

CWP-10202-2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10202-2016

Date of Decision: 16th January, 2020

Sant Ram & others

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Pawan Kumar Sharma, Advocate
for the petitioners.

Mr. Charanpreet Singh, Asstt. A.G., Punjab.

Mr. Karan Nehra, Advocate
for respondent Nos. 2 to 4.

AUGUSTINE GEORGE MASI, J. (ORAL)

Petitioners have approached to this Court impugning the order dated 31.01.2015 (Annexure P-7), whereby, benefit of first and second time bound higher pay-scale granted to them on completion of 9/16 years of service stands withdrawn by the Regional Engineer, Dehar Power House Division, Bhakra Beas Management Board, Slapper, Tehsil Sundernagar, District Mandi (H.P.).

2. It is the contention of learned counsel for the petitioners that the benefit, which has already been granted to the petitioners as per the instructions dated 23.04.1990, could not have been withdrawn by the respondents merely on the ground and that too at a belated stage now for

the reason that the petitioners have refused/foregone their promotion. He asserts that the petitioners were granted the benefit of first and second time bound higher pay-scale on they having completed 9 and 16 years of service much prior to the date on which they were offered promotion to the next post. He contends that the instructions dated 23.04.1990 do not deal with a situation where an employee at a subsequent stage refuses/foregoes his promotion. That apart, he asserts that a benefit already conferred upon the petitioners could not have been withdrawn by the respondents merely because at a subsequent stage, they would be granted the benefit of promotion. He, thus, contends that the impugned order cannot sustain especially in the light of the judgments passed by this Court in CWP-2587-2009, titled as 'Rattan Chand versus Punjab State Electricity Board and others', decided on 12.08.2010 (Annexure P-1) as also in CWP-2595-2011, titled as 'Rajinder Parshad Raturi versus Punjab State Power Corporation Limited & another', decided on 06.07.2012 (Annexure P-2).

3. On the other hand, learned counsel for the respondents submits that the petitioners although were granted the benefit of the first and the second time bound higher pay-scale on completion of 9/16 years of service but this was granted primarily for the reason that by that time, they had not been offered promotion to the higher post. When such an offer had come their way, they were bound to take the said offer. Refusal/foregoing of such promotional avenue would itself be contrary to the spirit of instructions, for which such instructions dated 23.04.1990

were issued and further, the said refusal/foregoing of the promotion is triggered because of an intention to continue in service till the age of 60 years, whereas the petitioners if are promoted, would have continued upto the age of 58 years. Prayer has, thus, been made for dismissing the writ petition by asserting that the judgments, on which reliance has been placed by the counsel for the petitioners, are distinguishable on this aspect.

4. I have considered the submissions made by learned counsel for the parties and with their assistance have gone to the pleadings as also the judgments on which reliance has been placed by the petitioners but do not find myself in agreement with the submissions of the learned counsel for the respondents.

5. The factum that the petitioners were granted the benefit of first and second time bound higher pay-scale on completion of 9/16 years of service much prior to the date on which their turn for consideration for promotion had come, is not in dispute. It is also not disputed that prior to the grant of benefit of first and second time bound higher pay-scale to the petitioners, the petitioners were neither promoted nor had they refused/foregone their promotion for denying the benefit under these instructions is apparent. The benefit, therefore, stood conferred on them as per the instructions dated 23.04.1990. The factum that the said instructions only deal with the contingency where an employee becomes eligible for consideration for the grant of promotion and foregoes his promotion for denying the benefit under these instructions is apparent. It

is, under these circumstances only, that he would not be entitled to the grant of first or second time bound higher pay-scale on completion of 9/16 years of service. The instructions do not envisage or deal with a situation where an employee after having been granted the benefit of first and/or second time bound higher pay-scale, refuses/forgoes his/her promotion at a later stage for empowering withdrawal of such benefit having been granted. If that be so, the plea as taken by the counsel for the respondents that they having foregone their promotion at later stage also would confer a right on the respondents to withdraw the benefit is unsustainable.

6. That apart the plea which has been taken by the respondents that the petitioners have intentionally refused to take promotion so that they can continue till the age of 60 years also cannot be accepted as it is the discretion of an employee to continue on a particular post by refusing promotion. Nothing has been pointed out from any rule/instruction which mandate that an employee on being eligible and offered promotion must accept the said promotional post. It may be added here that all the instructions on which reliance has been placed by the respondents have been duly considered and dealt with by this Court in *Rajinder Parshad's* case (supra) and rejected.

7. In the light of the above and keeping in view the judgments passed by this Court in *Rattan Chand's* and *Rajinder's* cases (supra) (Annexures P-1 and P-2), which cover the case of the petitioners in their favour, the impugned order dated 31.01.2015 (Annexure P-7) cannot

sustain and is hereby quashed.

8. The recovery which has been effected from the petitioners in pursuance to the above referred to order shall be released to them within a period of two months along with other consequential benefits. Petitioners would be entitled to the interest at the rate of 7% per annum from the date of recovery/accrual till the date of disbursement.

9. The writ petition stands allowed in above terms.

(AUGUSTINE GEORGE MASIH)
JUDGE

16th January, 2020
Nisha

Whether speaking/reasoned:	Yes
Whether Reportable:	No