IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(107) **CM-1080-C-2023 in/and RSA-1247-2011**
Date of Decision : February 09, 2023

Urmila Sood **.. Appellant**

Versus

Punjab State Electricity Board, Patiala and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Singh, Advocate, for the applicant-appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1080-C-2023

Present application has been filed for early hearing of the main appeal i.e. RSA No.1247 of 2011.

Keeping in view the facts mentioned in the application, the same is allowed and the main appeal i.e. RSA No.1247 of 2011 is taken up for hearing today.

RSA-1247-2011

Present Regular Second Appeal has been filed challenging the judgment of the lower Appellate Court dated 10.12.2010 by which, the judgment and decree of the trial Court dated 08.02.2010 has been set aside and the suit filed by the appellant-plaintiff was dismissed in respect of claiming of higher pay w.e.f. 01.01.1999 by treating the plaintiff at par with defendant No.3.

Certain facts needs to be mentioned herein.

The appellant-plaintiff was appointed as Lower Divisional Clerk (LDC) on 05.12.1963 and thereafter, she was promoted as Upper Divisional Clerk (UDC) on 15.04.1967. On 12.12.1969, the appellant-plaintiff was promoted as Assistant and thereafter as Superintendent Grade-II on 15.09.1986 and Superintendent Grade-I on 21.11.1989. On 15.04.1997, the appellant-plaintiff was promoted as Under Secretary and on 01.08.2000 as Deputy Secretary. While working on the post of Joint Secretary, she retired on attaining the age of superannuation on 31.05.2003. After the retirement, the appellant-plaintiff raised a grievance that defendant No.3 who was junior to her but he was granted the salary of Rs.13,300/- w.e.f. 01.01.1999 whereas, the appellant-plaintiff was being given a salary of Rs.12,900/- which is not permissible, hence, she was entitled for the grant of the benefit of step up of her pay equivalent to that of defendant No.3 w.e.f. 01.01.1999 with all consequential benefits.

The said claim which was raised after her retirement by the appellant-plaintiff was rejected by the respondent-Department on 20.04.2006 on the ground that a retired employee cannot claim the benefit of step up of pay. The said order was challenged by the appellant-plaintiff by filing the civil suit praying for a declaration that the rejection of her claim vide order dated 20.04.2006 was bad in law with the further prayer that she be granted the equivalent salary as being granted to defendant No.3 w.e.f. 01.01.999 with all consequential benefits including interest.

The trial Court allowed the claim on the ground that the salary of a junior cannot be higher than the senior, hence, once defendant No.3 was getting a higher pay than the appellant-plaintiff as on 01.01.1999, the said benefit was admissible to the appellant-plaintiff as well. Further, the stand taken by the respondent-Department that in case, an employee applies for the removal of anomaly of the pay/pay scale, the same can only be entertained while that employee is in service and not after the retirement, is held to be bad. The suit filed by the appellant-plaintiff was decreed by the trial Court vide judgment and decree dated 08.02.2010.

Feeling aggrieved against the said order, the appeal was preferred by the respondent-Electricity Board, which appeal came to be decided by the lower Appellate Court vide order dated 10.12.2010. Lower Appellate Court held that the trial Court has misread the evidence on record for the reason that vide circular dated 15.04.2002, which has been exhibited as Annexure D-1 even if, there was an anomaly in the pay of senior employees, the same can only be considered if the employee is in service and no request will be entertained after the retirement qua the said prayer and as appellant-plaintiff had raised the claim for step up of her pay after retirement, the same was not found feasible, hence was rejected. With regard to defendant No.3, it was mentioned that he had also raised the claim for the correcting of his pay but said prayer was raised while in service, which benefit was extended to him, hence, as the appellant-plaintiff had already retired, keeping in view the circular dated 15.04.2002, her case could not have been considered for step up of her pay as she raised the said grievance after her retirement and the appeal was allowed and the suit filed by the appellant-plaintiff was dismissed. Hence, the present Regular Second

Appeal has been filed.

Learned counsel for the appellant argues that once a particular benefit has been extended to defendant No.3 under the instructions dated 15.04.2002, the same was also liable to be extended to the appellant-plaintiff being senior to defendant No.3 as it was the duty of the Department to give the benefit to all the similarly situated persons.

Learned counsel for the appellant concedes that though Ex.D-1 dated 15.04.2002 recites the factum that the anomaly in pay scale will only be entertained qua the serving employees but submits that the said decision is totally arbitrary and illegal and cannot be sustained.

I have heard learned counsel for the appellant and have gone through the record with his able assistance.

The first question which arise is whether, after the retirement, the plea of the anomaly in the pay between seniors and juniors can be raised by the employee concerned or not keeping in view the facts and circumstances of the present case.

It is a conceded position that a circular was issued by the Board on 15.04.2002. At the time of the issuance of the said circular, the appellant-plaintiff was in service. Despite availability of chance for revision of her salary in case the same was not correct, the said grievance was never agitated. Whereas, defendant No.3 raised the grievance qua the anomaly by co-relating his pay scale with one of the employee namely Kamal Narayan Ahuja, which plea was accepted.

Once, the appellant never raised any grievance while in service qua the anomaly in the pay scale citing the case of Kamal Naryana Ahuja, no benefit could be allowed to the appellant as the claim was raised after the retirement, keeping in view a specific condition in the circular dated 15.04.2002.

Even otherwise, the employee has to be vigilant to raise the claim when admissible and no reason has come forward as to why, the appellant never raised the said grievance while in service though she had a chance to raise the same keeping in view the instructions of the respondent-Department dated 15.04.2002 as she was in service on the said date. In the absence of any valid justification, the raising of a grievance in May 2006 is clearly time barred as the reliance was being placed by the appellant herself on the instructions dated 15.04.2002 to raise the claim of revisional of pay anomaly. Once the cause of action had accrued to the appellant in April 2002 and she could have only filed the claim within a period of three years of the cause of action, hence, no illegality can be found in the order passed by the lower Appellate Court declining the relief to the appellant.

Learned counsel for the appellant further submits that once the benefit has been extended to defendant No.3 in the year 2003, the same should have been extended to the appellant as well on the ground of parity.

The present case is not the case of revision of pay scale. The instructions dated 15.04.2002 was only qua the remount anomalies of salary between seniors and juniors. This shows that a senior person, who was getting lower salary than junior, was required to raise his/her claim. Once, defendant No.3, who was in service as on 15.04.2002, raised a claim for stepping up his pay qua his junior, and the same was found feasible as per the instructions dated 15.04.2002, he was granted the benefit but the appellant failed to raise any claim under the instructions dated 15.04.2002 while in service despite in service at the relevant time or even within a period of three years from the cause of action arisen i.e. issuance of the instructions dated 15.04.2002, therefore, the parity which is being claimed by the appellant qua defendant No.3 is not there and the same has rightly been adjudicated by the lower Appellate Court.

Even otherwise, once claim of the appellant is under the instructions dated 15.04.2002, she has to abide by the terms and conditions of the said instructions. Concededly there is no challenge by the appellant to the conditions envisaged in the instructions dated 15.04.2002 that only the in-service employee can raise the claim under those instructions. Hence appellant is bound by the said terms, according to which, by the time she raised her claim under the instructions dated 15.04.2002, she had already retired. Hence, no infirmity can be found in the findings of the Courts below on the said issue.

No other argument raised.

Keeping in view above, as no perversity has been pointed out in the judgment of the lower Appellate Court qua the facts or the settled principle of law, no interference is called for by this Court in the present Regular Second Appeal and the same is accordingly dismissed.

February 09, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes