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

**CWP No.3829 of 2023
Date of decision : 03.03.2023.**

Pardeep Kumar

....Petitioner

Versus

PSPCL and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Abhishek Khullar, Advocate
for the petitioner.

Mr. Sunpreet Singh, Advocate for
Mr. Avneet Singh, Advocate for the respondent.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed under Article 226/227 of the Constitution of India impugning order dated 12th of October, 2022 by which the petitioner has been denied grant of 23 years scale.

2. The petitioner was employee of the respondent-Corporation became entitled for grant of 23 years scale on 24th of May, 2012 and admittedly on the said date the following two conditions were required to be fulfilled for grant of the promotional scale :-

“7. In case of employees who do not fulfill the qualifications/ passing of examination essential for their promotion to the next higher post, they shall also be placed into time promotional/devised promotional scale to be specified by the Board in the schedule as referred to in para 5(above).

8. No anomaly of pay would be claimed by any senior employee viz-a-viz an other employee merely on the strength of latter getting his placement into the time bound promotional/devised promotional scale.”

3. Counsel for the petitioner would not dispute that the petitioner does not fulfill the aforesaid two conditions. It is also not disputed that the petitioner retired in the year 2017. He relies upon Finance Circular No.20/2018 to submit that the Conditions for entitlement of 23 years scale since relaxed, by the same petitioner would be governed vide circular dated 1st of October, 2018. Reliance is being placed upon **CWP No.16737 of 2011** titled as **Om Parkash Dua vs. Punjab State Electricity Board and others** decided on 14th of December, 2015.

4. I have heard counsel for the petitioner and have gone through records of the case.

5. The contention raised by counsel for the petitioner is totally misplaced. The question as to whether Conditions No.7 and 8 as contemplated vide Circular No.17/90 fell in for consideration of Division Bench in LPA No.997 of 2016 titled as **Punjab State Power Corporation Limited, Patiala through its Secretary and others vs. Nirmala Rani** wherein after noticing the precise issue, the same was answered in the following terms :-

“7. We may briefly advert to the relevant eligibility criteria prescribed vide Order No.17934/18163/Fin/PRC-1988-III/L-61 dated 25.01.1993 for promotional increment in relation to an employee who had covered 23 years of service, which is as

follows:-

“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.”

8. The question before us now is, therefore, basically legal in nature as to whether or not those employees who on the relevant date (17.03.2010) had already become eligible for promotional increment after having fulfilled the eligibility conditions listed above, but to whom the same had not been actually extended, would be entitled to the same in view of the fact that the benefit contained in the original financial Order dated 23.04.1990 had been withdrawn retrospectively. Here, it would be apposite to first take note of the relevant stipulations which were withdrawn retrospectively. The same happen to be as follows:-

“7. In case of employees who do not fulfill the qualifications/passing of examination essential for their promotion to the next higher post, they shall also be placed into time promotional/devised promotional scale to be specified by the Board in the schedule as referred to in para 5(above).

8. No anomaly of pay would be claimed by any senior employee viz-a-viz an other employee merely on the strength of latter getting his placement into the time bound promotional/devised promotional scale.”

9. It is noteworthy that the aforesaid stipulations were made applicable in relation to employees who had completed 23 years

of service, by virtue of Finance Circular No.62 of 1992 issued vide Order No.285/Fin/PRC-1988-III/Vol-4 dated 16.12.1992, in which it was clarified that Feature Nos.7 and 8 would also be applicable in toto for the grant of promotional increment(s) on completion of 23 years of regular service.

10. The controversy arose, however, with the Finance Circular No. 14 of 2010 by virtue of which the aforesaid stipulations were withdrawn/deleted from the earlier mentioned circular retrospectively w.e.f. 01.01.1996. The relevant extracts of this circular are to the following effect -

“Punjab State Electricity Board has decided to delete Para-2 of below mentioned note in the office order No.285/Fin./PRC-1988-III/Vol-4 dated 16.12.1992 w.e.f. 01.01.1996.

Note(ii). “Feature No.7 & 8 shall also applicable in toto for the grant of promotional increment(s) on completion of 23 years of regular service.”

11. The submission raised on behalf of the appellants in this regard is that since a given set of employees had not yet been granted the promotional increment on the given date, and their eligibility for the same in terms of the previous circulars subsisted only during the time which was retrospectively covered with the scrapping of Feature Nos.7 and 8, so they would no longer remain eligible to grant of such benefit. A number of citations have been placed before us.

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26. In conclusion, therefore, we have no hesitation in holding that the withdrawal of the benefit for promotional increment as contained in Feature Nos.7 and 8 of the original circular dated 23.04.1990 by the appellant authorities has no validity in the eyes of law qua those employees who had already become eligible for promotion as on 17.10.2010 and who otherwise were eligible for the same by virtue of the eligibility criteria in force till that date. Of course such deletion of Feature Nos.7 and 8 would be valid prospectively as against the other class of employees, who did not

meet up the prescribed criteria as noted in Para No.7 earlier, or had not yet put in the requisite length of service (23 years).

27. We, therefore, dismiss these appeals by holding that the retrospective deletion of the relevant Feature Nos. 7 and 8, in the original Financial Order dated 23.04.1990, is not in accordance with law. However, the appellants are at liberty to approach the Ld. Single Judge for modification of the impugned judgment(s), if in any given case they can show that the concerned writ petitioner had actually not become eligible for promotional increment on the relevant date i.e. 17.03.2010.”

6. In view of the aforesaid fact, the Circular dated 1st of October, 2018 can't come to aid of the petitioner and rather disadvantageous to the case of the petitioner.

7. In view of the afore-settled proposition of law, no ground to entertain the present writ petition is made out. Consequently, the same is dismissed.

March 03, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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