

COCp-3186-2019

Date of Decision :01.12.2022

Maghar Singh

...Petitioner

versus

Er. Baldev Singh Sran, Chairman, PSPCL and another

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Kanwaljit Singh, Advocate for the petitioner (s).

Mr. Sehajbir Singh, Advocate for the respondents.

B.S. Walia, J. (Oral)

1. This order shall decide two sets of petitions i.e.

i) COCP-3186-2019, COCP-3187-2019, COCP-3188-2019, COCP-3189-2019, COCP-3190-2019, COCP-3191-2019, COCP-3192-2019, COCP-3193-2019, COCP-3641-2019, COCP-2595-2019, COCP-2596-2019, COCP-2598-2019, COCP-2599-2019, COCP-2600-2019, COCP-2601-2019, COCP-2602-2019, COCP-2605-2019, COCP-2613-2019, COCP-2614-2019, COCP-2615-2019, COCP-2618-2019, COCP-2620-2019, COCP-2621-2019, COCP-2622-2019, COCP-2624-2019, COCP-2625-2019, COCP-2627-2019, COCP-2630-2019, COCP-2632-2019, COCP-2634-2019, COCP-2635-2019, COCP-2636-2019, COCP-2638-2019, COCP-2639-2019, COCP-2640-2019, COCP-2642-2019, COCP-2643-2019, COCP-2644-2019, COCP-2647-2019, COCP-2648-2019, COCP-2987-2019, COCP-2988-2019, COCP-2990-2019, COCP-2991-2019, COCP-2992-2019, COCP-2993-2019, COCP-2994-2019, COCP-2995-2019, COCP-2997-2019, COCP-2998-2019, COCP-3000-

2019, COCP-3827-2019, COCP-2483-2019, COCP-3002-2019, COCP-3252-2019, COCP-3256-2019, COCP-2989-2019, COCP-2597-2019

and

ii) COCP-2604-2019, COCP-2603-2019(O&M), COCP-2629-2019, COCP-2633-2019 (O&M), COCP-2606-2019 and COCP-2616-2019, as in all cases, allegation is of intentional and willful non compliance with judgment dated 29.11.2018, in CWP-1013-2017 by denial of advanced promotional increment on completion of 23 years of service, though the distinguishing feature in the two sets of petitions is that while in the petitions mentioned in paragraph No. 1 (i), advanced promotional increment on completion of 23 years of service has been declined vide order Annexure R/2 dated 27.8.2019 on account of non-fulfillment of condition No.1 by the petitioners therein due to not fulfilling the requirement of having three avenues of promotion, in the petitions mentioned in paragraph No. 1(ii), advanced promotional increment on completion of 23 years of service has been declined vide order Annexure R/2 dated 06.05.2019, on account of the petitioners therein despite being matriculate not fulfilling condition No.3 as per which an employee cannot be placed in a scale which is higher than the scale of his/her next higher post.

2. Facts of the case are being taken from COCP-3186-2019. Prayer in the instant petition is for initiation of proceedings against the respondents for intentional and willful defiance of order, Annexure P-1 dated 29.11.2018 in CWP-24314-2016 (detailed judgment in CWP-1013-2017). Relevant extract of the aforementioned decision is reproduced as under:-

“As a result, the rights of the petitioner/s will be governed by the decision in LPA No. 997 of 2016, Punjab State Power Corporation Limited Vs. Nirmala Rani’ decided on 22.09.2016 and other connected appeals and the orders of the Supreme Court in Interlocutory Applications in SLP (C) Diary No. 30953 of 2017 dismissed on 13.10.2017 and keeping in view the two resolutions of the Corporation (supra) the further course of action, if any, will be governed by this order. Relief will be regulated on the cumulative effect of these judicial and administrative decisions. So far as payment of arrears of benefit of promotional increments is concerned, those will be determined by the Corporation restricted to 36 months from the date of filing of the respective writ petitions.”

3. Learned counsel contends that in terms of the aforementioned directions, the petitioner(s) are entitled to grant of advance promotional increment on completion of 23 years of service in terms of finance circular No.17/90 dated 23.04.1990. Finance circular No.17/90 has not been placed on record. However, learned counsel has produced the photocopy of finance circular No.17/90 and refers to paragraph No.2 of the aforementioned circular. Relevant extract of the aforementioned circular is reproduced as under:-

“2. The Punjab State Elecy.Board has further decided to allow benefits of promotional increment(s) to an employee on completion of 23 years of regular service provided:

i) He has not been benefited by the scheme of 9/16 years time bound promotional scale.

ii). He has not earned three regular promotions in his career.

iii)He has not earned third promotion in his regular service between 16th and 23rd years of service.

iv)The increments referred to in para-2 above are in the nature of advance promotional benefit to be absorbed in next regular promotion”

4. Learned counsel contends that the petitioner(s) were inducted as Assistant Lineman on 08.09.1976 and in terms of the aforementioned circular, were entitled to grant of promotional increment on completion of 23 years of regular service on account of fulfilling the conditions mentioned in paragraph No.2 of the circular since they had not been benefited by the scheme of 9/16 years, time bound promotional scale nor had earned three regular promotions in their carrier besides had not earned third promotion in their regular service between 16th and 23rd year of service.

5. Learned counsel for the respondents has filed reply alongwith copy of speaking order Annexure R/2 dated 27.8.2019 and while referring to paragraph No.3 therein, contends that the claim of the petitioner(s) for grant of advance promotional increment on completion of 23 years of service was examined in the light of finance circular 17/90 dated 23.04.1990, No.52/99 dated 9.11.1999 and No.20/2000 dated 28.7.2000 but the claim was to be tested on the basis of conditions contained in Finance Circular No.20/2000 dated 28.07.2000. Relevant extract of the conditions contained therein are reproduced asunder:-

“i. he/she has the avenue of three promotions but has not earned three regular promotions in his/her regular service

from the date of joining on the inductions post or any other post specifically declare as induction post for granting time bound promotional/devised promotional scale.

ii. he/she has not earned third promotion in his/her regular service between 16th and 23rd years of service.

iii. he/she has not been placed in a scale which is higher than the scale of his/her next higher post.

iv. the increment(s) are in the nature of advance promotional benefits to be absorbed in the next regular promotion.

v. Those who forego promotion shall not be entitled for this benefit.”

6. Learned counsel contends that the first and foremost condition was that the employee concerned must have avenue of three promotions but have not got three regular promotions in his/her regular service from the date of joining on the induction post or any other post specifically declared as induction post for granting time bound promotional/devised promotional scale.

7. Learned counsel further while referring to paragraph No.4 of Annexure R-2 contends that the petitioner(s) fulfill condition Nos.2, 3, 4 and 5 of Finance Circular No.20 of 2000 but he/they do not fulfill condition No.1 of the aforementioned Finance Circular. Learned counsel contends that the petitioner(s) educational qualification was matriculation and as per Finance Circular No.20/2000 dated 28.07.2000, entitlement of an employee for grant of promotional increment on completion of 23 years, was subject to the condition that the employee concerned must have three avenues of promotion whereas third avenue of promotion was not available for the petitioner(s), who had been inducted on the post of ALM and as per the PSEB(now PSPCL) Technical Grade-3 Regulations,

Lineman and from the post of Lineman to Foreman but there was no third avenue of promotion for an under Matric ALM.

8. Learned counsel further contends that reference in Finance Circular No.20/2018 dated 01.10.2018 of resolution passed by the PSPCL on 20.09.2018, namely that condition of finance Circular No.20/2000 dated 28.07.2000 had been deleted but the deletion was not applicable in the case of the petitioner(s) for the purpose of grant of 23 years advance promotional increment because Circular No.20/2018 was dated 01.10.2018, meaning thereby that the same was applicable for those employees who were in service with PSPCL and not applicable retrospectively, whereas the petitioner(s) stood retired from service on 30.09.2008, therefore, in view of the decision of Hon'ble the High Court in CWP-1013/2017, titled as Balbir Singh and others vs. PSPCL and others decided on 29.11.2018, and LPA-997 of 2016, decided on 22.09.2016 and SLP (C) Diary No.30953 of 2017, decided by Hon'ble the Supreme Court on 13.10.2017 and keeping in view the circulars as referred to above, although the petitioner(s) was/were exempted from passing departmental examination but he/they was/were not entitled to grant of advance promotional increment on completion of 23 years service because of non-fulfillment of condition No.1 namely of not having three avenues of promotion from the induction post. Accordingly, the petitioner(s) was/were not eligible for grant of 23 years of advance promotional increment as claimed by him/them in CWP-24314-2016 and connected petitions. Learned counsel contends that the claim of the petitioner(s) had been considered in view of directions in paragraph No.4 of CWP No. 1013 of 2017 but not finding any merit in the claim of the petitioner(s) for grant of advance promotional increment, the same was

rejected vide order Annexure R-2 and in the circumstances no case for contempt was made out and at best, the petitioner(s), if so advised, may avail remedy as per law to challenge order Annexure R-2 dated 27.08.2019 by way of appropriate proceedings in accordance with law.

