graduates in Electrical/Mechanical Engineering/ AMIE qualified hands who possess this qualification before joining the services of the Board and have completed three years service as technical subordinates. (This amendment takes effect from 02.11.1988 i.e. the date of decision of the Board).

4. A Division Bench of this Court in case titled as 'Surjit Singh and another v. Nirmal Singh and others', bearing LPA No. 89 of 1995, decided on 23.11.2005, held that the amendment to the Regulations had not been notified as per Section 79 of the Electricity Supply Act, 1948, and hence, cannot be said to have come into force effectively. Directions were also issued to PSEB to consider the claims of the petitioners for promotion to Assistant Engineer as per Regulation 10.9, as it stood prior to the amendment, within 6 months. SLP filed against the said order of the Division Bench was dismissed by the Hon'ble Supreme Court by order dated 28.08.2014 (Annexure P-2). The LPA judgment has since attained finality.

5. Thereafter, the petitioner submitted representation dated 10.06.2015 (Annexure P-3), seeking retrospective promotion as Assistant Engineer w.e.f. 18.09.1989, under the original Regulation 10.9, as was upheld by the Division Bench of this Court, *ibid.* However, the representation was not reverted to by the respondent-Board.

6. It has been pointed out in the petition that respondent-Board has implemented the judgment dated 23.11.2005 (Annexure P-1), vide orders dated 21.10.2008 and 06.03.2009 (Annexures P-4 and P-5 respectively), whereby, persons similarly situated to the petitioner have been given promotion from the deemed date of their eligibility.

7. In the written statement, respondent No.2- Bhakra Beas Management Board (hereinafter BBMB), has stated that there are 2 wings, namely, irrigation wing and power wing, in the organizational structure of BBMB. The partner States who are incharge of the management of the Hydro-Power project, depute their respective employees to the Board, as per their respective share in the Project. The said employees continue to be governed by the rules as per their parent Department. Hence, it is stated that the writ petition is liable to be dismissed against respondent No.2 on the ground that no cause of action lies against it.

8. Respondent No.1 has, in its reply, taken the plea that the cause of action arose 28 years ago and hence, is liable to be dismissed on the ground of delay and laches as the petitioner has failed to explain the delay in filing the writ petition satisfactorily. It has also been contended that the judgment being relied on by the petitioner has specifically mentioned in the obiter dictum that, '*the matters are disposed of with a direction to the board to consider the case of only the parties to the present proceeding*'. And accordingly, the benefit was granted only to those who were parties in writ petition and other connected matters.

9. It has further been stated that the Regulation 10.9, as is applicable in the case of the petitioner, stood amended w.e.f. 02.11.1988. Under the amended provision, the petitioner was ineligible to be granted the promotion as he had acquired the AMIE qualification in winter of 1985 i.e. after he had already joined service on 11.10.1979. It is stated that even under the old Regulation 10.9, the petitioner was not eligible for promotion as he had cleared the Departmental Accounts Examination, which was

another pre-requisite for promotion, only on 18.09.1989. Hence, under both circumstances the claim of the petitioner was liable to be rejected.

10. Another contention raised by respondent No.1 is that the petitioner could not even be given the benefit of seniority as under Regulation 10.9, it can only be granted after 3 years of having cleared the AMIE Examination. The petitioner has also failed to provide the seniority number allotted to him, as per Regulations, in his petition.

11. Respondent No.1 further states that the petitioner was granted promotion to the post of Assistant Engineer/Electrical, under Regulation 10.7, w.e.f. 08.10.1997 and the same was not challenged by him. He was further promoted to the post of Superintending Engineer vide office order dated 05.05.2016, under Physically Handicapped Quota, and presently, he is placed higher to the persons with whom he is claiming parity and if his relief is granted then such persons may be adversely affected.

12. I have gone through the record of the case and heard learned counsel for the parties.

13. It is not disputed that the petitioner joined service as Junior Draftsman in the erstwhile PSEB (predecessor in interest of respondent No.1). During service, he cleared the AMIE examination in 1985. On application against advertisement, he was directly recruited as Junior Engineer-II on 31.07.1986. In view of this, the petitioner became eligible for promotion to the post of Assistant Engineer, claimed from 18.09.1989, after completion of three years' service as Technical Subordinate.

14. Learned counsel for the petitioner contends that the case is fully covered by the judgment of the Division Bench of this Court in LPA No. 89 of 1995 decided on 23.11.2005 (Annexure P-1) and that delay in filing the

petition has been explained and that even otherwise the claim cannot be negated only because of some delay. Argument put forth by respondent No.1 that the petitioner cannot take benefit of the Division Bench judgment, *ibid*, and that in any case, the writ petition is liable to be dismissed because of delay and laches does not stand judicial scrutiny. As the judgment in LPA has attained finality, the emerging legal position is that the claim of the petitioner has to be considered in accordance with the unamended Regulation 10.9 *ibid*.

15. No doubt, the direction given by Division Bench of this Court to the PSEB was to consider the case of only the parties to the said proceedings taking into account that the (amended) Regulations were not enforceable, having not been notified on the relevant dates. I am of the opinion, that the said direction does not operate as a prohibition against the consideration of the instant case independently on its own merits. In **State of Karnataka v. C.Lalitha 2006 (2) SCC 747**, it was held that only because one person had approached the Court that did not mean that the persons similarly situated should be treated differently. A full Bench of this Court held in **Saroj Kumari vs. State of Punjab , 1988(3) PLR 123** that where the claim is of fixation of pay according to rules and instructions, it is a recurring cause of action for an employee arising every month and that writ petition for such claim cannot be dismissed on ground of delay and laches.

16. The petitioner's averments are that he suffered “complicated cryptococcal meningitis” during 2001. He remained admitted in Vidyasagar Institute of Mental Health & Neuroscience, New Delhi, from where he was shifted to Apollo Hospital, New Delhi, from 16.03.2001 till date of

discharge from Hospital on 02.05.2001 and was required to remain in Delhi for constant diagnostic tests etc. He has supported these averments with relevant medical records (Annexures P-7, P-8 and P-9). Further, the petitioner submits that due to bad luck, during hospitalization, there was loss of vision from both eyes causing total blindness. He was re-admitted to Apollo Hospital on 22.05.2001 and remained there till 25.08.2001. It took him long time to recover from the complicated disease despite long pursuit of treatment at Apollo Hospital as OPD patient. After a long wait, his vision started to return, but remained restricted and caused permanent disability. Due to partial blindness/low vision, the petitioner remained confined to his duty place and home town. Throughout his service period, he remained on deputation in BBMB, away from his parent department, official circle of colleagues, friends and was ignorant for a long time about the case of other officers in the parent department. In the totality of circumstances, I am of the opinion that the petitioner also deserves some leniency for the delay in filing the petition.

18. In view of the discussion and the reasons stated above, the writ petition is allowed and the respondents are directed to ante-date the promotion of the petitioner as Assistant Engineer notionally w.e.f. 18.09.1989, i.e., when he qualified the departmental accounts examination and became eligible for the promotion on parity with similarly situated employees. It is, however, made clear that only pecuniary and pensionary benefits of notional ante-dating of promotion of the petitioner shall be restricted to 38 months prior to filing of the writ petition. The petitioner shall not be entitled to any other benefits, i.e. seniority etc. This direction is issued in peculiar facts and circumstances as explained above and owing to

the pendency of petition before the Hon'ble Supreme Court and considering the fact that the petitioner was suffering from physical ailment and was unable to seek advice for filing the writ petition and to wait for the outcome of the SLP.

March 29, 2019

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(ARUN MONGA)
JUDGE

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