IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1516 of 2019 (O&M)
Date of decision: 05.04.2021

Punjab State Electricity Board, Patiala (now Punjab State Power Corporation Ltd.)

...Appellant

Vs.

Er. Jagjit Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Vinod S. Bhardwaj, Advocate,
for the appellant.

Mr. H.S. Saini, Advocate,
for the respondents.

***

Ritu Bahri, J.

CM-3373-LPA-2019

For the reasons mentioned in the application, same is allowed and delay of 81 days in filing of the appeal is condoned.

LPA-1516-2019

Present Letters Patent Appeal is filed against the judgment dated 02.04.2019 passed by the learned Single Judge of this Court, whereby petition (CWP No.4378 of 1996) filed by the petitioners (respondents herein) has been allowed and direction has been given to the appellant to grant the benefit of time bound pay scale, as per the scheme, which was implemented w.e.f. 01.01.1986 with all consequential pecuniary benefits along with interest @ 6% per annum.

Heard, learned counsel for the parties.

Learned counsel for the appellant is not disputing that vide order dated 23.04.1990 (Annexure P-2), the appellant (erstwhile PSEB) formulated a scheme to grant time bound promotional scales to its employees w.e.f. 01.01.1986. Further, vide order dated 23.04.1990 (Annexure P-3), Junior Engineers, JE-II, who were in the pay scale of Rs.1640-2925-3200 were granted the pay scale of Rs.1800-3200 as first time bound scale after completion of 9 years service and the pay scale of Rs.2200-40-2400-60 and 2700-75-3000-100-4000-125-4250 as second time bound scale after completion of 16 years of service. Relevant order dated 23.04.1990 (Annexure P-3) is reproduced as under:-

SCHEDULE-I

<table>
<tr><th>Sr. No.</th><th>Name of Lowest Induction post through direct recruitment</th><th>Pay scales</th><th>First time Bound Scale to be allowed after 9 years of service</th><th>2nd time Bound Scale to be allowed after 16 years of service</th><th>Remarks</th></tr>
<tr><td>1</td><td>Assistant Linesman</td><td>950-1800 (with start of Rs.1000/-)</td><td>1200-2200</td><td>1640-3200</td><td></td></tr>
<tr><td>2</td><td>Linesman</td><td>1200-2200</td><td>1640-3200 (Promotional /devised Promotional Scale</td><td>1800-3600
JE Ist Scale</td><td></td></tr>
<tr><td>3</td><td>JE-II (Electrical)</td><td>1640-2925-3200</td><td>1800-3200</td><td colspan="2" rowspan="2">2200-40-2400-60-2700-75-3000-100-4000-125-4250
These 2 times higher scales will be allowed if JE-II qualifies the DAE for Technical Subordinate otherwise he will be placed in the second time bound scale of Rs.2100-3700</td></tr>
<tr><td>4</td><td>JE-II (Civil)</td><td>1640-2925-3200</td><td>1800-3200</td></tr>
</table>

Petitioners (respondents herein) were granted the pay scale of Rs.1800-3200 as first time bound scale after completion of 9 years (which is the scale of the post of JE-1) and Rs.2200-40-2400-60-2700-75-3000-100-4000-125-4250 (which is the scale of Assistant Engineers) after 16 years of service. With regard to the second time bound scale, which was to be allowed after 16 years of service, an amendment was made vide order dated 28.02.1994 (Annexure P-5), whereby scale of Assistant Engineer was granted to the JE-II (after completing 16 years). Relevant extract of the order is being reproduced as under:-

> "......The Punjab State Electricity Board is pleased to order the grant of scale of Assistant Engineer i.e. Rs.2200/4250 (2200-50-2480-60-2700-3000-100-4000)-125-4250 without the initial start of Rs.2400 to the categories of J.Es (DAE qualified) eligible for the post of AE under the PSEB Engineers (Elect./Civil) Regulations, 1965 (Electrical/Civil/Testing/Communication/Installation & Sub Station) on completion of 16 years service from the date of joining on the induction post of JE-II in terms of O/O No.197/FIN/PRC-1988 dated 23.04.1990......."