9. Per contra, learned counsel for the petitioner (s) vehemently contended that it was absolutely wrong that there was no third avenue of promotion from the post of ALM as was evident from the decision in RSA No.4018 of 2018 (Annexure P/8) affirming the judgments of the Courts below as a categorical finding had been given that the Courts below had held that there existed a channel of Special Foreman after the post of Foreman with PSEB and 23 years promotional scheme was awarded to the plaintiff and five other persons in said case which was later on withdrawn by the Board without hearing the affected employees including the plaintiff but subsequently on challenge to the said action, the impugned order was withdrawn by the Board and the plaintiff herein was granted 23 years promotional increment benefit. Learned counsel contends that in the circumstances, it is apparent that there is a channel of Special Foreman after post of Foreman with PSEB. Therefore, third channel of promotion was available to an ALM, consequently the finding in Annexure R-2 that condition No.1 of circular dated 28.07.2000 was not complied with on account of there not being a third channel of promotion was factually incorrect. Relevant extract of the decision in RSA-4018-2018, is reproduced as under:-

“A categorical finding was given by the courts below that there existed a channel of Special Fore-Man after service of Fore-Man with PSEB and 23 years promotional scheme was awarded to the plaintiff and five other persons which was

later on withdrawn by the Board without hearing the affected employees including the plaintiff. The said action of the Board was challenged by the one of the co-workers namely Ved Parkash by approaching this Court which sought clarification from the Board and in response the Board recalled its order of withdrawal of promotional increment granted to Ved Parkash vide which 23 years promotional increment was granted to him. It was further held that there was no direct recruitment for the post of Special Fore-Man and the post ought to be filled up only by way of promotion from amongst the Foremen/Cable Jointers and therefore the plaintiff was entitled to 23 years promotional increment as he fulfilled all the conditions.”

10. Per contra, learned counsel for the respondent(s) contended that although a recommendation had been made by the authorities interdepartmentally for providing third avenue of promotion from the induction post of ALM to the post of Foreman Special in the case of under matriculates vide letter dated 03.09.2016 provided such a candidate had 12 years of service as ALM, yet the proposal never fructified into amendment of the regulations applicable, consequentially there is no provisions under the regulations applicable providing for third avenue of promotion from ALM to Foreman for an under Matric as in the case of the petitioner(s) irrespective of the number of years of service.

11. Learned counsel for the respondents has placed on record copy of memo No.875/ENG-10 (Misc.) T-4/Loose dated 09.09.2022, from the Deputy Secretary/Eng-2, PSPCL, Patiala to the Deputy Chief

Engineer, DS Circle, PSPCL, Sangrur and contends that in reference to COCP-2604-2019 and other connected cases, it was informed that as per the Punjab State Electricity Board (now PSPCL) Technical Grade-3 Regulations 1996, published in 1997, there is no provision under the regulations for promotion from the post of Foreman to Special Foreman and that in the year 2016, the matter of registering the promotion channel from Foreman to Special Foreman in the Technical Services Grade-3 Regulation 1996, was raised, but promotion channel from the post of Foreman to Special Foreman has not been recorded in the Technical Service Grade-3 Regulations 1996 till date. Aforementioned communication dated 9.9.2022, has already been supplied to learned counsel for the petitioner(s). The same is taken on record.

12. Learned counsel for the petitioner(s) contends that the sole grievance of the petitioner(s) in the instant petition as well as connected 57 cases, is of denial of advance promotional increment on completion of 23 years of service solely on account of there not being a third channel of promotion from the induction post of ALM.

13. Learned counsel for the respondentson instructions from Mr. Munish Kumar Garg, Addl. SE, PSPCL, Dibra, has made a statement at the bar to the effect that there is no 3rd avenue of promotion from the induction post of ALM to that of under Matric Foreman Special as in the case of the petitioner and other connected '57' petitions, though in the case of ALM matriculate, there is a 3rd channel of promotion to the post of Junior Engineer.

14. Learned counsel for the petitioner(s) on the other hand contends that it is not the case of the petitioner(s) in the instant

post of Junior Engineer since none of the petitioners are matriculate.

15. No other point has been argued.

16. Learned counsel are ad idem that the decision in LPA-997-2016 and other connected cases and *SLP (C) Diary No. 30953 of 2017*, has no applicability in the facts of the instant case(s) on account of the point in issue in said cases being with regard to striking down of ineligibility of the employees to get the benefit of advanced promotional increment on completion of 23 years of service on account of non-clearance of departmental examination, whereas the said point is not in issue in the instant cases.

