280+109 **2023:PHHC:166630**

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

**CWP-17146-2023 (O&M)
Date of decision : 11.10.2023**

Jarnail Singh Brar **...Petitioner**

Vs.

Punjab State Power Corp.Ltd. and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Peeush Gagneja, Advocate
for the petitioner.

Mr. Gurnoor Singh Sethi, Advocate
for the respondent-PSPCL.

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DEEPAK MANCHANDA, J.(Oral)

CM-17593-CWP-2023

This application has been filed under Section 151 CPC for placing on record reply by way of affidavit of Er.Suman Singh, Sr. Executive Engineer, DS Division, PSPCL Malout on behalf of respondent Nos.1 to 5.

Application is allowed as prayed for.

Reply on behalf of respondent Nos.1 to 5 is taken on record.

Main case

1. By way of present writ petition, the petitioner has sought quashing of the letter/reply dated 02.02.2023 (Annexure P-3) as well as letter dated 16.06.2023 (Annexure P-10) with the further prayer for issuance of directions to the respondents to remove the anomaly in the pay-scale of petitioner and to release the remaining amount of salary, arrears, revised pay-scale and all other

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consequential benefits.

2. The facts emanated from the pleadings are that petitioner retired on 30.06.2019 as Divisional Superintendent from the office of respondent No. 5, whose date of birth is 01.07.1963 and had joined his services on 13.12.1984. His seniority number as LDC was 7465, as UDC was 5803, as Circle Assistant his seniority number was 3329 and on the post of Divisional Superintendent, his seniority number was 715, however, in respect of another employee namely Baljinder Singh, who has also retired from service as Divisional Superintendent on 31.05.2021, whose Date of Birth is 27.05.1963 and had joined the Department on 03.12.1984, his seniority number as LDC was 7188, as UDC was 6772 and as Circle assistant his seniority number was 3757 and on the post of Divisional Superintendent his seniority number was 796. It is mentioned that the said employee was junior to the petitioner and the date of promotion of the petitioner on the post of UDC was 25.01.1996 and as Circle Assistant it was 01.07.2010 and as Divisional Superintendent, it was 17.11.2014, whereas date of promotion of the Balwinder Singh on the post of UDC is 03.04.2000, as Circle assistant it was 19.07.2013 and as Divisional Superintendent it was 09.10.2018 meaning thereby that the said Balwinder Singh being junior was promoted subsequently. It is also mentioned that as per service record, the petitioner was drawing basic salary of ₹ 68,000/- on 01.01.2016, ₹70,000/- on 01.12.2016 and ₹ 72,100/- on 01.12.2017, whereas the said Balwinder Singh was drawing basic salary of ₹ 66,200/- on 01.01.2016, ₹68,200/- on 01.12.2016 and ₹70,200/- on 01.12.2017, which shows that the petitioner was drawing more pay at every stage up to 01.12.2017, but on 01.12.2018 the anomaly in the pay had occurred and on

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01.12.2018, the petitioner was getting salary of ₹ 74,300/-, whereas Balwinder Singh was getting salary of ₹ 76,500/- in comparison to the petitioner, which has occurred after fixation of salary in the 6^{th} revised pay scale as per Finance Circular 12/2021 dated 17.11.2021.

3. Learned counsel for the petitioner contends that petitioner is a retired employee and is aggrieved against the inaction on the part of respondent- corporation, whereby his anomaly in the pay scale has not been removed in spite of producing sufficient evidence and documents. He further contends that vide representation dated 21.03.2022 (Annexure P-7), petitioner approached the Department, which was replied through letter No. 461 dated 02.02.2023 (Annexure P-3), however, the prayer for removing pay anomaly was not accepted. Thereafter, one more representation dated 06.02.2023 (Annexure P-4) was submitted and vide letter dated 24.02.2023 (Annexure P-5), the petitioner was granted opportunity of personal hearing on 01.03.2023, whereby Department did not deny claim of the petitioner rather assured for removing of anomaly. Learned counsel for the petitioner submits that when nothing was done inspite of the assurance given by the respondent, thereafter, petitioner served legal notice dated 12.05.2023 (Annexure P-9), which was replied vide letter dated 16.06.2023 (Annexure P-10), but once again the respondents did not accept the prayer of the petitioner for removal of anomaly stating therein that the same cannot be accepted after retirement. Learned counsel for the petitioner also submits that the act and conduct of the respondents is not tenable as petitioner is entitled for the relief even in view of the Finance Circular 12/2021 dated 17.11.2021 and in terms of the above mentioned judgments.

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4. Learned counsel again submits that apart from the above, the claim of the petitioner is squarely covered by the judgment passed by the Coordinate Bench in CWP No. 10253 of 2016, titled as “Jivan Kumar Singla Vs. Punjab State Power Corporation Ltd. and others” decided on 17.02.2023 and another judgment passed in CWP-26169-2014, titled as “Hari Krishan Dangwal Vs. State of Punjab and others” decided on 07.12.2018. He prays for quashing of the letter/reply dated 02.02.2023 (Annexure P-3) as well as letter dated 16.06.2023 (Annexure P-10).

5. On the other hand, learned counsel for the respondents while referring to the affidavit dated 29.09.2023 submits that as per the Finance Circular No. 4/2004 dated 18.03.2004 issued by Punjab State Electricity Board, wherein it has been specifically mentioned that as and when an employee comes to know about any such anomalous situation in his pay with reference to the pay of his junior he was supposed to make a specific request immediately, at least while in service, as no such request shall be made post-retirement. He further submits that since the petitioner had retired on 30.06.2019 and during service, no such representation was filed by him to the concerned authority to fix the anomaly. He also submits that the claim on the basis of Finance Circular 12/2021, which was issued on 17.11.2021, the same had been issued after the retirement of the petitioner, hence, the benefit cannot be extended in light of the circular No. 4/2004 dated 18.03.2004, therefore, he prays for dismissal of the present petition.

6. I have heard learned counsel for the parties and have perused the material available on record.

7. On 14.09.2023, this Court issued notice of motion and learned

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counsel for the respondents put in appearance and sought time to file reply. The stand taken by the respondents is that once the petitioner was aware about the anomaly during his service tenure and all representations were made post-retirement, which are in violation of the Finance Circular No. 4 of 2004 dated 18.03.2004, hence the prayer of the petitioner for removal of anomaly in pay cannot be accepted.

8. This Court is of the view that such arguments raised by the learned counsel for the respondents cannot be accepted as the only issue raised by the learned counsel for the respondent is that while in service the petitioner should have approached the respondents, but there is no denial to the claim made by the petitioner with regard to removal of his pay anomaly. Further, learned counsel for the petitioner has relied upon the judgements passed by the Coordinate Bench on similar issue in CWP No. 10253 of 2016 and CWP-26169-2014, wherein it is mentioned that the said Finance Circular No. 4 of 2004 dated 18.03.2004 stands superseded by circular No. 6/13 dated 18.01.2013. The contents of the same are reproduced hereinbelow for reference:-

> *"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 :*
>
> > *" 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*

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pay has been fixed lower than that of their junior due to revision of pay scales w.e.f.01.01.2006."

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."

9. Moreover, the petitioner was retired on 30.06.2019 and the arguments raised by learned counsel for the petitioner saying that the date of issuance of Finance Circular 12/2021 is 17.11.2021 and there was no occasion for the petitioner to approach the Department before issuance of said finance circular, have force in his submissions. Further while deciding the issue in CWP No. 10253 of 2016 the coordinate bench specifically observed that The claim of the petitioner therein ought not to have been rejected mainly 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 anomaly is 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. The relevant portion of the Finance Circular No.12/2021 dated 17.11.2021 is reproduced below:-

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*“**Note 7.** In case, where a senior PSPCL employee promoted to a higher post before the first day of January, 2016, draws less pay in the revised pay structure than his junior, who is promoted to a higher post on or after the first day of January, 2016, the pay of the senior PSPCL employee, shall be stepped up in the revised pay structure to an amount equal to the pay, as fixed for his junior in that higher post. The stepping up shall be done with effect from the date of promotion of the junior PSPCL employee subject to the fulfilment of the following conditions, namely: -*

(a) The junior and the senior PSPCL employees should belong to the same cadre and the posts in which they have been promoted should also be identical in the same cadre;

(b) The existing scale and Pay Matrix Level of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The senior PSPCL employee at the time of promotion to higher level should have been drawing equal or more pay than the junior. However, no relief shall be given, if the senior PSPCL employee exercises an option to maty's pay fixation/promotion postponed.

(d) The anomaly should be directly as a result of application of the
provisions of these regulations or any other regulation or order regulating pay fixation on such promotion in the revised pay structure. However, if in the lower post, the junior PSPCL employee was drawing more pay In the existing scale than his senior by virtue of any advance increment(s) granted to him or due to any inflation in pay other than by way of normal pay fixation, the provisions of this note shall not be applied for stepping up the pay of the senior PSPCL employee:

Provided that the benefit of stepping up of pay can be allowed to the senior second time, if the anomaly has arisen with reference to the pay of the same junior, in respect of whom, the pay of the senior was stepped up first time;

Provided further that the senior PSPCL employee shall be entitled to earn next increment on the same date as that of his junior with respect to whom, he had got stepped up his pay.”

10. Thus, with the aforesaid findings and while relying upon the judgement passed in CWP No. 26169 of 2014, titled as “Hari Krishan Dangwal

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Vs. State of Punjab and others" and CWP No. 10253 of 2016 by the Coordinate Bench of this Court, the pay anomaly of the petitioner deserves to be removed.

11. In light of the above, the present writ petition is allowed, the respondent-corporation is directed to consider the case of the petitioner for removal of the anomaly within a period of eight weeks from the date of receipt of certified copy of this order and release all consequential monetary benefits along with interest at the rate of 6% from the date the amount fell due till the date of actual realization within a period of 4 weeks thereafter.

12. Petition is allowed.

(DEEPAK MANCHANDA)
JUDGE

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

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