

230
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4516-2021 (O&M)
Date of decision: 14.02.2024

BALRAJ SINGH RANGI

...Petitioner

VERSUS

HARYANA POWER GENERATION CORPORATION LIMITED AND
ANOTHER

...Respondents

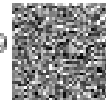
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Anurag Goyal, Advocate, for the petitioner.

Mr. Jagbir Malik, Advocate, for the respondents.

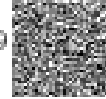
JASGURPREET SINGH PURI, J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 15.09.2020 (Annexure P-20) to the extent of denying the petitioner payment of arrear/any other financial benefit on the principle of '*no work no pay*', though he is ordered to be promoted to the post of Executive Engineer w.e.f. 03.09.2010 i.e. the date when his juniors were promoted with a further prayer to direct the respondents to grant the petitioner the benefit of arrears of pay right from 03.09.2010 i.e. the date of promotion of his juniors to the post of Executive Engineer till the actual date of promotion i.e. 24.04.2020 alongwith interest for delayed payment @ 9% per annum on the basis of law settled by Hon'ble Supreme Court.



2. Brief facts of the present case are that the petitioner joined the respondent-Corporation on the post of Junior Engineer on 26.09.1989. Thereafter, he was promoted to the post of Boiler Controller and then to the post of Assistant Engineer on 22.10.2003. Further the petitioner was promoted to the post of Assistant Executive Engineer and he assumed the charge of the post on 15.11.2006. In the year 2010, a raid was conducted on the basis of some secret information pertaining to Light Diesel Oil (LDO) Tankers, which were coming from the Indian Oil Corporation, Delhi and the oil was to be transported to Rajiv Gandhi Thermal Power Plant, Khedar, Hisar and the raiding party impounded the truck and allegation was made pertaining to shortage in supply of aforesaid Light Diesel Oil (LDO). Consequent thereupon, FIR No.316 was registered on 07.08.2010 under Sections 406, 407, 420, 467, 468, 471, 379, 411, 120-B IPC read with Section 7/10/55 of Essential Commodities Act, Sections 3 and 4 of the Petroleum Act, 1943 and Section 13(1)(c) of Prevention of Corruption Act. The petitioner was also nominated in the aforesaid FIR.

3. On 03.09.2010, i.e. after about one month after lodging of the aforesaid FIR, a meeting of the Departmental Promotion Committee (hereinafter referred to as 'DPC') was held and the petitioner along with seven other Assistant Executive Engineers was considered for promotion and approval was granted by the Managing Director. The other Assistant Executive Engineers were formally promoted but so far as the present petitioner is concerned, his name was deferred for promotion as Executive Engineer due to contemplated disciplinary proceedings against him but it was also directed that one post of Executive Engineer be kept vacant for him. In this way, seven other Assistant Executive Engineers were promoted to the post of Executive Engineers but the



case of the petitioner was deferred because of contemplated disciplinary proceedings against him. The aforesaid order passed by the Chief Engineer/Admn., HPGCL, Panchkula dated 03.09.2010 vide Annexure P-2 is reproduced as under:-

HARYANA POWER GENERATION CORPORATION LIMITED

An ISO:9001, ISO 14001 and OHSAS 18001 Company

C-7, Urja Bhawan, Sector 6, Panchkula - 134109.

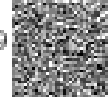
Phone No. 0172-502344, Fax No. 0172-5022433

Office Order No. 416/HPG/GE-623 Dated : 03.09.2010

The suitability of S/Sh. Sukhbir Singh, Prem Kumar, Jasmer Singh, Kartar Singh Gill & Rakesh Gupta, Assistant Executive Engineers (Electrical) for their promotion to the post of Executive Engineers (Electrical) has been approved by Managing Director, HPGCL.

