IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(114)

RSA-2491-2024 (O&M)
Date of decision:- 16.10.2024

MANAGING DIRECTOR PUNJAB STATE TRANSMISSION CORPORATION, PATIALA AND OTHERS

... APPELLANTS

VERSUS

HARDIP SINGH ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

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SUVIR SEHGAL, J. (*ORAL*)

CM-10251-C-2024 & CM-10252-C-2024

1. For the reasons given in the applications, they are allowed.

2. Delay of 47 days in the filing of the appeal and 187 in its re-filing are condoned.

CM-10253-C-2024

3. Exemption, as prayed for, is granted.

4. Application is allowed.

RSA-2491-2024 (O&M)

5. Appellants-defendants are in second appeal before this Court challenging the judgments and decrees passed by the Courts below.

6. Pleaded case of respondent-plaintiff is that he joined the service as a Lineman on 05.12.1975 and was promoted as J.E. and then as J.E.-1 in the years 1980 and 2007. He retired on attaining the age of superannuation on

31.10.2010. It was averred that he is exempted from passing the departmental examination after crossing the age of 50 years as per circular letter dated 08.04.1993 issued by the Punjab State Electricity Board (PSEB), Patiala. Claiming that as he did not get any promotion between 1980 to 2007, he was entitled to additional increments on completing of 9, 16 and 23 years of service as per Finance Circular No.20/2000 issued by the defendants on 28.07.2000, he filed a suit for declaration and mandatory injunction. Upon notice, the defendants appeared and opposed the suit by raising various preliminary objections. The factual position was not disputed. However, it was submitted that the appellant-department came into existence on 16.04.2010 upon the unbundling of the PSEB. It was submitted that the plaintiff was charge-sheeted on 01.01.2011 as he failed to supply the requisite information pertaining to years 2001 to 2003 under the Right to Information Act, 2005. His claim was denied on the ground that the plaintiff had failed to clear the departmental accounts examination, which was mandatory and that the exemption claimed by the plaintiff is not applicable for grant of promotional increment. A stand was also taken that the suit is barred by limitation. Plaintiff filed replication to the written statement and re-asserted the claim. Trial Court framed issues on the basis of the pleadings of the parties, who led evidence in support of their case. By judgment dated 02.04.2019, Trial Court decreed the suit and found that the plaintiff is entitled for the grant of additional increments on completion of 23 years of service and was also granted the revised pensionary benefits along with arrears, interest etc. In appeal, preferred by the defendants, the learned Additional District Judge, Gurdaspur modified the judgment and decree of the Trial Court and held that the plaintiff is entitled to recover arrears and interest for a period of three years preceding the filing of the suit. The defendants have approached this Court in the above background.

7. Counsel for the appellant has argued that the plaintiff was not 50 years of age, when he was granted the benefits as his date of birth was 18.12.1952. It is also his submission that the Courts have erred in granting pendente lite interest @ 9% per annum on the arrears. He has placed reliance upon the judgment of the Supreme Court in ***Union of India and others Versus Tarsem Singh, (2008) 8 SCC 648*** and a Full Bench of this Court in ***Saroj Kumari Versus State of Punjab, 1998 (3) SCT 664***.

8. I have heard counsel for the appellant and considered his submission, besides examining the documents placed on the record.

9. A similar dispute came up for determination before this Court in ***RSA-3327 of 2015*** titled as "***Punjab State Electricity Board now Punjab State Power Corporation Limited and others Versus Trishan Singh***", decided on 19.01.2017, which has been followed by the Courts below. The relevant observations of this Court deserve to be noticed and are reproduced hereunder:-

> "*5. The learned trial Court dismissed the suit by the judgment and decree dated May 04, 2011 holding that by the time the petitioner had retired he did not have a third avenue of promotion during his entire service rendered from the date of joining. This order has been reversed by the First Appellate Court. The controversy rests on the interpretation of Finance Circular No.20/2000 of the PSEB. The circular prescribes that the grant of benefit of promotional increment (s) to an employee on completion of 23 years of service will be governed by the following conditions:-*

> *"(i) If he/she has the avenue of three promotions but has not earned three regular promotions in his/her regular service from the date of joining on the induction post or any other post specifically declared as induction post for granting time bound promotional/devised promotional scale;*
> *(ii) if he/she has not earned third promotion in his/her regular service between 16th and 23rd years of service.*
> *(iii) if he has not been placed in a scale which is higher than the scale of his/her next higher promotion.*
> *(iv) the increments are in the nature of advance promotional benefits to be absorbed in the next regular promotion.*
> *(v) those who forego promotion shall not be entitled for this benefit."*

6. This case turns on interplay of conditions (i) and (ii) above. Plaintiff earned two promotions before he retired but could not earn the third promotion for lack of seniority and vacancy in the promotional post from Junior Engineer. However, he had three or more "avenues" of promotion available to him in his career with the Board had he been lucky but his turn did not come before he superannuated and in case, he did not earn the third promotion in regular service between the 16th and 23rd years of service as per condition (ii) of the moot Circular he would become entitled to the promotional increment on completion of 23 years of service from the date of induction without earning actual promotion and to be placed in the "devised promotional scale". There is a vast difference between actual promotion and "avenue" of promotions. The circular is built on a legal fiction to tide over stagnation and, therefore, we will have to imagine all the legal consequences the steps entail as real when taken to their logical conclusion. In the case of the plaintiff, the 16th year would fall in 1982 and the 23rd year in 1989. By 1985 the plaintiff had earned his second promotion as Junior Engineer. He could not earn his third promotion between 1982 to 1989 because a lack of *opportunity or availability of vacancy etc. since quite possibly, the cadre may have been heavy but still he had an "avenue" of promotion which did not fructify till he retired on March 31, 2004. Quite obviously the plaintiff's case fell in condition (ii) read with condition (i) in conjunction as part of the scheme devised by the Board for its employees.*

7. Interestingly, Finance Circular No.20/2000 speaks of 'avenue' of three promotions but not actual earning of three regular promotions, as is the case of the plaintiff, and condition No.(ii) amplifies the right and guarantees benefit of promotional/additional increment on completion of 23 years of service in 1989. The last promotion earned was in 1985 as a Junior Engineer which was the second promotion. This is how the learned Additional District Judge (Adhoc) Fast Track Court, Gurdaspur in his judgment dated September 08, 2014 decided the matter to which legal proposition there can be no quarrel.

8. The only other impediment in the way of the plaintiff from securing promotion was passing of a prescribed departmental examination which he could not clear and the Lower Appellate Court found that the PSEB Order No.333 dated April 08, 1993 Ex. DW1/A had come to the rescue of the plaintiff when the respondent Board deleted the condition of passing the departmental accounts examination by granting exemption to Engineering Officers who had crossed the age of 54 years. The petitioner had crossed the age of 54 years in the year 2000. With the removal of this obstacle, the benefit of promotional increment to the plaintiff on completion of 23 years of regular service would flow naturally and thence deserves to be guaranteed and paid to the plaintiff by way of the difference of pay and allowances and arrears thereof. The right being a continuing one in nature as it would lead to re-fixation of pay and pension, if any, on the date of retirement.

This is how the suit was decreed.

9. On the question of relief, the learned First Appellate Court took into consideration the delay factor in filing the suit on September 18, 2008 and directed recovery of arrears restricted for the period of three years preceding the date of filing the suit along with interest @6% per annum till realization.

10. The judgment in appeal, appeals to reason and is found sound in law when it correctly interprets the moot circular to bring home the relief as decreed, which I fully support and endorse as the correct position in law on the interpretation of Finance Circular No.20/2000 of the appellant Board."

10. This judgment was unsuccessfully challenged before the Supreme Court and SLP (C) No. 18909 of 2017 was dismissed on 20.07.2017, while leaving the question of law open. The above reproduced observations are fully applicable to the facts of the present case. Counsel for the appellant has not been able to distinguish the judgment in ***Trishan Singh's*** case (supra). This Court does not find any good reason to deviate from the view taken by a Co-ordinate Bench of this Court in similar circumstances.

11. There is no merit in the instant appeal, which is hereby dismissed with no order as to costs.

12. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

16.10.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No