

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

CR 7078/2013 (O&M)
Date of decision: 10.03.2023

Kamal Raj Singh

.....Petitioner

Vs.

**Punjab State Electricity Board, Patiala now known as Punjab State Power
Corporation Limited, Patiala**

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Swapan Shorey, Advocate for the petitioner.
Mr. Parminder Singh, Advocate for the respondent.

Nidhi Gupta, J.

Present revision petition has been filed by Decree Holder seeking setting aside of the order dated 31.08.2013 passed by Additional Civil Judge (Senior Division), Patiala whereby the application filed by the petitioner u/s 151 CPC for seeking fresh statement of account of the amount due to the petitioner/DH, has been disposed of.

Facts of the case are that the petitioner had filed a suit for declaration that he is entitled for promotion as Junior Engineer-I w.e.f. 2.6.1987, and as Assistant Engineer from 2.6.1992, along with all consequential benefits. The said suit was decreed on 7.11.2006. In appeal, the said judgment and decree dated 7.11.2006 was modified by the learned District Judge, Patiala vide judgment and decree dated 13.10.2009 (Annexure P-3), as under: -

"The learned lower Court committed no error while recording the findings on different issues. The findings recorded by learned lower court are upheld but a modification in relief clause is required to be made. The

court cannot direct the appellant PSEB to promote a person w.e.f. a particular date but what appropriate direction can be made is that the plaintiff in the present case be considered for promotion as J.E-I w.e.f. 2.6.1987 and for subsequent promotion, if any, on due date which means of course that while considering his promotion or further promotion, his other eligibility or service record will be considered. With this modification, the findings recorded by the learned lower court are upheld and the appeal is ordered to be dismissed with costs."

Pursuant to the judgment and decree dated 7.11.2006, the petitioner had filed Execution Petition No. 6/3.3.2007 (Annexure P-9) for recovery of the decretal amount against the respondent. Respondent filed reply and opposed the said execution petition inter alia, on the ground that the execution does not lie as decree is declaratory.

During the pendency of the contempt proceedings initiated by petitioner before this Court, respondent passed order no. 194/BEG dated 19.4.2011 whereby petitioner was granted deemed date of promotion as AAE(JE-I) with his junior Hakumat Rai w.e.f. 2.6.1987; and petitioner was further promoted to the post of Assistant Engineer (Electrical) w.e.f. 14.6.1997 with the condition that the petitioner will not be paid the arrears and other benefits since he already stood retired and because he had been granted notional promotion.

Aggrieved thereof, Petitioner filed COCP No.2150/2011 before this Court which was decided vide order dated 26.4.2011, which is reproduced as under:-

"Additional affidavit filed on behalf of the respondent in court today, is taken on record.

The petitioner has been granted a deemed date of promotion but the denial of back wages is sought to be justified on the ground that he did not work on the promotional post. The denial of the back wages is prima facie misconceived, as the petitioner denied promotion for no fault on his part. However, as the matter is pending adjudication before the executing court, the contempt petition is disposed with the direction to the executing court to decide whether the respondents are justified in denying the arrears of salary to the petitioner. The execution petition to decide, within three months of the receipt of a certified copy of this order”. (Emphasis supplied)

Thereafter, the petitioner filed application dated 27.5.2011 u/o 21 Rule 11 and 32 for execution of the decree dated 7.11.2006 for recovery of arrears of salary, gratuity and pension along with interest @ 18% w.e.f. 2.6.1987 till the date of retirement. Respondent filed reply thereto, and denied the averments made in the application. Vide order dated 24.8.2011 (Annexure P-4), the Executing Court held that Decree Holder is entitled to arrears of salary w.e.f. 2.6.1987 till 31.12.1999 and all other resultant benefits till date. Operative part of the order dated 24.8.2011 is reproduced hereunder:-

“So, decree holder is entitled for the arrears of his salary w.e.f. 2.6.87 till 31.12.1999 and all other resultant benefits till to date. The J.D. Board is directed to pay the amount of arrears of salary for the post of AEE and then AE coupled with retrial and pensionary benefits till to date within one month from today”.

It is stated by the petitioner that as JD/respondent again failed to comply with the aforesaid order, petitioner filed contempt petition on 12.10.2011 before the Additional Civil Judge (Senior Division), Patiala on the ground that the respondent had wrongly calculated the arrears as per decree and

paid Rs.2,43,476/- on 12.10.2011; Rs.1,20,449/- for leave encashment and gratuity on 28.10.2011; and Rs.1,71,306/- for pensionary arrears from 1.1.2000 to 30.9.2011 on 14.8.2011. It is submitted by the learned counsel for the petitioner that respondents were required to pay Rs.39,04,000/- out of which respondent had paid only Rs.5,35,231/- as above and alleged that the decree is fully satisfied.

Thus, petitioner filed present application dated 17.7.2012 (Annexure P-5) u/s 151 CPC for fresh statement of account to which the respondent filed its reply dated 7.9.2012. It is submitted that however, the above said application stands disposed of vide impugned order dated 31.8.2013, which reads as under:-

“There being nothing on record to show that anyone junior to the petitioner was promoted earlier than him the claim made by the petitioner cannot be sustained. In view of the same, this Court is of the considered view that JD-Board was directed to consider the case of the decree holder as per eligibility criteria and since no employee junior to the decree holder was promoted as Asstt. Engineer till 13.6.97, case of decree holder was also not considered, though he was eligible to be promoted as Asstt. Engineer w.e.f. 2.6.92. Though there was no requirement for the petitioner/DH to clear departmental examination for getting eligible for the promotion of Asstt. Engineer, yet he was rightly considered w.e.f. 14.6.97 when his junior Jaswant Singh was considered to the post of Asstt. Engineer.

Accordingly, in view of my above discussion, the present application under Section 151 CPC is disposed off and the J.Ds are directed to clear all the claims and arrears of the decree holder, if any, till 28.9.2013”.

It is vehemently submitted by the Id. Counsel for the petitioner that Id. Executing Court has wrongly held that no person junior to the petitioner was promoted as Assistant Engineer till 13.6.1997 and therefore the petitioner was rightly considered for promotion w.e.f. 14.6.1997 when his junior Jaswant Singh was considered for the post of Assistant Engineer.

It is further submitted that vide the impugned order, the Court below has wrongly held that the recourse to the petitioner was to challenge the office order dated 19.4.2011 as the issue at hand already stood decided vide order dated 24.8.2011 (Annexure P-4).

Per contra, Id. Counsel for the respondent submits that in compliance of order dated 11.3.2019 of this Court, affidavit dated 26.4.2019 of Ashok Kumar, Joint Secretary/ Zones, Punjab State Power Corporation Limited, Patiala was filed, wherein it has been stated as follows: -

"2. That in the above-mentioned revision petition, the petitioner has prayed for setting aside the order dated 31.08.2013 passed by Additional Civil Judge, Senior Division, Patiala (Annexure P-1) vide which application under Section 151 CPC seeking fresh statement of account of the amount due to decree holder from judgment debtor has been disposed of. The trial court vide Annexure P-2 had decreed the suit of the petitioner/plaintiff and respondent/defendant Board was directed to consider the plaintiff case for promotion to the post of JE-I w.e.f. 2.6.1987 and as Assistant Engineer from 2.6.1992 within two months. The above said decree passed by learned trial court was modified to the extent that the Court cannot direct the appellant Board to promote a person with effect from a particular date, but it was observed that the case of the plaintiff be considered for promotion as JE-I w.e.f. 2.6.1987 and for subsequent

promotion if any on due date which means, of course, that while considering his promotion or further promotion, his other eligibility or service record will be considered

