

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

CWP-27316-2015

Date of decision: - 10.02.2020

Lal Chand

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Mr. R.L. Sharma, Advocate
for respondents No.2 to 4.

Mr. Aseem Rai, Advocate
for respondents No.5 and 6.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that though, he is working as Oil Cleaner, which admittedly is a Class IV post according to the rules governing the service, but, he has been retired on attaining the age of 58 years on the ground that pay, which he is getting, is admissible to a Class III employee and hence, he is to be treated as a Class III employee for all intents and purposes including for the purpose of retirement and no benefit of

continuance in the service till the age of 60 years, which is admissible to a Class IV employee, can be claimed the petitioner.

As per the facts stated in the writ petition, petitioner joined the Punjab State Electricity Board (for short 'PSEB') in the year 1984 and was sent to Bhakra Beas Management Board (for short 'BBMB') in the same year. At the time when petitioner was sent to BBMB, he was working on the post of an Oil Cleaner. While working on the said post, respondents passed an order on 14.07.2014 (Annexure P-3) retiring the petitioner on attaining the age of 58 years. Petitioner represented to the respondents that Oil Cleaner is a Class IV post (Group 'D') as per the Punjab State Electricity Board, Main Services Regulations, 1972 and therefore, the retirement age of a Class IV is 60 years and he should be allowed to continue till the said age. Though, there were several communications addressed by the BBMB to the PSEB seeking clarification on the said issue, but no relief was extended to the petitioner and he was made to retire on 31.07.2014 on attaining the age of 58 years, keeping in view the advice given by the PSEB. Petitioner has approached this Court challenging the said action of the respondents and further claiming that he should be allowed to continue in service till he age of 60 years, which is the retirement age of a Group 'D' employee alongwith consequential benefits.

Upon notice of motion, respondents have filed the reply, in which, the respondent-PSEB has stated that the petitioner has already been released his pensionary benefits and therefore, the claim of the petitioner to continue in service no longer subsists and is liable to be

rejected. In the reply, the respondents have admitted that Oil Cleaner is a class Group 'D' post (Class IV), but keeping in view the implementation of 4th Pay Commission report, the petitioner is to be treated as a Group 'C' employee as per the circular circulated by the Punjab State Electricity Board, being finance circular No.20 of 2004. In the said circular, the Group "A, B, C and D" were bifurcated on the basis of the pay-scales. On the basis of said circular, as petitioner was drawing the salary between ₹6100-11749, he was to be treated as a Group 'C' employee and was retired by the respondent-PSEB on attaining the age of 58 years.

Learned counsel appearing on behalf of the respondent-BBMB stated that keeping in view the stalemates between the rules and the instructions, letters were written to the PSEB for advice as to whether the petitioner is to be relieved at the age of 58 years or 60 years, but as the employer i.e. PSEB insisted on relieving the petitioner on attaining the age of 58 years, the BBMB had no option, but to retire him on 31.07.2014.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question, which has been posed before this Court, is whether on the basis of the Finance Circular No.20 of 2004, a post of Oil Cleaner, which is admittedly a Class IV post under the Recruitment Rules, can be treated as a Class III post.

This question arose for consideration before this Court in **CWP No.16002 of 2018** titled as '**Dilbag Singh Vs. State of Punjab and others**', decided on **16.09.2019**. In the said case also, the post of Packer,

which was admittedly a Class IV post under the Recruitment Rules, was being treated as a Class III post for deciding age of superannuation. In the said case also, there was a letter dated 10.07.2017, which was issued by the competent authority bifurcating the posts between Group 'A to D' on the basis of the pay-scales, which was being relied upon by the respondents to claim that though under the Recruitment Rules the post of a packer was a Class IV post, but the same has to be treated as a Class III post keeping in view the letter issued on 10.07.2017. This Court held that once the rules governing the service i.e. the recruitment rules envisage a post under a particular category, merely the grant of pay-scales by an executive instruction, cannot change the category of the said post. The relevant paragraphs of the said judgment are as under: -

“Further, once the post of Packer is governed by the 1963 Rules duly framed as per law, the same has to be made applicable upon the employees unless and until the Rules are amended. In 1963 Rules, as amended from time to time, the post of Packer is being treated as a class IV post. 1963 Rules have been attached by the respondents as Annexure R-4 with their reply. In the 1963 Rules, the post of the Packer is duly covered. 1963 Rules were amended in the year 1976 and the relevant portion of the Rules is as under:-

Office Order

No. 6483/LA/Admn/Pb. Dated 09.12.76

The appointments to Punjab State (Class-IV) Service are to be governed by the Punjab State (Class-IV) Services Rules 1963 as notified by the Punjab Government vide Notification No.G.S. R. 123/Const/Art309/6 dated 23.05.1963 (copy enclosed) within the provisions of these rules, the method of appointment and promotion to class-IV posts both in

the Ministerial and Industrial order of the
Printing & Stationery Department shall
be governed as under:

Sr. No.	Name of the post with Scale	Promotion of appointment (ii) Promotion	(iii) Direct appointment	Method of Recruitment qualification and Experience for promotion	Qualification and Experience for direct recruitment
1.	Packer/ Officer Daftari Counter	75%	25%	By selection amongst Peon, Mazdoor, Chowkidar, Ward Servant, Mali and Sweeper etc on the basis of a pooled Seniority to be determined by continuous date of appointment in the service.	Matric with Punjabi
2.	Peon, Mazdoor, Chowkidar Ward Servant, Mali, Sweeper etc.	----	100%	----	Preferably primary Pass with knowledge of Punjabi language

Chandigarh
09.12.76

Pawittar Singh Walia
Controller,
Printing and Stationery
Department, Punjab
Chandigarh.

A bare perusal of the above would show that the post of Packer is a Class IV post.

The 1963 Rules were further amended in 1979 wherein again, the post of Packer has been treated as class IV post. Again, even in the amendment, done on 06.11.1985, the post of Packer has been treated as a class IV post. That being so, once the 1963 Rules as amended from time to time, governing the services, declare the post of packer as a class IV post the same cannot be treated as a class III post merely on account of grant of same pay scale, which might have been extended to a class III post. The categorization of the post depends upon the Rules governing service and not upon the pay scale attached to the Rules.

The option was available to the department that in case, they felt that a class IV post has been granted a higher scale, which is admissible to class III, the respondents could have amended the 1963 Rules accordingly to bring the post of Packer into a class III post but without amendment of 1963 Rules, merely on account of grant of higher pay scale, the post automatically does not become a class III post.

In the present case, it has been admitted by the learned counsel appearing on behalf of the respondents that there is no amendment carried out to the 1963 Rules by which, the said post has been treated as a class III post instead of class IV post. There is only letter dated 10.07.2017, which has been issued by the department wherein, it has been stated that keeping in view the pay scale given to the post of Packer, the same is to be treated as a class III post instead of class IV.

It is a settled principle of law that if there is a conflict between the rules governing the service and the instructions, the rules will prevail over the instructions. Hon'ble Supreme Court of India while deciding Civil Appeal No.3605 of 2009, titled as **General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and others**, decided on 15.05.2009 held as under:

“31. Reliance has been placed on a purported circular issued by Uttaranchal Public Works Department dated 21st March, 2002, assuming that the same can be taken into consideration, is in our opinion wholly irrelevant. Apart from the fact that such a contention had not been raised by the respondents before the High Court, we fail to understand how a mere circular letter which has no force of law shall prevail over the statutory Rules. Respondents themselves have relied upon the decision of this Court in **DDA Vs. Joginder S. Monga** {(2004)2 SCC 297}, wherein it was held that executive instructions cannot run contrary to the statutory provisions.”

A Division Bench of this Court also while deciding CWP No.15288 of 2006, decided on 14.12.2006, titled as **Dharambir and another Vs. State of Haryana** again reiterated that the State Government through executive instructions cannot have the power to act in violations of the provisions of the Act. The instructions which are in conflict with the Rules or the Act, cannot be given preference as the Act has a superiority over the instructions. The relevant paras 8 and 9 of the judgment are as under:

“8. After hearing the learned counsel for the parties and taking into consideration the pleas raised by them, we find that the grievance made by the petitioner is wholly justified. The appointment of the Cattle Fund as per the guide-lines Annexure P3 is clearly in conflict with the substantive provisions of Section 16 of the Act (as noticed above).

9. The State Government through executive instructions cannot have any powers to act in violations of the provisions of the Act.”

In the present case by the letter dated 10.07.2017, 1963 Rules governing the service are being amended so as to treat the post of Packer which is a Class IV post according to the 1963 Rules, to be treated as a Class III post, which is contrary to the settled principles of law. Hence, 1963 Rules, as amended from time to time, will prevail over the letter dated 10.07.2017 as the said letter cannot over ride duly framed 1963 Rules.

Keeping in view the above, the action of the respondents in treating the post of Packer as a class III post is not at all sustainable, especially in case of the employees, who had already retired prior to the issuance of the letter dated 10.07.2017, by retrospective operation of the said letter. Therefore, the refixation of the salary of the petitioner by withdrawing two increments by the respondents is held to be bad. The petitioner is entitled for fixation of his pay, which he was drawing actually on the date of his retirement as well as pensionary benefits which were fixed when the petitioner actually retired on 28.02.2016, after serving for extension period and the same needs to be restored and respondents are directed to restore the same.”

In the present case also, the facts are somewhat similar. On the basis of a circular, which has been issued by the respondent-PSEB being Finance Circular No.20 of 2004, the Recruitment Rules are being ignored/superseded. This is impermissible as the rules cannot be superseded or amended by a letter or a circular. If there is a contradiction between the circular and the rules, the rules will prevail over the circular.

The circular is merely an executive instruction, which cannot override the duly framed recruitment rules.

In view of the above, treating of the petitioner as a Class III employee on the basis of a finance circular No.20 of 2004, which is only an executive instruction to supersede the rules, is in violation of the settled principle of law as noticed above. Further, during the course of hearing, learned counsel appearing on behalf of the respondents admitted that under the recruitment rules, the post of Oil Cleaner is a Class IV post even as of now. The said fact has also been admitted in the written statement as well and therefore, keeping in view the fact that the post of Oil Cleaner is a Class IV post under the Recruitment Rules, which rules govern the status of the employee till they are suitably amended in case the need arose for the respondents after the issuance of the circular No.20 of 2004, but the same have never been amended and therefore, the recruitment rules as they exist, will prevail over the instructions and the petitioner is to be treated as a Class IV employee for all intents and purposes including his retirement age. Hence, petitioner is held entitled for his retirement at the age of 60 years.

Further, as the petitioner has been restrained from working for a period of two years, for which only the respondent-PSEB is responsible, the benefit of two years of service will be extended to the petitioner with consequential benefits alongwith re-computation of the pensionary benefits. Respondents will be at liberty to adjust the pensionary benefits whatever has been paid to the petitioner while implementing this judgment.

Let the computation of benefits for which the petitioner becomes entitled for under this order be done within a period of three months from the date of receipt of certified copy of this order and the actual benefits be released to the petitioner within a period of one month thereafter.

Present writ petition is allowed in the above terms.

February 10, 2020
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes