

CWP-23030-2017

219

2023:PHHC:126611

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

CWP-23030-2017

DECIDED ON: 26th JULY, 2023

SHOBHA GARG

.....PETITIONER

VERSUS

HARYANA POWER GENERATION CORPORATION LTD. & ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivam Malik, Advocate and
Ms. Santosh Malik, Advocate
for the petitioner.

Ms. Aditi Sharma, Advocate for
Mr. Charanjit Singh Bakshi, Advocate,
for respondents No. 1 to 4.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* for quashing the impugned Order dated 02.02.2017 (Annexure P-21) whereby, the claim of the petitioner's deceased husband for the grant of deemed date of Promotion to the Posts of Junior Engineer-1, Assistant Engineer, Assistant Executive Engineer and XEN with consequential benefit of seniority and pay fixation at par with his juniors, i.e. the respondent no. 5 and 6, was rejected.

2. The factual matrix of the present case is that on 23.06.1966, the husband (since deceased) of the petitioner had joined services on the Post of Operator in the erstwhile Punjab State Electricity Board, which was later on

disbanded for the promulgation of the Haryana State Electricity Board in 1967. He was rendering his services on the Post of Cooling Tower Operator in the Thermal Power House, Faridabad, which was later closed down in the year 1968. Respondents No. 5 and 6, who were also appointed and working as Operators in the Thermal Power House, Faridabad, were transferred to the field on account of closure of the Plant. On account of the closure, various officials discharging their duties in the Operations and Maintenance Staff were adjusted in the Field Cadre and the Operators were redesignated as Line Superintendent – II, while some Operators were retained in the Thermal Power House, Faridabad and were redesignated as Junior Engineer/Thermal. The petitioner's deceased husband was, therefore, retained to render his services in the Thermal Power House, Faridabad as a Junior Engineer/Thermal, whereas the respondents No.5 and 6 were adjusted and transferred to the field cadre, as Line Superintendents. Due to the adjustment so made, the petitioner's deceased husband and the private respondents, who were initially serving in the same cadre as Operators, were disbanded and hence, the grievance of the petitioner's deceased husband *viz.* his Seniority arose. Meanwhile, respondents No. 5 and 6 were granted further promotions before the petitioner's deceased husband. Establishing his claim for seniority and deemed dates of Promotion at par with the respondents no. 5 and 6 at the strength of decisions taken by the erstwhile Haryana State Electricity Board vide Order dated 30.11.1978 (Annexure P-3) and Order dated 24.02.1981 (Annexure P-4), the petitioner's deceased husband approached the authorities by serving upon them a Legal Notice dated 02.06.1997. Pursuant thereto, the petitioner's deceased husband approached

this Court by way of filing of CWP-12395-1997 titled as **“R.P Garg Versus Haryana State Electricity Board and others”**. The writ petition was disposed off by this Court on 24.04.2014 with a direction to respondents to consider the claim of the petitioner’s deceased husband for Promotion within a period of 4 months. Pursuant thereto, upon consideration, respondent No. 1 scrutinized the entitlement of the petitioner’s deceased husband and vide an Order dated 02.02.2017 (Annexure P-21), impugned herein, the claim for Promotion has been rejected on the premise that due to non-representation against the tentative seniority lists circulated, the seniority so fixed qua the petitioner’s deceased husband had attained finality and therefore, he was not entitled to the benefit of deemed date of Promotions at par with his purported juniors, Jaswant Singh and Narinder Singh, i.e. respondents no. 5 and 6.

3. It is asserted by learned counsel for the petitioner that her deceased husband was appointed on the Post of Operator with the respondents (erstwhile Haryana State Electricity Board) on 23.06.1966 as against the respondents no. 5 and 6, who were appointed as Operators, i.e. the same Post, on 06.02.1967 and 05.07.1966 respectively and, therefore, the petitioner’s husband was senior to the respondents no. 5 and 6. It is further asserted that upon the closure of the Thermal Power House, Faridabad in 1968, respondents No. 5 and 6, working as Operators were adjusted in the Field Cadre and re-designated as Line Superintendents as against the petitioner’s deceased husband, who was retained to serve in the Thermal Power House, Faridabad and re-designated as Junior Engineer/Thermal, however, in order to curb with the interlinked seniority of the officials, the

respondents (erstwhile Haryana State Electricity Board) had taken a decision to maintain seniority, as maintained prior to the closure of the Thermal Power House, Faridabad, i.e. as per the original seniority.

4. Learned counsel for the petitioner has drawn attention of this Court to the Orders dated 30.11.1978 & 24.02.1981 (Annexures P-3 & P-4 respectively) and submits that the officials, who were originally working as Operators in the Thermal Power House, Faridabad but were later redesignated, either as Junior Engineers/Thermal Supervisors/Line Superintendents were decided to be kept at parity in all aspects, i.e. for the grant of the same rank as well as Pay. Thus, he contends that in view of Orders dated 30.11.1978 and 24.02.1981 respectively, the seniority of the Junior Engineers, Thermal Supervisors and Line Superintendents stands inter-linked in a manner, such that the original seniority, as was maintained before the disbanding of officials to the Field Cadre, continued to operate for the intents and purposes of granting Promotions and parity in Pay.

5. It is submitted by learned counsel for the petitioner that since the respondents no. 5 and 6 were promoted to the post of JE Grade – I w.e.f. 18.09.1980 and 07.01.1982 respectively, therefore, at the strength of decisions taken vide Orders dated 30.11.1978 and 24.02.1981 (Annexures P-3 and P-4), the petitioner was also granted Promotion to the Post of Junior Engineer Grade – I w.e.f. 18.09.1980, i.e. at par with the respondent no. 5, so as to maintain the inter-linkage of Seniority by granting the petitioner's deceased husband, a deemed date of Promotion to the Post of Junior Engineer Grade – I. The contention is that the grant of deemed date of Promotion to the Post of JE Grade – I at par with the respondent no. 5 and

w.e.f. 18.09.1980 is a clear acceptance by the respondents that the petitioner's deceased husband was in fact senior to the respondent no. 5 and at the strength of the decision of inter-linkage of seniority taken by the erstwhile Board, the petitioner's deceased husband was rightly granted a deemed date of Promotion to the Post of Junior Engineer Grade – I at par with respondent no. 5.

6. Further contention of learned counsel for the petitioner is that the petitioner's deceased husband was further promoted to the Post of Assistant Engineer vide Order dated 11.05.1988 (Annexure P-6) and pursuant thereto, the erstwhile Board had circulated a Seniority List for the Post of Assistant Engineers, as it stood on 30.09.1990. He has drawn attention of this Court to the Seniority List as appended Annexure P-7. A perusal of the same would show that the petitioner's deceased husband was placed at number 894, as against the respondents no. 5 and 6, who were placed at numbers 1085 and 1084 respectively and thus, the petitioner's deceased husband was undisputedly senior to the respondents no. 5 and 6.

7. It is further contended that while in service, the petitioner's deceased husband, as well as the respondents no. 5 and 6, amongst other aggrieved officials, were pursuing their requests with the erstwhile Board for correction of their Seniority by treating the Post of Operator Thermal Plant equivalent to the Post of Line Superintendent Grade – I instead of Line Superintendent Grade – II as the Pay Scale for the Post of Operator and that of Line Superintendent Grade – I was equal, i.e. Rs.140-300 and therefore, the decision of placing the Operators equivalent to the Post of Line Superintendent Grade – II was wholly misconceived and resulted in an

anomaly. It has been pointed out that in order to get the anomaly rectified, the respondent no. 5 had filed a suit for declaration, which was decided on 14.08.1995 and while allowing the suit of the respondent no.5, it was decreed that the respondent no. 5 shall be assigned seniority after his rectified placement into the Seniority List of Junior Engineer Grade – I with effect from the date of his joining as Operator. It is further contended that the erstwhile Board did not assail the Decree so passed by any Appeal and therefore, the same stands to have attained finality. It is further contended that pursuant to the Decree, the erstwhile Board incorporated the necessary removal of anomaly qua the respondent no. 5 by affording him a deemed date on the Post of Line Superintendent Grade – I with effect from the date he had joined as an Operator in the Thermal Power House, Faridabad. Consequently, his seniority was also re-assigned at Sr. No. 60/A instead of 435 in the cadre of Line Superintendent Grade – I and all the benefits entailing the said rectification were also granted to the respondent no. 5. The respondent no. 5 was further assigned deemed date of promotion and seniority as Assistant Engineer, Assistant Executive Engineer and Executive Engineer with effect from 01.10.1974, 01.06.1980 and 17.08.1995 respectively. A reference has been drawn to Order dated 27.06.1968 (Annexure P-9), Order dated 05.02.1996 (Annexure P-10) and Orders dated 24.07.1996 and 03.01.1997 (Annexures P-11 & P-12) to substantiate the above contentions.

8. Learned counsel for the petitioner further submits that the petitioner's deceased husband was further promoted to the Post of Assistant Executive Engineer vide Order dated 21.11.1996 and while working on the

said Post, the deceased husband of the petitioner had retired on attaining the age of Superannuation on 31.01.2003.

9. Learned counsel for the petitioner has further pointed out that seeking a parity with the respondent no. 5, the respondent no. 6 had also approached this Court by filing a Writ Petition bearing CWP No. 13318 of 1996 titled as **'Narinder Singh and another Versus HSEB and others'** and the writ petition was disposed off while issuing directions to the erstwhile Board to consider the claim of the respondent no. 6 raised vide his representation and to pass an appropriate Order on the same. It is further contended that pursuant thereto, the respondent no. 6 was also granted all the benefits of deemed date, as had been granted to the respondent no. 5. A reference has been drawn to the Orders appended as Annexures P-14, P-15, P-16 and P-17 in support of the above contentions.

10. Learned counsel for the petitioner further states that on account of his undisputed seniority, the deceased husband of the petitioner was also entitled to the benefits of being granted deemed dates of joining and promotions with the rightful fixation of his seniority at par with his juniors, i.e. the respondent no. 5 and 6 and despite repeated encounters with the respondents on various occasions, there was no consideration of the claims made by the deceased husband of the petitioner. It is vehemently argued that the deceased husband of the petitioner was always senior to the respondents no. 5 and 6 on account of their date of appointment in the erstwhile Board and the decisions of the respondents vide Orders dated 30.11.1978 and 24.02.1981 (Annexure P-3 & P-4) and therefore, the subsequent rectification of an error committed by the erstwhile Board should have rather been

undertaken in totality and the petitioner's deceased husband should have been granted the benefit of deemed dates of joining and promotion in the respective cadres over and above his juniors, so as to evade any supersedure and maintain the original seniority, as was maintained in the Thermal Power House, Faridabad. It is vehemently submitted that failure to grant the benefit of deemed dates to the deceased husband of the petitioner would tantamount to gross discrimination against a senior official for no fault attributable to him, as it was the sacrosanct duty of the respondents to carry out the necessary rectifications in the Seniority Lists in toto.

11. Pursuant to the order passed in CWP No.12395 of 1997, the respondent corporation has passed the impugned speaking Order rejecting the claims of the deceased husband of the petitioner on 02.02.2017, i.e. after a passage of 20 years. It was in the interregnum that the petitioner's deceased husband, unfortunately, passed away and hence, the petitioner filed the present petition. However, during the pendency of the writ petition, even the petitioner, unfortunately, passed away and hence, her legal heirs are on record to contest the present writ petition.

12. Before advertng to the rival contentions, it would be apposite to reproduce the Orders dated 30.11.1978 and 24.02.1981, so as to test the very genesis of the claims raised herein.

The Order dated 30.11.1978 reads as under: -

“The Haryana State Electricity Board in its meeting held on 22.10.78 is pleased to decide that the category of the thermal supervisors, should if otherwise suitable, be given the rank and pay on the basis that seniority is to be counted from the date of continuous officiation.

Therefore, whenever a line Supdt. Junior to Thermal Supervisor is promoted as a Junior Engineer then the Thermal Supervisor would also with effect from that date have the rank and pay of Junior Engineer/Thermal.”