3. That in compliance of the decree passed by learned trial court and modified decree by the appellant Court, the petitioner was given promotion w.e.f. 2.6.1987 on the post of JE-I when his junior Hakumat Rai was promoted on the post of JE-1. However, thereafter Hakumat Rai had retired on the post of JE-I and he earned no further promotion. It is submitted that one Jaswant Singh promoted on the post of Assistant Engineer on 13.6.1997 and the petitioner was given deemed date of promotion w.e.f. 14.6.1997. The petitioner was allotted seniority number at 734/5A. The Seniority No. of Hakumat Rai was 734/6 and the seniority no. of Jaswant Singh was 734/7. The petitioner retired on account of superannuation on 31.12.1999.

4. That the petitioner was given arrears of salary from 2.6.1987 to 13.6 1997 on non-gazetted post as upto the post of JE-I, the post is non-gazetted. The petitioner was also given arrears of Salary w.e.f. 14.6.1997 to 31.12.1999 on Gazetted Post and he was allowed 18% interest on the above said arrears of salary. The arrears of salary from the period from 2.6.1987 to 13.6.1997 (non-Gazetted period) were Rs 44,643/-. The interest thereupon at the rate of 18% was Rs.95093/- and the total amount was Rs.1,39,736/- The arrears of salary for the period from 14.6.1997 to 31.12.1999 (gazetted period) were Rs.33,142/- plus interest @ 18% (Rs.70.598/-) and sum total was Rs 1,03,740/- The total amount of gazetted and non-Gazetted period was Rs.2,43,476/-. Cheque No:106454/- dated 7.10.2011 was issued for a sum of Rs.2,43,476/- and the said payment was made to the petitioner".

It is submitted that therefore, the present petition has in fact, been rendered infructuous as the modified decree dated 13.10.2009 (Annexure P-3) already stands complied with.

No other argument is made on behalf of the parties. I have heard Id. Counsel for the parties.

Vide order dated 30.8.2022, Id. Counsel for the petitioner had sought time to verify and bring on record as to whether any junior of the petitioner was promoted as AAE before the date of his retirement i.e. 31.12.1999. On the next date of hearing i.e. 2.12.2022, neither the requisite information was brought on record, nor the petitioner put in appearance. Thereafter on 3.3.2023 matter was adjourned on joint request of Id. Counsel for the parties.

On a Court query, learned counsel for the petitioner submits that the information as sought to be placed on record vide order dated 30.8.2022, is already on record in the form of Annexure P-2 herein, and therefore, no fresh affidavit needs to be filed. Annexure P-2 is the copy of Decree Sheet dated 7.11.2006.

Be that as it may, in my view learned counsel for the petitioner is unable to demonstrate before this Court that any person junior to petitioner stood promoted to the post of AAE before the date of his retirement. Moreover, vide order dated 24.8.2011, the following direction was given by the Id. Executing Court “*So, decree holder is entitled for the arrears of his salary w.e.f. 2.6.87 till 31.12.1999 and all other resultant benefits till to date. The J.D. Board is directed to pay the amount of arrears of salary for the post of AEE and then AE coupled with retrial and pensionary benefits till to date within one month from today*”. Id. Counsel for the petitioner has been unable to

controvert the categoric averments made in the affidavit dated 26.4.2019 of Ashok Kumar, Joint Secretary/Zones, Punjab State Power Corporation Limited, Patiala wherein it has clearly been stated that the petitioner was promoted w.e.f. 2.6.1987 on the post of JE-1; deemed date of promotion as AEE w.e.f. 14.6.1997 and thereafter, the petitioner had retired on 31.12.1999 and all arrears of salary as well as other consequential benefits admissible to petitioner have been cleared. It is further clear from the above said affidavit that though Id. Executing Court vide order dated 31.8.2013 had not directed payment of interest yet, petitioner has been granted interest @ 18%.

Accordingly, I find no merit in the present revision petition. Resultantly, the present revision petition stands, dismissed.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

10.03.2023
Joshi