211 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10253 of 2016 (O&M)
Date of decision :17.02.2023

Jivan Kumar Singla ...... Petitioner

versus

Punjab State Power Corporation Ltd. & ors. ...... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. Deepak Gupta, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for respondents No.1 to 3.

Mr. Puneet Bansal, Advocate
for the respondent-PSPCL.

Ms. Tuneet Walia, Advocate
for respondents No.4 & 5.

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PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed by the petitioner challenging order dated 29.04.2016 (Annexure P-5) passed by Deputy Secretary whereby the case of the petitioner for removal of anomaly in his pay stands rejected.

Petitioner was working as Senior Executive Engineer with the respondent-Corporation. The scales of the employees were revised w.e.f. 01.01.2006. The salary of the petitioner was fixed at Rs.53,710/- whereas that of one Sh.A.K.Abrol was fixed at Rs.53,420/-. However, later on w.e.f. 26.06.2007 after the petitioner was promoted as Sr. XEN, the salary of the petitioner was fixed at Rs.55,330/- whereas that of Sh.A.K.Abrol in the same cadre was fixed at Rs.58,400/-. The petitioner was retired from service on 31.01.2015 on attaining the age of superannuation. After his retirement he racked up the issue of pay anomaly by way of representation dated 18.04.2015 placed on recorded as Annexure P-3. The same stands rejected vide impugned order dated 29.04.2016. Operative part thereof reads as under :-

> *"In reference to above said subject it has been written to you that your case of removal the pay anomaly with Er. A.K.Abrol (Code no. 3695) was sent to Finance Department and they have written to this office that your case is not covered as per the instructions. Therefore, your representation has been filed.*
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> *This has been issued with the approval of competent authority."*

Learned counsel for the petitioner submits that the impugned order is bereft of any reasoning and thus the same needs to be set aside. He submits that even in the written statement filed before this Court to the writ petition so far as the fact with respect to anomaly and the junior of the petitioner namely Sh.A.K.Abrol drawing higher salary is admitted. The only reason that has been given is that the petitioner ought not have racked up the issue after retirement. He further relies upon order passed by Co-ordinate Bench in ***CWP No.26169 of 2014 titled as Hari Krishan Dangwal Vs. State of Punjab & ors., decided on 07.12.2018.***

Per contra, Mr. Parminder Singh, Advocate for respondents No.1 to 3 submits that the anomaly as per admitted facts had arisen in the year 2007 and the same was sought to be remedied only in 2015. He thus submits that in light of Finance circular No.4 of 2004 dated 18.03.2004 placed on record as Annexure R-I, the authorities have rightly rejected the claim of the petitioner.

I have heard learned counsel for the parties and have gone through the records of the case.

The issue with respect to non-consideration of pay anomaly by resorting the Finance circular No.4 of 2004 dated 18.03.2004 came for consideration before Co-ordinate Bench in CWP No.26169 of 2014 *(supra)* wherein after taking note of subsequent Circulate No.6/13 dated 18.01.2013 it was held as under :-

> *"8. I am of the view that the stand taken by learned counsel for the respondent-Corporation does not stand scrutiny of law and is not tenable in view of conceded position as envisaged in circular No.6/13. The circular 4/04 is prior in time and the same is superseded by circular No.6/13 dated 18.01.2013. For ready reference, the relevant part of circular No.6/13, ibid, is extracted herein below :*
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> > *" Punjab State Power Corporation Limited has decided to give an opportunity to remove anomaly up to 31.03.2013 to those employees retired upto the date of issue of circular and whose pay has been fixed lower than that of their junior due to revision of pay scales w.e.f 01.01.2006."*
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> *9. In view of the circular No.6/13, there is no ambiguity to the effect that the petitioner was entitled to seek correction of the anomaly of his pay upto the date of issuance of circular No.06/13 dated 18.01.2013. Admittedly, the petitioner retired on 30.04.2010 which is before the date of issuance of circular and he had been representing immediately after the issuance of circular from 28.01.2013 and respondent rejected his claim in view of old circular No.4/04. Petitioner's case was covered by circular No.6/13 dated 18.01.2013. These facts have not been controverted by learned counsel for the respondents.*"

In view of the afore-stated position of law and the fact that Finance circular No.4 of 2004 dated 18.03.2004 stands superseded by Circulate No.6/13 dated 18.01.2013, this court finds that the claim of the petitioner ought not have been rejected merely on the ground that he has retired and thus was not entitled to rack up the issue of anomaly. Even otherwise, the respondent-Corporation being instrumentality of State cannot deny pay parity to its employees which has its roots in Article 14 of the Constitution of India. Once the anomalies admitted, respondent-Corporation cannot take refuge under Circular to deny the same. It is duty of the employer to make good the anomaly and pay its employees at par with his juniors.

Resultantly, present writ petition is allowed.

Respondent-Corporation is directed to consider the case of the petitioner for removal of pay anomaly within a period of 8 weeks from the date of receipt of certified copy of this order and release all consequential monetary benefits along with interest @8% p.a. from the date the amount fell due till the date of actual realization within a period of 4 weeks thereafter.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

17.02.2023
Pooja sharma-I

Whether speaking/reasoned Yes
Whether Reportable : No