

CWP-5729-2017

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2023:PHHC:166562

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

CWP-5729-2017

Date of decision : 26.07.2023

Nirmal Singh

...Petitioner

Vs.

**The Punjab State Power Corporation Ltd.
And others**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

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

Mr. Sandeep Vermani, Advocate and
Ms. Sukriti Gupta, Advocate
for the respondents.

DEEPAK MANCHANDA, J.(Oral)

Petitioner has filed this writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of orders dated 20.12.2012, 25.04.2013, 13.06.2016 and 06.07.2016 (Annexures P-5, P-6, P-8 and P-9, respectively) and also for quashing of recovery of Rs.2,18,679/-and impugned letter dated 26.07.2013 (Annexure P-12), whereby recovery of Rs.22266/- pertaining to work-charged period has been wrongly ordered. Further, a prayer has been made for directing the respondents to count the period of work-charged service from 15.09.1987 to 22.09.1994 for various service benefits.

The facts in brief leading to the present case are that the petitioner was appointed as skilled worker on work charged basis on 15.09.1987 and his

services were regularized w.e.f.23.09.1994 (Annexure P-1/T). As per the instructions dated 23.04.1990 (Annexure P-2) issued by respondent No.1, petitioner was granted First Time Bound Higher Pay Scales after completion of nine years of service w.e.f.22.09.2003 vide office order No.533 dated 10.03.2004 (Annexure P-3/T) issued by respondent No.2. Vide office order dated 1854 dated 02.12.2011 (Annexure P-4/T), the petitioner was promoted to the post of Junior Plant Attendant (JPA), however, due to family circumstances, he submitted a representation for permission to forego the promotion, therefore, vide order No.2328 dated 20.12.2012 (Annexure P-5/T), the petitioner was permitted to forego the promotion and it was further ordered that the benefit of eight years proficiency step up and nine years Time Bound Higher Pay Scales shall be withdrawn w.e.f.02.12.2011 due to foregoing of promotion. Through letter dated 25.04.2013 (Annexure P-6), pay of the petitioner was re-fixed and recovery of Rs.57,165/- was effected from the petitioner. Thereafter, the petitioner retired from service on 31.05.2016 (Annexure P-7). By passing order No.999 dated 13.06.2016 (Annexure P-8), the benefit of nine years pay scale was withdrawn w.e.f.23.09.2003 and further order dated 06.07.2016 (Annexure P-9) was passed by respondent No.2, whereby further recovery of Rs.1,61,514/- was worked out against the petitioner. The total recovery amounts to Rs.2,18,679/-, out of which, an amount of Rs.57,165/- was recovered from the salary of the petitioner and an amount of Rs.1,61,514/- was recovered from the gratuity of the petitioner after his retirement (Annexure P-10). Further, vide letter dated 26.07.2013 (Annexure P-12), another recovery of Rs.22,266/- has been effected from the petitioner on account of excess salary paid to him during the work-charged

period. It is further pleaded in the petition that the period of work-charged service from 15.09.1987 to 22.09.1994 has not been counted as qualifying service for the purpose of grant of various service benefits including the eight years proficiency step up, Time Bound Higher Pay Scales after completion of nine years of service. The benefit of 16 years and 23 years Time Bound Higher Pay Scales has also not been granted to the petitioner as his work charged service was not counted. Hence this present writ petition.

Learned counsel for the petitioner contends that the petitioner was appointed as skilled worker on work charged basis on 15.09.1987 and thereafter, he was regularized on 20.09.1994. In terms of instructions dated 23.04.1990 issued by respondent No.1, petitioner had been granted the benefit of First Time Bound Higher Pay scale after completion of nine years of regular service on 22.09.2003. The petitioner had been offered the promotion to the post of Junior Plant Attendant (JPA) in the year 2011, however, he had foregone the promotion and therefore, the respondent had taken away the benefit of higher pay scale while passing the impugned order dated 20.12.2012, which had already been granted to him. Further, respondents are also recovering from his salary and even from the gratuity amount after his retirement. He submits that the petitioner could not have been denied the benefit of further promotional pay scale after he had foregone the promotion. He further submits that the benefit of 16 years Time Bound Higher Pay Scale has also not been granted to the petitioner as his work charged service was not counted, therefore, he seek indulgence of this Court.

In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment passed by this Court in CWP-2587-2009,

titled as “*Rattan Chand Vs. Punjab State Electricity Board and others*” decided on 12.08.2010 (Annexure P-11) and submits that the case of the petitioner is covered under this decision.

Vide order dated 20.03.2017, notice of motion has been issued and pursuant to the same, reply on behalf of Daljit Singh Kohli, Dy.Secretary/Estt.Section, Guru Gobind Super Thermal Plant, Roopnagar on behalf of respondents has been filed.

Learned counsel appearing on behalf of the respondents while opposing the prayer of the petitioner submits that claim of the petitioner is not covered under any instructions and rules. The work charge service of the petitioner has already been counted for pensionary benefits vide order bearing No.424 dated 18.03.2014 as per prevailing instructions, however, there are no rules and instructions to count work charge service for 9/16 years Time Bound Pay Scales, 8 years proficiency step up and 23 years advance promotional increment. Further, the petitioner had joined as regular skilled worker on 23.09.1994, and for the purpose of 9/16 Time bound pay scale and 23 years advance promotional increment, his service will be counted from 23.09.1994. As the petitioner has already foregone his promotion, therefore, he is not entitled for 9/16 time bound pay scale and 23 years advance promotional increment. He submits that petitioner is not entitled for 23 years advance promotional increment as he has retired on 31.05.2016, whereas he would have completed 23 years of regular service on 23.09.2017, therefore, he prays for dismissal of the present petition.

Learned counsel for the petitioner also submits that indeed the issue raised in the petition would be covered by judgment rendered by this

Court in Rattan Chand's case (supra) as well as various judicial pronouncement, which were allowed while relying upon the **Rattan Chand's** case by the Coordinate Bench of this Court on similar issue in CWP-25103-2014, decided on 27.02.2023, titled as "**Harbinderjit Singh Vs. The Punjab State Power Corporation Ltd., & others**".

I have heard learned counsel for the parties and have perused the case file carefully.

In **Rattan Chand's case (supra)**, the following has been held:-

"(10). The clarificatory Circular dated 26.07.1990 (Annexure R3/1) nowhere provides nor it can lead to such absurd consequences that a promotion offered after 16 years of service would take away the service benefit given to an employee on completion of 9 years' service. Since the petitioner never refused to accept the promotion before he was granted the time-bound promotional pay scales on completion of 9/16 years of service, the subsequent offer for such promotion and that too at the fag end of his career, cannot take away the time bound promotional scales which were rightly granted to him being a stagnated employee.

(11). The impugned action of the respondents deserves to be struck down also being violative of the principles of natural justice. The withdrawal of the promotional pay scales has far-reaching civil consequences including reduction in the petitioner's pension and other retiral dues. Unfortunately, the respondents have acted with such a closed mind that they did not deem it proper to hear the petitioner before passing the order under challenge and that too at the time of his farewell on retirement."

Considering the above facts and circumstances, this Court finds

that the petitioner had already been granted the Higher Time Bound Pay Scale

as he could not be promoted despite having nine years of service and the benefit granted to him for eradicating stagnation in service after having completed nine years of service. He had foregone the promotion subsequently, but the benefit which had already been granted to him cannot be taken away. Thus, petition is allowed and the impugned orders dated 20.12.2012, 25.04.2013, 13.06.2016, 06.07.2016 and 26.07.2013 (Annexures P-5, P-6, P-8, P-9 and P-12) are set aside and respondents are directed to restore the Time Bound Promotional Pay scales to the petitioner besides refund the amount already deducted from his salary and gratuity. Respondents shall further re-fix the pension and other retiral dues of the petitioner accordingly. Deducted amount as well as arrears of promotional pay scales, pension etc., be released to the petitioner along with interest at the rate of 6% per annum. Needful be done within a period of three months from the date of receipt of certified copy of this order.

(DEEPAK MANCHANDA)
JUDGE

26.07.2023
sapna/vanita

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