



CWP-11727-1997 (O&M)

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

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CWP-11727-1997 (O&M)

Date of decision: 29.07.2024

JOGINDER SINGH

...PETITIONER

Vs.

PRESIDING OFFICER, LABOUR COURT, PATIALA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. S.S. Salar, Advocate
for the petitioner.

Ms. Diksha Sharma, Advocate
for respondent Nos. 2 and 3.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 09.12.1996 (Annexure P-4) whereby Industrial Tribunal has rejected claim of the petitioner.
2. The petitioner joined Punjab State Electricity Board (for short 'PSEB') as Technical Engineer on 26.04.1966. On deputation, he joined BBMB in the year 1976.
3. Respondent issued a circular dated 21.02.1980 (Annexure P-1) whereby options were invited from employees with respect to their pay scale. In the circular, it was provided that employees who are out of India, shall file their option within 4 months from the date of taking over charge of their post with PSEB.



4. The petitioner on 21.02.1980 was with BBMB and he left for Libya on 09.07.1980. He was sent to Libya by PSEB for a period of 5 years. He came back to India on 15.05.1985 and rejoined his post with PSEB.

5. As per circular dated 21.02.1980, he was required to file option qua his revised pay scale within 4 months from the date of joining duty i.e. by 15.09.1985 whereas he filed his option on 2nd December' 1985. As there was delay of 3 months', the Competent Authority did not accept his option. He preferred an application under Section 33-C(2) of Industrial Disputes Act, 1947 before Labour Court which framed following issues:-

- “1. Whether the application is not maintainable and this Court has no jurisdiction to try this application?*
- 2. To what amount, if any, the workman is entitled?*
- 3. Relief?”*

6. The respondent-PSEB did not press issue No. 1, thus, it was decided against PSEB. The Labour Court vide order dated 09.12.1996 dismissed claim of the petitioner on the ground that he was bound to file option within 4 months after coming back to India whereas he had filed options after 7 months, thus, he was not entitled to benefit of revised pay scale as granted vide circular dated 21.02.1980.

7. Mr. S.S. Salar, Advocate submits that petitioner was out of country from 1980 to 1985 and he was unaware about the circular issued by PSEB. As soon as he came to know about the circular, he filed the option. The circular was a piece of beneficial legislation and Clause-11 of the circular permits to relax any condition, thus, he cannot be denied benefit of revised/better pay scales.

8. Per contra, learned counsel for the respondent submits that as per circular, the petitioner was bound to furnish his option within 4 months' from the



date he rejoined his duties whereas he filed his option after 7 months, thus, there was clear violation of circular. He is not entitled to benefit of revised pay scale.

9. I have heard counsel for the parties and with their able assistance perused the record.

10. From the perusal of record, it comes out that as per circular, an employee posted outside the country, was bound to file his option within 4 months from the date of his taking over charge after coming back to India. The circular further provides that any condition may be waived off by the Board. Clauses 5 and 11 of the Appendix B of the circular are reproduced as below:-

“5. Exercise of Option: (1) The option under regulation 4 to elect the existing scale or the revised scale shall be exercised in writing in the form ‘A’ appended to these regulations, so as to reach the Head of the Department/ Office within four months of the date of issue of these regulations or of the order revising the existing scale whichever is later:

Provided that-

In the case of Board employee who is on that date out of India or on leave or on deputation, or on foreign service or on active service, the said options shall be exercised in writing so as to reach the prescribed authority within four months of the date of his taking over charge of his post under the Punjab State Electricity Board. and

11. Power to relax: Where the Board is satisfied that the operation oi any of these regulations causes, undue hard- shop to any individual employee or class of employee, it may be order dispense with or relax the requirements of that regulation to such extent and subject to such conditions as is may consider necessary in dealing with the case in a just and equitable manner. ”

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11. From the perusal of afore-cited clauses, it is evident that petitioner was bound to file option within 4 months from the date, he joined his duty after coming back to India. As per Clause-11, the condition of furnishing option within 4 months might be waived off by Competent Authority. The petitioner did not approach Board for the waiver of condition whereas he approached Labour Court which was not an appropriate Forum. The matter in the normal course ought to be remanded to the Board to consider the grievance of the petitioner but considering the fact that matter is pending before the Courts since 1993, it would not be just and fair to remand the matter to the Board.

12. Considering the totality of the facts and circumstances, this Court finds it appropriate to set-aside impugned order dated 09.12.1996. Accordingly impugned order is hereby set-aside and Competent Authority is directed to relax the condition of filing option within 4 months and thereafter grant benefit as extended by circular.

13. Let the needful be done within 6 months from today.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

29.07.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No