The Order dated 24.02.1981 reads as under: -

“It has been decided that the benefit of giving rank and pay of next higher post under the next below rule as has been granted by the board to the thermal supervisors (redesignated as JE/Thermal vide office order No. 1032/NGE/-935 dated 30.11.78 is also extended to thermal operators (redesignated as JE). Junior to them is promoted as JE Gr-I.

2. This issues with the approval of Whole Time Members.”

13. Ms. Aditi Sharma, learned counsel appearing for the respondents no. 1 to 4 has vehemently contended that a fresh comprehensive exercise was carried out and a detailed self-speaking order was passed vide Office Order No. 220/HPG/GE-623 dated 24.03.2015 vide which, a tentative seniority list of AEs was circulated with a specific mention therein for any aggrieved officer/retiree with grievances pertaining to their seniority to represent for their grievance before the competent authority. It is argued that the petitioner's deceased husband never made any representation against the said tentative Seniority List and therefore, it can be said that the petitioner's deceased husband had accepted the said Seniority List and hence, at this stage, his legal heirs cannot agitate for any grouse being estopped for non-representation.

14. Learned counsel for the respondents has further contended that respondents No. 5 and 6 were adjusted in the Field Cadre and not in the

Thermal Cadre and therefore, the Promotional Avenues for both the cadres in question are entirely different and cannot co-relate with each other. However, learned counsel for the petitioner vehemently argues that the said argument is completely misplaced as the erstwhile Board had already taken a decision to inter-link the seniority of the said posts for the purposes of Promotions and Pay vide Orders dated 30.11.1978 and 24.02.1981 (Annexures P-3 & P-4). He further reiterates that once the respondent Board had already granted deemed date of Promotion to the petitioner vide Order dated 11.03.1981, that too, at the strength of the Order dated 24.02.1981 (Annexure P-4), there is no occasion, whatsoever, to take the defense of cadre segregation and deny the rightful claim of the petitioner on this ground. Upon being confronted with the argument of having maintained and followed the original seniority by the respondents, as evident by the earlier Order dated 11.03.1981 (Annexure P-5) granting deemed date of Promotion to the petitioner at the strength of Order dated 24.02.1981 (Annexure P-4), learned counsel for the respondents has not been able to refute the same. She, however, strenuously argues that the petitioner's deceased husband could have submitted his grievances *viz.* Seniority as a representation against the tentative seniority list circulated on 24.03.2015 and having accepted the same, any precedential Order of promotion/deemed date granted in favor of the petitioner in 1981 would not come to the rescue of the petitioner once a fresh exercise has been carried out and a comprehensive seniority list has been prepared afresh.

15. Per-contra, Mr. Shivam Malik, learned counsel for the petitioner submits that the relief sought in the present petition relates way back to

1971, 1974, 1980 and 1995, i.e. when the juniors of the petitioner were granted deemed dates of joining/promotion. He further submits that the argument raised by the respondents cannot sustain as the petitioner's deceased husband had approached this Court way back in the year 1997, i.e. immediately after the respondent no. 6, who was junior to the petitioner, was granted deemed dates of promotion over and above the petitioner. He further vehemently argues that the impugned Order is liable to be quashed for this sole ground that the same is premised on the very basis of non-submission of a representation against the said seniority list circulated in 2015, whereas, the writ petition filed by the petitioner's deceased husband was decided on 24.04.2014 whereby, it was directed to consider the case of the petitioner's deceased husband and pass an appropriate order. Learned counsel for the petitioner, thus, argues that in such circumstances, where this Court had already issued directions to the respondents to consider the claims raised by the petitioner's deceased husband, he ought not have raised his grievances distinctly against the said seniority list and non-representation against the same cannot be stated to be an embargo/impediment in the grant of his rightful entitlements, for which, he had been fighting since decades but unfortunately, could not take it to its logical end.

