

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

(286)

RSA-291-1987

Date of Decision : May 30, 2023

Surinder Kumar and others

.. Appellants

Versus

PSEB, Patiala

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Satya Pal Jain, Senior Advocate, with
Mr. Sahil Garg, Advocate, for the appellants.

Mr. Bhupinder Banga, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present regular second appeal has been filed challenging the concurrent findings recorded by the Courts below so as to reject the claim of the appellants-plaintiffs as raised in the civil suit.

2. It may be noticed that in the civil suit, the challenge was raised to the amendment of Punjab State Electricity Board Service of Engineer (Electrical) Regulation, 1965 as amended w.e.f. 17.08.1976.

3. The assertion of the appellants-plaintiffs was that they are entitled for promotion as per the un-amended Regulations of 1965 whereas, the amended Regulations, which came into effect from 17.08.1976 were being made operational upon them so as to deny them the eligibility for further promotion. The Courts below recorded a finding that the amendment

to the 1965 Rules so as to be effected from 17.08.1976 has already been upheld by this Court while passing order in ***CWP No.397 of 1979 titled as U.S. Grewal vs. Punjab State Electricity Board*** wherein, the similar claim raised was negitivated by the Division Bench of this Court while passing order dated 23.03.1979.

4. Learned senior counsel appearing on behalf of the appellants submits that the appellants were appointed in the joint Punjab and were governed by 1965 Rules, which were applicable to the Punjab State Electricity Board as it existed in the joint Punjab. Learned senior counsel for the appellants further submits that after creation of separate State of Haryana in the year 1966, the appellants-plaintiffs were allocated in the new Punjab State Electricity Board for the State of Punjab and assurance was given to them that there will be no change in their service conditions hence, the amendment of the 1965 Rules as made effected from 17.08.1976 has taken away their vested right of being considered for promotion under the un-amended Rules of 1965, which is against the conditions of service under which they were absorbed in the Punjab State Electricity Board after re-organization of joint Punjab.

5. Learned senior counsel for the appellants further submits that the actual notification for the amendment was issued in the year 1980 but the said amendment was made effected from 17.08.1976, which is arbitrary and illegal.

6. Learned counsel for the respondent submits that the claim being put forward by the appellants-plaintiffs is identical to the claim raised by similarly situated employees before this Court in CWP No.397 of 1979

in which, the same pleas, as being raised in the present appeal, were raised

and those were negitivated by the Division Bench hence, the claim of the appellants-plaintiffs is covered against them as per the judgment of the Division Bench of this Court dated 23.03.1979 hence, the judgments of the Courts below which have taken into consideration the said fact and rejected the claim of the appellants-plaintiffs, are liable to be maintained.

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

8. It is a conceded fact that the amendment was carried out by the Punjab State Electricity Board in 1965 Rules which was made effected from 17.08.1976. As per the said amendment of the 1965 Rules, the appellants-plaintiffs were not eligible for being considered for promotion to the higher rank at the relevant period of time. Not only the appellants but there were other similarly situated employees who were also employees of Punjab State Electricity Board in the joint Punjab and were aggrieved in a similar way qua the amendment which was made by the Punjab State Electricity Board to 1965 Rules, made effected from 17.08.1976.

9. Learned senior counsel for the appellants has not been able to show that the claim as raised in the present civil suit is not akin to the claim raised in the CWP No.397 of 1979.

10. Once, learned senior counsel for the appellants has not been able to distinguish the claim raised in CWP No.397 of 1979 with that of claim of the appellant in the present suit, the claim raised by the appellants herein is to be decided in the same terms keeping in view the order passed by the Division Bench of this Court dated 23.03.1979 in CWP No.397 of 1979. Hence, the findings recorded by the Courts below that once the claim

of the similarly situated persons have already been rejected by this Court, no

relief can be granted to the appellants also, cannot be disturbed.

11. Further, the grievance raised by the learned senior counsel for the appellants is that once the notification was issued in the year 1980, the amendment of the Rules can only be done prospectively and not retrospectively from August 1976.

12. A bare perusal of the order of the Division Bench of this Court would show that the said factor has already been taken into consideration to hold that the competent authority had already given approval to the amendment of 1965 Rules on 17.08.1976 and the said amendment has been given effect to from the date of approval. That being so, even the said aspect has already been settled by the Division Bench while passing order dated 23.03.1979 which will also govern the similar claim being raised by the appellants herein.

13. Further, learned senior counsel for the appellants has not been able to show that once the amendment to the Rules have been made applicable from a particular date, how the same can be nullified. The notification amending the 1965 Rules is to be made applicable from the date when the same has been made effected. Once, it is a conceded position that the said notification of amendment of Rules has been made applicable w.e.f. 17.08.1976, the date of amendment of Rules has to be taken as 17.08.1976 for all intents and purposes so as to ascertain the eligibility of the appellants and the applicability of the amendment to 1965 Rules for considering an employee for promotion.

14. Concededly, as per the amended Rules, the appellants were not eligible for promotion to the higher rank at the relevant period of time. In the absence of the eligibility, the Courts below have rightly concluded that

the claim being raised for promotion to the higher rank is not supported by the Rules which were in operation at the relevant time.

15. Keeping in view the above, as no perversity in the judgments of the Courts below has been pointed out by the learned senior counsel for the appellants, no ground is made out for any interference by this Court in the present Regular Second Appeal and the same is accordingly dismissed.

May 30, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes