



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9619 of 2001 (O&M)
Reserved on: 02.12.2024
Decided on: 16.12.2024

Nirdosh Kumari
.....Petitioner
Versus
Punjab State Electricity Board and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Vishal Gupta, Advocate
for the petitioner.

Ms. Deepali Puri, Advocate
for respondents No.1 to 3.

NAMIT KUMAR J. (Oral)

1. Prayer in this writ petition filed by the petitioner under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of mandamus, directing the respondents to allow the petitioner a revised higher pay scale of Rs.1500-2640 w.e.f. 01.01.1986, which is admissible on completion of 10 years of services as Lower Division Clerk (LDC) as provided in Finance Circular dated 03.10.1990 (Annexure P-1), as allowed to petitioner's junior Sh. Surinder Kumar Modgill (respondent No.4) and refix the pay of the petitioner and grant arrears thereof, along with interest.
2. The brief facts, as have been pleaded in the petition are that the petitioner was appointed as Lower Division Clerk (LDC) in the erstwhile Punjab State Electricity Board (now Punjab State Power Corporation Limited) on 24.02.1975 and joined as such on 28.02.1975.



Thereafter, she cleared the departmental accounts examination in the first chance and was promoted to the post of Upper Division Clerk and she joined as such on 20.12.1983. The recommendations of the Fourth Pay Commission were implemented w.e.f. 01.01.1986 and the revised pay scale of Rs.1500-2640 was to be given to 40% of total number of posts of Lower Division Clerk (LDC) in a cadre after minimum period of 10 years of service rendered in the pay scale of Rs.950-1800 and Rs.1200-2100, taken together. The revised pay scale of Rs.1500-2640 was allowed to the cadre of Lower Division Clerk w.e.f. 01.01.1986 in the ratio of 20:40:40 and the said scale was allowed to Lower Division Clerks, who joined the duties upto 31.12.1975 and have completed 10 years of service. The Punjab State Electricity Board, vide its Circular letter No.48 of 1992, decided that the Lower Division Clerks who were directly recruited and had been promoted after qualifying the departmental accounts examination before 01.01.1986, could revise their option by treating the post of Lower Division Clerk as the induction post and they would be accordingly entitled to the benefit of revised pay scale. The petitioner also exercised the abovesaid option and, accordingly, she was allowed 16 years time bound promotional scale of Rs.1640-2925, after counting 16 years of service w.e.f. 24.02.1975, vide order dated 16.12.1992. The petitioner submitted representation dated 16.08.1994 and claimed the pay scale of Rs.1500-2640 w.e.f. 01.01.1986, as the said scale was granted to similarly situated person namely Smt. Tripta Sood, LDC, who was junior to the petitioner and whose pay was fixed at a higher scale than the petitioner



and Smt. Tripta Sood, cleared the departmental accounts examination later than the petitioner and was also promoted as Upper Division Clerk (UDC) on 04.06.1987 and was allowed the revised pay scale of Rs.1500-2640 w.e.f. 01.01.1986, however, the said benefit was not granted to the petitioner despite submitting various other representations.

3. Written statement on behalf of the respondents has been filed, wherein it has been stated as under:-

3. That the contents of this para are wrong and denied. However, the Answering Respondent Board framed its own regulation named as PSEB (Revised Pay) Regulation, 1988, vide office order No. 129/PRC/Finance, dated 11.11.1988. The said regulation was made applicable w.e.f. 1.1.1986. There was no provision for grant of scale on the ratio 20:40:40 to LDC. The Punjab State Electricity Board, vide financial circular No. 58/90 dated 3-10-1990, further revised the scales of pay of various categories w.e.f. 1-1-1986. In the ministerial establishment, the L.D.Cs. were placed in senior scales in the ratio of 20:40:40. As per the said circular, the pay scale of 950-1800 i.e. basic entry scale with the initial start of Rs. 1000/- was given to the total number of employees in the cadre minus posts which were placed in the pay scale of Rs. 1200-2100 and Rs 1500-2640. It was provided that the pay scale of Rs. 1200-2100 will be allowed to about 40% of the total number of posts of LDC in the cadre after a minimum period of service as LDC and incumbents are re-designated as Sr. Clerks. Further the pay scale of Rs. 1500-2640 was given upto 40% of the total number of posts of LDC in the cadre after a minimum period of 10 years of



service taken together as LDC and Sr. Clerk in the cadre and incumbents are designated as Junior Assistants. The revised pay scale of Rs. 1500-2640 was allowed to the cadre of LDC w.e.f. 1-1-1986 in the ratio of 20:40:40. The method of working out the percentage of posts in the LDC cadre was given in the Annexure P-1. Further vide finance circular No. 75/91, the regular LDC placed in the pay scale of Rs. 1640-2925 i.e. on the grant of 16 year Time Bound Promotional scale, their posts shall be excluded for counting the cadre of LDC for the grant of scale in the above mentioned ratio of 20:40:40. The copy of Finance Circular No.75/91 is annexed as Annexure R-1 to this written statement. It is submitted that the position was clarified vide finance circular No. 14/93 dated 2-3-1993 which provides that this is not the Promotional scale but is only a placement of LDCs in higher scale. It is denied that the scale was allowed to all the LDCs who joined duty upto 31-12-1975 and completed 10 years of service. These LDCs who were promoted to the higher post i.e. UDC prior to completion of 10 years service are not entitled for the placement in the scale of 1500-2640 in the ratio of 20:40:40. The relevant definition of existing scales as provided vide finance circular No. 33/88, dated 11-11-88 is reproduced as Under:-

"C) "existing scale" means the scale of a Board employee in respect of the post held by him in substantive or officiating capacity on the appointed day;"

4. That the contents of this para are admitted to the extent that the petitioner joined in the Answering Respondent Board on 24-2-1975 as LDC and she was promoted to the post of UDC on 20-12-1983(AN) after qualifying the Departmental Accounts Examination. As per the finance



circular No;. 58/90 dated 3-10-98, the LDCs who were promoted after passing the Departmental Accounts Examination, the date of joining as UDC will be taken as date of first induction in the Punjab State Electricity Board for the grant of 9/16 years Time Bound Promotional scales. However, the Punjab State Electricity Board, vide finance circular No. 48/92 dated 21-9-1992, Board has given the option to the qualified LDCs either to treat their induction posts as LDC or UDC for the purpose of grant of 16 year Time Bound Promotional scale. The said circular No. 48/92 is not relating to the grant of Sr. Scale to the LDCs in the ratio of 20:40:40. The petitioner has exercised the option and she was given the 16 years Time Bound Promotional scale of Rs. 1640-2925 after completion of 16 years of service counted from 24-2-1975, vide office order No. 87/MT/16 dated 16-12-1992 (Annexure P-2). It is denied that the Answering Respondents are treating the petitioner as LDC for all intents of purposes. The petitioner was asked for the option as per Finance circular No. 48/92 whether the induction post of the petitioner is to be treated as LDC or UDC for the purpose of granting of 9/16 year Time Bound Promotional scale. There are no instructions which provides that an employee can be treated as LDC or UDC for the purpose of placement in selection grade and Sr. Scale to the LDC in the ratio of 20:40:40 and as the petitioner was promoted as UDC before the appointed day viz. 1.1.86 even prior to the completion of 10 years as LDC. As such, he cannot be treated as LDC for the purpose of grant of selection scale and senior scale of LDC. Further, the petitioner has not worked for 10 years as LDC. As such, she was not entitled to be placed in the scale of Rs. 1500-2640.

5. That the contents of this para are admitted to the extent



that the petitioner was directly recruited as LDC on 24-2-1975 and he was to complete service on 23-2-1985 but before completion of 10 years service as LDC, she was promoted and joined as UDC on 20-12-1983. As such, the petitioner has not served as LDC for 10 years. Merely, the petitioner has given the option to treat his induction post as LDC, she is not entitled to be placed in the pay scale of Rs. 1500-2640 w.e.f. 1-1-1986 meant for UDC. It is only the persons who have completed minimum 10 years of service as LDC was to be placed in the said scale. It is submitted that the scale of Rs. 1500-2640 is not Time Bound Promotional scale but it is only a placement in the scale of Rs. 1500-2640. No increment was granted while placing the person in the pay scale of Rs. 1500- 2640 as is being done in the case of Time Bound Promotional scale. The option for induction post was to be taken for only granting of Time Bound Promotional scale of 9/16 years in case of UDC and 16 years in case of LDCs. It is denied that the action of the Answering Respondents in not giving the pay scale of Rs. 1500-2640 is illegal or arbitrary. The pay scale of the petitioner was rightly fixed as Rs. 1350/- in the scale of 1200-2200 with initial start of Rs. 1350/- w.e.f. 1-1-1986. It is denied that there is any wrong fixation or the pay of the petitioner was fixed less than the juniors. The receipt of the representation of the petitioner is admitted. In the said representation, the petitioner has compared his case with Smt. Tripta Sood. However, it is submitted that Tripta Sood was placed in the pay scale of Rs. 1500-2640 w.e.f. 1-1-1986 on completion of 10 years service as LDC as her case falls in the ratio of 20:40:40 of LDCs and she was not promoted as UDC. Whereas the petitioner enjoy the senior status and also the scale of UDC from 20-12-1983.



