

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

219

**CWP No. 18870 of 2014 (O&M)
Date of Decision :24.01.2020**

Ramesh Chander

... Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Vikas Mohan Gupta, Addl. A.G. Punjab.

SUVIR SEHGAL, J.

The instant petition has been filed seeking a writ in the nature of certiorari for quashing impugned order dated 23.05.2013 (Annexure P-6) and order dated 23.05.2014 (Annexure P-12) passed by respondent No.4. Further writ in the nature of mandamus has been sought for directing the respondents to correct the seniority of the petitioner and to grant monetary benefits to him which had been deducted by mistake.

Facts in brief are that the petitioner was appointed as an Electrician on 01.01.1985 in the pay scale of Rs.950-1800 in Ranjit Sagar Dam (RSD). His services were regularized vide Punjab Government notification No.9133/96/1PP-3(a)4911 dated 13.03.1996 and he was placed in the pay scale of Rs.3120-5160. Seniority list of Electrician was prepared vide letter dated 16.04.1999 and his name was placed at serial No.61. For conferring the benefits of second schedule, a

final seniority list was prepared and he was placed at serial No. 36. He was re-designated as Technician Grade II and placed in the pay scale of Rs.4020-6200 w.e.f. 01.01.1996 vide order dated 03.07.2000 (Annexure P-1). Petitioner continued to enjoy this scale for 10 years. Some employees had been wrongly given the benefit of pay scale of Rs.1200-2100 and the same was withdrawn by the respondents when the error came to their notice. Inadvertently, the benefit given to the petitioner was also withdrawn in the year 2010 and his seniority position was lowered to serial No.265. Petitioner approached the respondents and pointed out that he had never been granted the pay scale of Rs.1200-2100, therefore, there was no occasion for withdrawal of the same. After realizing their mistake, the respondents refixed the salary of the petitioner in the pay scale of Rs.4020-6200 w.e.f. 01.01.1996 vide letter dated 30.08.2010 (Annexure P-2) and recommended the grant of the said scale to him vide Annexures P-3 and P-4 which was sent to higher officer for approval. When no action was taken despite the petitioner having submitted a representation, the petitioner filed CWP No.25902 of 2013 which was disposed of by this Court vide order dated 26.02.2013 (Annexure P-5) with a direction to respondent No.4 to consider and decide the representation/claim of the petitioner and it was further directed that in case his claim is not accepted, then a well reasoned and speaking order be passed. In pursuance thereto, respondent No.4 passed the impugned order dated 23.05.2013 (Annexure P-6) rejecting the claim. The petitioner served legal notice dated 23.04.2014 (Annexure P-11) pointing out the factual error in the order (Annexure P-6) in as much as the petitioner had never been awarded benefit of pay scale of Rs.1200-

2100 and requested for a personal hearing. However, respondent No.4 vide impugned order dated 23.05.2014 (Annexure P-12) withdrew the pay scale of Rs.4020-6200 which had been granted to the petitioner vide Annexure P-1.

Upon notice, the respondents in their written statement submitted that the petitioner had been wrongly placed in the higher pay scale of Rs.4020-6200 vide Annexure P-1 as the seniority list of the employees of RSD had not been finalized prior to date of regularization i.e. 13.03.1996 and only a provisional seniority list had been prepared wherein petitioner had been placed at serial No.36. It was further submitted that seniority list of the category of Electricians was finalized in the year 2011 and the petitioner was placed at serial No.265 and moreover that the petitioner was not entitled to the benefit of second schedule as he did not fall in the first ratio of 20% under the IIInd Schedule. The respondents further submitted that no recovery had been effected from the petitioner on account of inadvertent grant of higher scale and that after withdrawal, the consequential pay refixation orders (Annexures R-3 and R-4) have been issued.

Counsel for the parties have been heard and record has been perused with their able assistance.

Shorn off other details, the fact is that the petitioner had approached this Court by filing CWP No.25902 of 2012 when the recommendations made in his favour, were not being given effect to by respondent No.4. The writ petition was disposed of by the High Court on 26.02.2013 with the following direction:-

"In the light of the above, the present petition is disposed of with directions to the Executive Engineer

Electrical Division, Ranjit Sagar Dam, Shahpur Kandi, District Pathankot-respondent No.4 to consider and decide the representation/claim of the petitioner as submitted by him/forwarded by respondent No.6 within a period of four months from the date of receipt of certified copy of this order. Decision so taken be conveyed to the petitioner forthwith.

In case the claim of the petitioner is accepted, the consequential benefits, if any, be released to him, in accordance with law, within a further period of two months. In case the claim of the petitioner is not to be accepted, a well-reasoned and speaking order be passed and conveyed to the petitioner forthwith."

It is clear that the direction of this Court was not only to consider and decide the claim of the petitioner but was also to pass a well reasoned and speaking order, in case, the claim is not accepted. Respondent No.4 was therefore, not only bound to pass a reasoned order but was also required to afford an opportunity of hearing the petitioner in case his claim was not being acceded to. However, the authority acted in violation of the direction and proceeded to decline the claim without hearing the petitioner by passing a non-speaking order.

Hearing in such a situation was imperative since the impugned order, Annexure P-6 had been passed on the basis of wrong facts. Had the petitioner been heard before passing the impugned order Annexure P-6, the factual error in the order would not have crept in as the petitioner had never been granted the pay scale of Rs.1200-2100 as mentioned therein. Though learned State counsel has tried to justify the

error by describing it as typographical, such an error exhibits that the order had been passed by the authority in a mechanical manner without any application of mind. Still further, in the legal notice served by the petitioner, he had specifically requested for a personal hearing while pointing out the factual error in the impugned order (Annexure P-6). Rather than accepting his request for hearing, respondent No.4 vide impugned order dated 23.05.2014 (Annexure P-12) withdrew the pay scale of Rs.4020-6200.

This order simply mentions that the matter was discussed and considered in the meeting of officers in the office of Chief Engineer and it was opined that the benefit had been wrongly sanctioned, therefore, it was withdrawn in public interest. No reasons were assigned in the order (Annexure P-12). The same cannot be said to be a reasoned order, in fact, the same seems to have been passed with a closed mind.

The settled principle of law is that an order which adversely affects the civil rights of a party whereby his financial benefits are reduced, is required to be passed not only after hearing the concerned employee but is also deserves to be supported by cogent reasons. However, neither the order dated 23.05.2013 (Annexure P-6) nor order dated 23.05.2014 (Annexure P-12) has been passed after hearing the petitioner nor are they supported by any reasons. Both the orders being violative of the principles of natural justice, deserve to be set aside.

Consequently, the impugned orders dated 23.05.2013 and 23.05.2014 (Annexure P-6 and P-12) are quashed with a direction to respondent No.4 to reconsider the matter afresh and pass a well reasoned and speaking order considering the claim set up by the petitioner in his

legal notice-Annexure P-11 after affording an opportunity of hearing to the petitioner. The necessary exercise be carried out within a period of four months from the date of receipt of certified copy of the order.

Writ petition is disposed of with the above observation.

24.01.2020

pooja saini

(SUVIR SEHGAL)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>