16. No other argument was raised.

17. Having heard learned counsel for the parties, at length.

18. It is categorically averred in the writ petition that the petitioner's deceased husband is indubitably senior, having been appointed as Operator prior to the respondents no. 5 and 6 and hence, in the circumstances, when the respondents have themselves taken a decision to the

effect whereby the seniority positions of the posts in question are inter-linked for the purposes of Promotions and Pay, the arguments raised by the learned counsel for the respondents cannot sustain. It was never incumbent upon the respondents to have taken a decision of inter-linking the seniority in a manner, which relates back to their appointment in the Thermal Power House, Faridabad, yet, the erstwhile Board took a decision and rather made everyone, including the petitioner's deceased husband, a beneficiary to the same. The Promotion Order dated 11.03.1981 (Annexure P-5) clearly shows that the petitioner's deceased husband was granted deemed date of Promotion w.e.f. 18.09.1980 at par with respondent no. 5 and therefore, it can be stated that even the respondents admit the seniority of the petitioner's deceased husband and therefore, the stand taken by the respondents before this Court, being contrary, cannot sustain.

19. The argument raised by the respondents with regards to non-representation also cannot sustain for the reasons that the petitioner's deceased husband had already approached this Court way back in 1997 and once, upon decision of the said writ petition, directions were issued to the respondents to look into the claims raised by the petitioner's deceased husband and pass an appropriate Order thereof, the respondents ought to have passed an Order within the stipulated time period and having failed to do so, issuance of a fresh seniority list would not accrue a duty upon the deceased husband of the petitioner to agitate for his grievances afresh, that too, when the respondents were already directed to look the claims raised by him and decide his entitlement in accordance with law. Be that as it may, the respondents cannot take shade of the non-representation by the deceased

husband of the petitioner to be a legal impediment in the rightful consideration of the claims put forth by the deceased husband of the petitioner and therefore, issuance of a fresh seniority list would not have any bearing to the claims raised by the deceased husband of the petitioner for grant of deemed dates of joining/promotion at par with his juniors. Therefore, the objection so raised is rejected.

20 Even in the written statement filed by the respondents, it has been submitted that the respondent no. 5 was appointed as Operator in the Thermal Plant on 06.02.1967 and that the respondent no. 6 was appointed as Operator in Thermal Plant on 05.07.1966. There is no denial to the averment that the petitioner's deceased husband was appointed as an Operator on 23.06.1966. Further, there is no specific denial to the seniority of the petitioner's deceased husband, averment of which is raised in para no. 2 of the present writ petition and in such circumstances where the petitioner's deceased husband was unequivocally senior to the respondents no. 5 and 6, the petitioner's deceased husband cannot be made to suffer supersedure at the hands of the respondents for errors and omissions that were only attributable to the Corporation itself.

21. The respondent no. 5, who is undisputedly junior to the petitioner had filed a Civil Suit, which was decided in favor of the respondent no. 5 and it was directed to place him in the Seniority List of Line Superintendents Grade – I instead of Line Superintendents Grade – II with effect from the date of his joining as an Operator. The petitioner's deceased husband is identically placed as the respondent no. 5 and rather senior to the respondent no. 5 and therefore, there is no justifiable reasoning

as to why the petitioner’s deceased husband be deprived of a benefit, which was extended to an identically placed junior employee. The respondent Corporation had all the occasion to assail the said decision in Appeal, however, having accepted the same, the decree has attained finality and the benefit stands extended to the respondent no. 5. Rather, on the principle of parity, when the respondent no. 6 had also approached this Court and directions were issued to consider his case and pass an Order, the respondent Corporation decided the same in favor of the respondent no. 6 and extended the benefit to the respondent no. 6 as well. Therefore, I find no reasonable justification as to why the same benefit of granting deemed dates of joining/promotion be not afforded to the petitioner’s deceased husband. Any denial of the same would only amount to gross discrimination, which cannot sustain in the eyes of Law.

22. In view of discussions made, herein, the present writ petition is allowed and the impugned Order dated 02.02.2017 (Annexure P-21) is hereby quashed and the respondents are hereby directed to grant deemed date of Promotion to the deceased husband of the petitioner at par with his juniors, i.e. respondents No. 5 & 6 and pursuant thereto, compute all the consequential benefits of the deceased husband of the petitioner including the Arrears of retiral benefits and release the same with an interest of 9% per annum within a period of three months from the date of receipt of certified copy of this Order.

23. There shall be no orders as to costs.

24 Pending Applications, if any, shall stand disposed off.

(SANDEEP MOUDGIL)
JUDGE

July 26, 2023

Sham

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No