Accordingly, the above Assistant Executive Engineers are hereby promoted to the post of Executive Engineer with immediate effect, subject to the following notes:-

- 1. The promotion of above Assistant Executive Engineers to the post of Executive Engineers has been made subject to the condition that they will have no claim of their seniority over those who are otherwise senior to them and whose cases could not be finalized due to pending disciplinary proceedings or any other reasons.*
- 2. The above Assistant Executive Engineers will remain on probation for a period of one year from the date of assumption of charge as Executive Engineers. The respective controlling officers will send the work and conduct report of these officers after completion of one year.*
- 3. The above Assistant Executive Engineers would have continued to officiate as AEE but for their promotion to the rank of Executive Engineers.*



4. The promotion of above Assistant Executive Engineers is without prejudice to the pending writ petition/civil suit, if any.

5. The name of Sh. Joginder Singh, AEE has been deferred for promotion as Executive Engineer due to pending disciplinary proceedings against him. However, one post of Executive Engineer has been kept vacant for him.

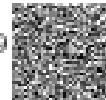
6. The name of Sh. Balraj Singh Rangi, AEE has been deferred for promotion as Executive Engineer due to contemplated disciplinary proceedings against him. However, one post of Executive Engineer has been kept vacant for him.

This issues with the approval of Managing Director, HPGCL.

*s/d
Dy. Secy./Estt. (G)
For Chief Engineer/Admn.,
HPGCL, Panchkula*

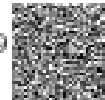
4. At the time when the name of the petitioner was deferred only because of the aforesaid reason, there was neither any show cause notice nor any charge-sheet nor any enquiry pending against the petitioner on the departmental side. Even on the criminal side, the aforesaid FIR was lodged against him but no further process had taken place and even charges were not framed.

5. On 08.09.2010, the petitioner was arrested and thereafter, he was suspended on 09.09.2010. The petitioner was thereafter granted the concession of regular bail by this Court. On 31.05.2011, a charge-sheet was issued against petitioner on the aforesaid grounds and in the meanwhile, the petitioner was also reinstated in service. The petitioner then moved a representation on



10.02.2014 and also gave number of reminders regarding deferring his promotion without any disciplinary/criminal proceedings on the date of passing of the order of promotion. However, on 19.05.2014, the representation of the petitioner was considered by observing that promoting the petitioner would send a wrong message to the public. Thereafter, the petitioner served a legal notice to the respondents in this regard. The petitioner thereafter filed a writ petition before this Court taking all the pleas pertaining to his right to be considered for promotion and also challenged the order dated 03.09.2010, whereby his promotion was deferred in contemplation of disciplinary proceedings. In the meantime, the respondent-Corporation did not even proceed with the enquiry/charge-sheet against the petitioner and rather the petitioner was acquitted by this Court in the criminal case vide judgment dated 15.07.2017. Thereafter, the enquiry also concluded and an order of punishment was passed against the petitioner for stoppage of two annual increments with cumulative effect and overall assessment was also ordered to be downgraded by one step below for the years in question. The petitioner assailed the aforesaid punishment order by filing an appeal before the appellate authority and the aforesaid punishment order was modified and it was converted into order of warning to be more careful in future. The aforesaid writ petition was also disposed of in view of the statement of the learned counsel for the respondents that the claim of the petitioner for promotion would be considered as per Rules applicable.

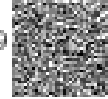
6. On 24.04.2020, the respondent-Corporation granted current duty charge to the petitioner for the post of Executive Engineer and he again represented to the respondent-Corporation as to why he has not been regularly



promoted and has been given only current duty charge. Thereafter, on 15.09.2020, an order was passed, whereby the petitioner was ordered to be promoted to the post of Executive Engineer w.e.f. 03.09.2010 i.e. the original date on which the other Assistant Executive Engineers were promoted to the post of Executive Engineer and on that date the name of the petitioner was deferred as aforesaid. It was also ordered that the period of suspension was also to be treated as duty period but without the payment of arrears or any other financial benefits and in this way, his pay was also fixed notionally from the date of his retrospective promotion i.e. 03.09.2010.

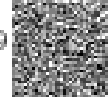
7. The aforesaid order dated 15.09.2020 (Annexure P-20) has been impugned in the present writ petition to the extent that the petitioner has not been granted the arrears and financial benefits from his deemed date of promotion i.e. 03.09.2010.

8. Learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner was wrongly not promoted on 03.09.2010 when his colleagues were promoted to the post of Executive Engineer because at that point of time there was no impediment or embargo upon the respondent-Corporation to not have promoted the petitioner and there was no justification for deferring his name by giving the reason that disciplinary proceedings are contemplated against him. He further submitted that on the aforesaid date, neither any disciplinary proceedings were contemplated nor even there was any show cause notice to that effect and even otherwise also, the disciplinary proceedings commenced only after issuance of charge-sheet but at that point of time there was no notice even to the petitioner and there was no question of any disciplinary proceedings being contemplated in the absence of any show cause

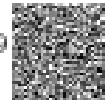


notice. He further submitted that although an FIR was lodged against the petitioner about one month prior to the aforesaid date but the mere lodging of an FIR would not become an impediment for promotion because the criminal trial starts only after issuance of a charge-sheet and there is no provision of law which provides that mere issuance of FIR would bar a person from being promoted. He further submitted that in this way on 03.09.2010, there was no impediment or embargo upon the respondent-Corporation to have not promoted the petitioner and his name was wrongly deferred. He submitted that thereafter even the petitioner has been acquitted by this Court vide judgment dated 15.07.2017 and relevant portion has already been reproduced in the reply filed by the respondent-Corporation which makes it clear that it was observed by this Court while acquitting the petitioner that it was a clear-cut case of faulty investigation conducted by the concerned Investigating Officers, during the course of investigation which required a fact-finding inquiry through the officer not below the rank of DSP/IPS by the concerned department. It was also observed that due to no establishment of link in the investigation proceedings, the prosecution has failed to prove its case against the accused and the petitioner was acquitted by giving benefit of doubt. He submitted that in this way, it was because of the fault on the part of the prosecution that he was falsely implicated and that he has since been acquitted.

9. Learned counsel further submitted that so far as the disciplinary proceedings against the petitioner are concerned, although a punishment order for stoppage of two increments with cumulative effect was passed by the punishing authority but the same stood modified by the appellate authority by passing of an order of warning and therefore, even otherwise also, the order of



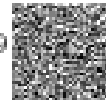
warning itself is not a ground for withholding of any punishment at the time for consideration of promotion by the DPC. However, in the present case at the time when the petitioner was considered for being promoted by the DPC on 03.09.2010, then there was no impediment or embargo or any kind of order against the petitioner and therefore, on that date he ought to have been promoted alongwith other colleagues and therefore, the action of the respondent-Corporation was absolutely against the law and now when the petitioner has been promoted by giving retrospective promotion from the aforesaid date i.e. 03.09.2010, the financial benefits and arrears of salary have been denied to the petitioner on the principle of 'no work no pay'. He submitted that the aforesaid principle would not apply to the present case because it was not due to the fault of the petitioner that he did not work on that post but it was because of the fault of the respondent-Corporation that without any justifiable reason his promotion was deferred as aforesaid. He submitted that law in this regard is now well settled that in certain circumstances the principle of 'no work no pay' will not apply as that in the present case. He referred to judgments of Hon'ble Supreme Court in *Union of India Versus Jankiraman, 1991 (4) SCC 109, Ramesh Kumar Vs. Union of India and others, 2015 (14) SCC 335 and The Commissioner, Karnataka Housing Board Vs. C.Muddaiah, 2007(7) SCC 689*. He also referred to various judgments of this Court in *Sardar Singh Vs. State of Haryana and others, 2015(2) RSJ 32, Karnail Singh Vs. PSEB and others, 2006 (4) RSJ 671, Kailash Chander Sharma Vs. State of Haryana and another, 2015(2) SCT 130 and Gian Singh Vs. State of Punjab and others, 2011(1) RSJ 256* in support of his contention.



