

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.25103 of 2014 (O&M)
Date of decision : 27.02.2023

Harbinderjit Singh Petitioner

versus

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

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. A.K.Walia, Advocate
for the petitioner.

Ms. Promila Nain, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 31.10.2014 (Annexure P-15) whereby time bound pay scale of 9/16 years have been withdrawn on account of foregoing promotion.

The petitioner was appointed as Line Superintendent or J.E.-2 on 07.08.1978 owing to lack of promotional avenues. He was granted first time bound promotional scale w.e.f. 08.08.1987 on completion of 9 years of service as J.E.-2 as per Finance Circular No.17/90 dated 23.04.1990. He was further granted 2nd time bound promotional scale w.e.f. 08.08.1994 on completion of 16 years of service as J.E.-2 in terms of Finance Circular No.17/90 dated 23.04.1990. The petitioner was promoted from J.E.-2 to J.E.-1/Additional Assistant Engineer (AAE) on 11.10.2001 which petitioner later on opted to

forego. On account of clarification the respondents have ordered withdrawal of two time bound promotional scales while relying upon Annexure R-1 dated 08.04.2003 which reads as under :-

“In this context it is stated that as per instruction issued by this office vide memo no. 192877/194427/ENG/G-212/Vol.-8 Dt.22-10-1993 of any employee foregoes his promotion for 3 years in that case payment to him on account of 9/16 years first/second time bound promotional Scale grant shall be held in abeyance. If such employee did not opt for promotion after 3 years or foregoes his promotion forever or retire from the service of Board due to completion of 58 years of age or premature retirement before completion of 3 years period for his promotion. Then in such case the benefit of 9/16 years first/second time bound promotional Scale granted to him shall be taken back. As for as its recovery is concerned, it can be effected in one go or in installments. But his carry home salary shall not be less than 40% in any case. If any amount remains outstanding for this purpose due to his retirement then it can be recovered from employee's gratuity.”

The issue with respect to the import of circulars issued in situation wherein the time bound promotional scale stands withdrawn after the employee opted to forego his promotion came for consideration before this Court in judgment passed in ***Rattan Chand Vs. Punjab State Electricity Board & ors.***, CWP No.2587 of 2009 decided on 12.08.2010 wherein it was held as under :-

“13. I, however, do not find any merit in the contention noticed above. Firstly, the respondents withdrew the promotional pay scales without any notice to petitioner. He still expected justice and represented the authorities, followed by more than on reminders. The respondents deliberately slept over the matter and took no decision until commanded by this Court in the previous writ petition. The respondents, thus, cannot take advantage of their own per se illegal action. Secondly, the impugned action has led to reduction of the petitioner's monthly pension which undoubtedly gives rise to a recurring cause of action in his favour. Thirdly and factually, there is no delay on the part of the petitioner for the reason that the impugned speaking order was passed on 23rd December, 2008 and conveyed to the petitioner vide memo dated 15.01.2009 (Annexure P6). Immediate thereafter the petitioner filed the present writ petition in February, 2009.

(14). It is then urged that the 'restoration' of time-bound promotional pay scales being not a specific prayer made in this writ petition, this Court cannot grant such a relief to the petitioner. I find no force in this contention too for more than one reason. Firstly, the petitioner has specifically sought the quashing of the order dated 23.12.2008 (Annexure P5), whereby, his claim for restoration of the aforesaid pay scales has been turned down. Secondly, he has sought a writ of mandamus to direct the respondents "to release the whole of the amount of pensionary benefits in accordance with law." Thirdly, he has also sought refund of the amount deducted from his Gratuity. All the reliefs taken together cannot be granted without directing the respondents to restore the promotional pay-scales as were granted to the petitioner on completion of 9/16 years of service. That apart, a writ court, while exercising its jurisdiction under Article 226 of the Constitution, is not bound by such technicalities and in order to bestow complete justice to the aggrieved, it can appropriately mould the relief."

In view of the aforesaid law and keeping in view the fact that the petitioner became entitled for time bound promotional scale much prior to date of his promotion w.e.f. 11.10.2001, the fact of foregoing such promotion at the hands of the petitioner cannot have an effect of his losing right over the time bound promotional scales.

However, keeping in view that the whole objective of granting of time bound promotional scale is to take care of stagnation within the cadre, wherever the employee becomes entitled for such time bound pay scale after foregoing the promotion, the respondent-Corporation will be within right to withdraw such scale.

Resultantly, the present writ petition is allowed. Order dated 31.10.2014 (Annexure P-15) is set aside. Respondents are directed to release the consequential benefits to the petitioner within a period of 3 months from the date of receipt of certified copy of this order along with interest calculated @6%

p.a. from the date of accrual till the date of realization. The amount already recovered shall also be paid back to the petitioner with interest as stated hereinabove.

(PANKAJ JAIN)
JUDGE

27.02.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No