Since the object of giving benefit of promotional scales, as per scheme dated 23.04.1990 (Annexure P-2), was to remove the stagnation in the case of JEs, who did not get promotion, the first scale granted to JEs, as per Schedule-I, was of Rs.1800-3200 after 09 years of service. They were to be granted the 2nd time bound scale after 16 years, which was of the post of Assistant Engineer and while removing this anomaly vide letter/order dated 28.02.1994 (Annexure P-5), it has been specifically stated that the scale of the Assistant Engineers has been granted. A perusal of the orders dated 23.04.1990 (Annexure P-2) and 28.02.1994 (Annexure P-5) clarifies that while granting the scale of Assistant Engineer, there was a jump of Rs.300/- i.e. from Rs.2700/- to Rs.3000/- and this was not reflected in

Schedule-1, as referred to above. This was an anomaly, which was removed vide order dated 28.02.1994 (Annexure P-5) and the learned Single Judge has rightly allowed the petition that this was an anomaly, which was removed by the department itself and it has to be implemented w.e.f. 01.01.1986.

The only ground taken by the appellant was that before revising the scales vide order dated 28.02.1994 (Annexure P-5), there was an agreement between the Council of the Junior Engineers and the appellant-board that the arrears would be given to them w.e.f. 1993. However, no such agreement has been placed on record. It is not the case of the appellant that as per scheme/order dated 23.04.1990 (Annexure P-2), petitioner-respondents were not entitled to the scale of the posts of Assistant Engineers. However, while passing the order dated 23.04.1990 (Annexure P-2), there was a mistake in recording the scales of the Assistant Engineers. In the said order, there was no mention regarding jump of Rs.300/- i.e. from Rs.2700/- to Rs.3000/- and this anomaly was removed vide order dated 28.02.1994 (Annexure P-5). Hence, for all intents and purposes, petitioner-respondents were given their rightful claim of the pay scales at par with the Assistant Engineers after completing 16 years of service as per original scheme dated 23.04.1990 (Annexure P-2). No written agreement has been placed on record by the appellant along with the additional affidavit to show that the Council of Junior Engineers had agreed to forego their arrears. They have placed on record only copy of the office noting. But, the office noting cannot be taken to be an agreement. Moreover, this is not a case of modifying the pay scales, but it is a case of removing the anomaly. Reference, at this stage, can be made to a judgment passed by Division

Bench of this Court in ***State of Haryana and others vs. K.L. Mittal and others,*** 2013 (2) SCT 110, wherein it has been observed as under:-

> "12. After considering the matter in detail including the arguments of counsel for both the parties, we are of the view that present case was not a case of anomaly. Instead a conscious decision was taken to give better pay scale to the respondents herein. Insofar as pre-revised scale of Rs.200-450 is concerned, revised scale thereof was Rs.525-1050/- which was given to the respondents with effect from 1.4.1979. However, they were demanding better treatment on the ground that their pay scale and that of degree-holders should be the same. Though this request was partially accepted earlier by revising the pay scale to Rs.600-1100/- with effect from 1.2.1981, thereafter on their repeated demands, the further revision in the pay scale of Rs.700-1250/- was given.
>
> 13. The word "Anomaly" has been defined in Webster's New Twentieth Century Dictionary to mean "abnormality; irregularity; deviation from the regular arrangement, general rule or the usual method". Since this definition is not precise with reference to the pay scales and pay revision, it is pertinent to draw up a reasonable definition of what would constitute of an anomaly. It has been discussed by this Court in S.K. Bishnoi (supra) as a situation "where there is a loss of emoluments in the case of an employee on account of revision of pay scales." In this context, we agree with the legal position stated in the orders dated 23.4.2004 passed by the Government of Haryana as to what would constitute 'anomaly' and the five instances given therein which already have been extracted above.
>
> 14. What is to be borne in mind is that the issues involved in pay revision matters are extremely complex. It has been repeatedly held by the apex court that these can be best examined and considered by the expert bodies, such as, Pay Commission and issues, such as, equality of work, nature of duties and responsibility of various posts require in-epth analysis. This principle is ingrained in **State of U.P.** vs. **J.P. Chaurasia (1989) 1 SCC 121** and exemplified further in the case of **Secretary, Finance Department vs. West Bengal Registration Services Association, AIR 1992 SC 1203**. Even when the expert committee like Pay Commission goes through this exercise and gives its recommendations, while implementing those recommendations and giving fitment to various categories of employees, anomalies do take

> place. The State Government had constituted pay anomaly commission in the present case. Consequently, while recommending the pay scale of Rs.700-1250/-, the Pay Commission did not observe any specific anomaly. On the other hand, it found that the diploma engineers i.e. Junior Engineers holding diploma should be brought at par with the degree-holders and this was the reason for according further revision in the pay scale. Once these significant aspects of the matter are looked into, we find that it was not a case of removal of anomaly, but grant of further revision and, therefore, the State had the prerogative to fix the date of 1.7.1985 from which this revision was to take effect."

In the aforesaid judgment, it has been held that when an anomaly in revision of pay scale is removed, it has to be taken from the same date when the pay revision takes place and not from the date when decision is taken to remove the anomaly at a later date. In para 6 of the judgment, it has been held as under:-

> "6. Whenever revision in pay scales takes place, while taking such a decision, the Government fixes the date from which the pay revision is to take place. While giving effect to the recommendations of the Pay Commissions, as accepted by the Government, many times anomalies also arise. It is also a practice/procedure adopted by the Government to appoint anomaly committees to look into the purported anomalies which are pointed out. Exercise which is done by the anomaly committee is to find out whether there is actually an anomaly in the implementation of the pay scale of a particular category. If it is so, the anomaly committee recommends giving of appropriate pay scale by removing the anomaly. Once anomaly is accepted and decision is taken to remove the same, it has to be from the same date when the pay revision takes place and not from the date when decision is taken to remove the anomaly at a later date. There can also be a situation when the pay was rightly revised corresponding to the pre revised pay scale, but on consideration of various other factors and the recommendations of anomaly committee or some other expert committee, the Government takes the decision to accord better pay scale for which justification is found for certain other reasons. In this situation, which is not a case of removal of anomalies, further revision can take place from a later date and such a date can be fixed by the

Government which may not necessarily be a date on which general revision of pay scale had taken place. The afore-stated principle finds enunciation in the case of **State of Rajasthan vs. Gopaldas, 1995(3) RSJ 24** in the following words:

> "7. The Rules providing for the revised pay-scales were made by the State Government as a result of the recommendation of the Pay Commission which was headed by Mr. B. P. Beri, a former Chief Justice of the Rajasthan High Court. In the process of consideration of the recommendations of the Pay Commission and its implementation, the likelihood of various anomalies and omissions cannot be ruled out. An Anomalies Committee is normally appointed to straighten the discrepancies and deal with the omissions which might come to the notice of the Government after the initial process of pay revision. This was precisely what was done by the State of Rajasthan by issuing the fourteen notifications relating to different departments whereunder the revised payscales, which could not be included under the Rules, were provided and enforced. So far as the notification dated February 23, 1985 relating to the UDCs of subordinate office is concerned, it was not with a view to remove any anomaly or to make any provision for a category which was left out of the Rules. It was a notification issued as a result of the acceptance of the demand of the UDCs of the subordinate offices for grant of higher payscale which was given to their counterparts in the Secretariat. The High Court failed to appreciate that the factual basis for issuing the notification dated January 23, 1985 and the fourteen notifications relied upon by the High Court was entirely different. No fault could be found with the notification dated January 23, 1985 and the State Government was justified in granting revised S-10 to the respondent and other UDCs of subordinate offices with effect from February 1, 1985."

As per the above said judgment, arrears can only be restricted if, it is a case of further revision in the pay scales or on the recommendation of the Anomaly Committee or some other expert committee, the Government takes a decision to grant better pay scale for some other reasons.

In ***The Punjab State Co-Operative Agricultural Development Bank Ltd. vs. Punjab State Co-Operative Agricultural Development Bank Pensioner's Association & others,*** 2009 (2) SCT 284, the Division Bench of this Court was considering a case of revision of pay scale. It was held that once there is anomaly in the pay scales, benefits are to be paid from the date of removal of anomaly and no artificial and arbitrary date can be fixed in this regard. In ***Jagroop Singh vs. State of Haryana,*** 2001 (3) SCT 124, the Division Bench of this Court was considering a case, where the petitioner was appointed as Water Pump Operator w.e.f. 21.10.1985 on work charge basis. He was matriculate with ITI (two years diploma in motor mechanic), which he passed in the year 1988. The pay scales were revised w.e.f. 01.01.1986 and petitioner's (therein) cadre was put in the pay scale of Rs.950-1500. Subsequently, the scale of technical posts, which were carrying minimum educational qualification as Matriculate and diploma in ITI or ITI certificate/polytechnic was further revised in the pay scale of Rs.1200-2040 w.e.f. 01.05.1990. Grievance of the petitioner (therein) was that the pay scale of Rs.1200-2040 was required to take effect from 01.01.1986 when the revised pay scales of the employees were given effect to and not to a subsequent date i.e. 01.05.1990. Since, petitioner had the qualification of Matric with ITI certificate, he was held entitled to the revision of pay scales w.e.f. 01.01.1986. In para 06 of the judgment, it was held as under:-

> "6. A mere perusal of the modification of the pay scales, shown above, indicates that the pay scale of Rs.950-1500 has been revised to Rs.1200-2040 in case of technical posts carrying the qualification of matric with I.T.I. Certificate/Polytechnic whereas for the technical posts of which the minimum qualification is ITI certificate/Diploma from Polytechnic without insistence on Matric, pay scale has been

> modified to Rs.950-1400. It is conceded by the respondents that the petitioner has the qualification of Matric with ITI certificate and he has been extended the benefit of revised pay scale of Rs.1200-2040, however, w.e.f. 01.05.1990 and not from 01.01.1986. In the circumstances, when the respondents by the impugned order only modified the pay scale earlier granted w.e.f. 01.01.1986, the modification has to relate to the same date and not to a subsequent date."

Further, reference can be made to a judgment passed by the Division Bench of this Court in ***Gurmail Singh Dahdli and others vs. Union of India and others,*** 2008 (3) SCT 234, whereby in the case of retirees, after removing anomaly, the benefit of removal of pay scale was granted w.e.f. 01.01.1996. It was held that the financial constraints cannot be made basis to deny them the arrears. The cut off date fixed while removing the anomaly was quashed. In paras 11 and 12, it was observed as under:-

> "11. Though financial constraint is a valid criteria for fixing cut off date for grant of benefits but in the present case, neither the respondents had given any data in respect of financial constraints nor such financial constraints can be relevant when anomaly in the pensionary benefit is sought to be removed. If all other retirees of Government of India have got the benefit of revised pension then why the lowest rank of Armed Forces have been deprived the benefit of revised pension. Since anomaly is sought to be removed in pursuance of the recommendations of the Group of Ministers, PBOR would be entitled to revised pension from the date other employees of the Central Government have got the revised pensionary benefits. The plea of financial constraints has been raised in respect of lowest paid employees of the Armed Forces, when all other categories of employees including services have been given the benefit. Such discriminatory treatment is wholly arbitrary.
>
> 12. In **Joginder Singh Saini's case (supra),** the Court held that having accepted the factum of anomaly and having taken decision to remove the same, the Government cannot arbitrarily fix the date with effect from which the benefit of revised pay scale is to be given to the petitioners. In **Harwinder Singh's case (supra),** the service of the

petitioner was not regularised though 13 other persons were given the benefit. It was found that once an approval has been sought, the same will relate back to the date of the original decision. If it is not so, the action of the respondents would result in invidious discrimination. In **Jai Narayan Jakhar's case (supra),** a Division Bench of this Court held to the following effect:-

> " Having heard the learned counsel for the parties, we are of the opinion that the stand of the respondents that the petitioner is not entitled to the benefit of removal of anomaly in the Pay Commission is wholly unjustified. It was during the implementation of 5th Pay Commission report, it was found by the respondents that there is anomaly in the pay scales. Once the anomaly in the pay scales is found and sought to be removed then it has to be removed from the implementation of the recommendation of the Pay Commission i.e. 01.01.1996. There is no explanation as to why the said anomaly is sought to be removed from 10.10.1997. In the absence of any explanation of removal of anomaly from 10.10.1997, we do not find the action of the respondents fixing such date as justified. Consequently, we hold that the petitioner is entitled to the revised pay scale of Rs.5220-140-8140/- w.e.f. 01.01.1996. Thus the petitioner shall be entitled to the retiral benefits on the said pay scale".

In the facts of the present case, there was anomaly while granting the benefit of time bound promotional scales to the petitioners, as there was no mention with regard to the jump of Rs.300/- i.e. from Rs.2700/- to Rs.3000/- and this anomaly was removed vide order dated 28.02.1994 (Annexure P-5). Accordingly, the petitioner-respondents were rightly given the pay scales at par with the Assistant Engineers after completing 16 years of service as per original scheme dated 23.04.1990 (Annexure P-2). Furthermore, no agreement has been placed on record by the appellant to show that the Council of Junior Engineers had forgone their claim of getting the pay scales w.e.f. 01.01.1986. Hence, keeping in view the above discussion, no ground is made out to interfere in the judgment passed by the learned Single Judge of this Court.

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

05.04.2021
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No