10. On the other hand, learned counsel appearing on behalf of the respondent-Corporation submitted that it is a case where at the time when the meeting of DPC was held, the petitioner was already facing FIR and in view of contemplation of the disciplinary proceedings, his name was deferred and thereafter, the competent authority thought it fit to promote the petitioner from the same date by giving him retrospective promotion but the financial benefits could not be granted to the petitioner for the period he did not work on that particular post and deemed date of promotion has already been granted to the petitioner and therefore, he should not have any grievance with regard to the same. He also submitted that in the criminal case the petitioner was granted the benefit of doubt only and he was not honourably acquitted and therefore, he cannot now turn around and say that he has been honourably acquitted in the criminal trial. He also submitted that it is a settled law that when a person has not worked on a particular post and he has been granted retrospective promotion, then he is not entitled for the grant of any financial benefit on the principle of '*no work no pay*'. He further submitted that once an FIR has been registered against the petitioner, then it was within the powers of the competent authority to have deferred the promotion of the petitioner. He also submitted that it is a not a case that the acquittal of the petitioner was on the basis of the observations of the Criminal Court that it was a case of a malicious prosecution but the petitioner has been acquitted on the basis of benefit of doubt and therefore, he cannot claim financial benefits.

11. I have heard the learned counsels for the parties.

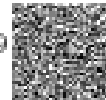
12. It is a case where at the time when the petitioner was considered for being promoted alongwith other seven Assistant Executive Engineers by



DPC on 03.09.2012, then as per Annexure P-2 as reproduced above, there was no show-cause notice or enquiry or any disciplinary proceeding or any criminal case against the petitioner except about one month ago, there was a FIR lodged against the petitioner. His name was deferred only because of the reason that disciplinary proceedings were 'contemplated', whereas it is a settled law that disciplinary proceedings start only after the issuance of a charge-sheet. At the most contemplation would have been from the date of issuance of show-cause notice but even show-cause notice was not issued on the aforesaid date and therefore, the aforesaid reason was a non-existent reason. It is not a case where at the time when the petitioner was considered for being promoted that he was facing any disciplinary proceeding or any criminal trial. As to whether he should be granted the financial benefits or salary or not by departing from the principle of '*no work no pay*' is to be seen in the light of facts and circumstances of the present case. In a catena of judgments Hon'ble Supreme Court has held that if it was not the fault of an employee to have remained away from the work, then the salary and financial benefits can be given to him by departing from the principle of '*no work no pay*'.

13. Hon'ble Supreme Court in ***Union of India Versus Jankiraman (Supra)*** observed as under:-

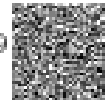
“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”



14. Hon'ble Supreme Court in ***Ramesh Kumar Vs. Union of India and other(Supra)*** observed as under:-

“14. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion are concerned that depends upon case to case. In [State of Kerala & Ors. vs. E.K. Bhaskaran Pillai](#), (2007) 6 SCC 524, this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a case-to-case basis and in para 4, it was held as under: (SCC p.527)

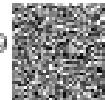
“4... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, [in that case](#) the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then [in that case](#) he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”



15. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”

15. Hon'ble Supreme Court in ***C. Muddaiah's case (Supra)*** observed as under:-

“33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case

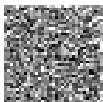


to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

16. Apart from the above, this Court in a number of judgments after referring to the aforesaid judgments have also observed that there is no straight jacket formula for not granting financial benefits when retrospective promotion is granted but it has to be seen in the light of facts and circumstances of each and every case.

17. After hearing the learned counsels for the parties, this Court is of the considered view that it is a case where at the time when the petitioner was considered for being promoted on 03.09.2010 alongwith his other colleagues,



then there was no impediment or embargo nor any disciplinary proceeding or show-cause notice or any criminal proceeding in any Court of law pending against him and no provision of law has been shown by the learned counsel for the respondent-Corporation to show as to under which provision or under which law his case should have been deferred for promotion under the guise of contemplation. This Court is also of the considered view that non-granting of promotion to the petitioner on the aforesaid date i.e. 03.09.2010 has caused miscarriage of justice.

18. Consequently, the present petition is allowed. The impugned order dated 15.09.2020 (Annexure P-20) to the extent of denial of the financial benefits inspite of the fact that the petitioner was granted promotion retrospectively is set aside. The respondents are directed to calculate and pay the arrears to the petitioner w.e.f. 03.09.2010 to 24.04.2020. i.e. the period for which he has been denied the financial benefits. However, there shall be no order of interest on the same. The aforesaid amount shall be paid to the petitioner within a period of three months from the date of receipt of the certified copy of this order.

(JASGURPREET SINGH PURI)
JUDGE

14.02.2024
Rakesh

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