17. In the light of claim of the petitioner(s) as well as the submissions made by learned counsel for the parties, counsel for the petitioner(s) was put a query to show from the regulations applicable the channels of promotion from the induction post of ALM under matriculate to the alleged third promotional post of Foreman Special. Despite repeated queries on the previous dates as well as today, counsel for the petitioner(s) has failed to refer to any provisions under the regulations applicable i.e. the Punjab State Electricity Board Technical Grade-3 Regulations 1996 of there being 3rd avenue for promotion for the post of ALM under matriculate to the post of Foreman Special. In the circumstances, reliance on the decision Annexure P/8 is of no avail to learned counsel for the petitioner(s) since the same is contrary to the provisions of law applicable, which govern and regulate the promotions from the induction post of ALM. Accordingly, in view of the petitioner(s) having failed to substantiate the existence of third avenue of promotion from the induction post of ALM under matriculate to the post of Foreman Special, impugned order cannot be said to have been passed

by the respondents in derogation of Circular No.20/2000 dated 28.07.2000 or of the same not being in accordance with the directions in paragraph No.4 in CWP-1013-2017.

18. As regards two resolutions of the Corporation Annexure P/4 and P/5 dated 21.08.2018 and 01.10.2018, learned counsel for the petitioner(s) states that he does not press the applicability of Annexure P/4 and P/5 at this stage and reserves his right to challenge the non-applicability of Circular Annexure P/5 by way of appropriate proceedings, in accordance with law, in a challenge to Annexure R/2.

19. Accordingly, the petitions mentioned in paragraph No.1 (i) are disposed of as not calling for any action against the respondents under the Contempt of Courts Act, 1971. However, the petitioner (s), if so advised, are at liberty to challenge order Annexure R/2 dated 27.08.2019, by way of appropriate proceedings, in accordance with law.

20. As regards the petitions mentioned in paragraph No. 1(ii) above, advanced promotional increment on completion of 23 years of service was declined vide order Annexure R/2 dated 06.05.2019, on account of the petitioners therein despite being matriculate not fulfilling condition No.3 of Finance Circular No. 20/2000 as per which an employee claiming advance promotional increment on completion of 23 years of service is not entitled to the same if he / she has already been placed in a scale higher than the scale of the next higher post. Learned counsel for the respondents contends that all petitioners in the petitions mentioned in paragraph No. 1 (ii) having been placed in a scale higher than the scale of the next higher post are not entitled for grant of advanced promotional increment on completion of 23 years of service

No. 20/2000 due to non fulfillment of condition No. 3 therein. Learned counsel by referring to the contents of COCP-2604-2019, contends that the petitioner-Raj Kumar had been placed in the scale of Rs. 7000-11750 on 30.06.1995 by granting him 16 years time bound promotion scale, whereas pay scale of his next promotional post after 30.06.2002 i.e. the date on which he completed 23 years of service was 6300-10700 and in view of the same, the petitioner Raj Kumar having already been placed in a scale, higher than the scale of his next higher post, he did not fulfill condition No.3 of circular Annexure R/2 and that although as per circular No.20/2018 dated 01.10.2018, condition of Finance Circular No.20/2000 dated 28.07.2000 had been deleted qua condition No.3 but the circular was not applicable in the case of the petitioner, as it was effective from 01.10.2018 for the employees who were then in the service of PSPCL whereas the petitioner had retired from service on 31.03.2006 and the petitioners in the connected petitions being similarly situated, are not entitled for the relief sought. Learned Counsel for the petitioners does not dispute the factual position. Accordingly, in view of the petitioner(s) having failed to substantiate entitlement to advanced promotional increment on completion of 23 years of service on account of not fulfilling condition No.3 of Finance Circular No. 20/2000 as per which an employee claiming advance promotional increment on completion of 23 years of service is not entitled to the same if he / she has already been placed in a scale higher than the scale of the next higher post and all the petitioners in the petitions mentioned in paragraph No. 1 (ii) having been placed in a scale higher than the scale of the next higher post are not entitled for grant of advanced promotional increment on completion of 23

Finance Circular No. 20/2000 due to non fulfillment of condition No. 3 therein. In the circumstances, order Annexure R/2 dated 06.05.2019, cannot be said to have been passed by the respondents in derogation of Circular No.20/2000 dated 28.07.2000 or of the same not being in accordance with the directions in paragraph No. 4 in CWP-1013-2017.

21. In view of the position noted above, the petitions mentioned in paragraph No. 1(ii) are also disposed of as not calling for any action against the respondents under the Contempt of Courts Act, 1971.

(B.S. Walia)
Judge

01.12.2022
rajesh/monika

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