4. In nutshell, the stand of the respondents is that the petitioner was recruited as LDC on 24.02.1975 and before she could complete 10 years of service as LDC, she was promoted as UDC on 20.12.1983 i.e. on completion of about 08 years of service, therefore, she was not entitled for the pay scale of Rs.1500-2640 w.e.f. 01.01.1986. The pay scale of Rs.1500-2640 was granted to Smt. Tripta Sood w.e.f. 01.01.1986, on completion of 10 years of service as Lower Division Clerk (LDC) as her case falls in the ratio of 20:40:40 of LDC's as she was not promoted as Upper Division Clerk (UDC). Thereafter, she was promoted as UDC much later than the petitioner.

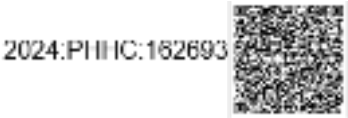
5. Learned counsel for the petitioner submits that the petitioner was entitled for the pay scale of Rs.1500-2640 w.e.f. 01.01.1986, as was granted to Smt. Tripta Sood and one another person namely Surinder Kumar Modgill, who was granted the said benefit in pursuance of the judgment and decree passed by the Civil Court dated 28.01.1997 (Annexure P-14), which has been upheld by this Court in RSA No.819 of 1999, decided on 19.03.1999 and the SLP against the said judgment was also dismissed by the Hon'ble Supreme Court vide order dated 31.03.2000.

6. Per contra, learned counsel for the respondents submit that since the petitioner did not complete 10 years of service as LDC as on 01.01.1986 as she was promoted as Upper Division Clerk (UDC) on 20.12.1983, therefore, she is not entitled for the pay scale of Rs.1500-2640 w.e.f. 01.01.1986, and the case of the petitioner is distinct from that of Smt. Tripta Sood.



7. I have heard learned counsel for the parties and perused the record.

8. The facts are not in dispute that the petitioner initially joined as LDC on 28.02.1975 and she was promoted to the post of Upper Division Clerk (UDC) and she joined, as such, on 20.12.1983. She had not completed 10 years of service as LDC as her promotion to the post of Upper Division Clerk (UDC) was made, after completion of 08 years of service. As per the stand of the respondents, the pay scale of Rs.1500-2640 is not a time bound promotional scale but it is only a placement in the pay scale of Rs.1500-2640. No increment was granted while placing the person in the pay scale of Rs.1500-2640, as is being done in the case of time bound promotional scale. In the ministerial establishment, the Lower Division Clerks were placed in the senior scales in the ratio of 20:40:40. As per the Finance Circular No.58 dated 03.10.1990, the pay scale of Rs.950-1800 is the basic entry scale with initial start of Rs.1000; pay scale of Rs.1200-2100 is allowed to 40% of the total number of posts of Lower Division Clerks cadre and are designated as Senior Clerks and the remaining 40% are placed in the pay scale of Rs.1500-2640, on completion of 10 years of service taken together as Lower Division Clerk and Senior Clerk. The petitioner was granted the first placement in the pay scale of Rs.1200-2100, but before she became eligible for grant of pay scale of Rs.1500-2640, on completion of 10 years of service, she already stood promoted to the post of Upper Division Clerk (UDC), therefore, she is not entitled for the pay scale of Rs.1500-2640 w.e.f. 01.01.1986. The case of Smt.



Tripta Sood is totally different as she was junior to the petitioner and was appointed as Lower Division Clerk (LDC) on 24.02.1975. She cleared the departmental examination after the petitioner and was promoted as Upper Division Clerk (UDC) on 04.06.1987 and by that time, she had completed 10 years of service as Lower Division Clerk (LDC) and therefore, she was rightly placed in the pay scale of Rs.1500-2640, on completion of 10 years of service.

9. So far as the grant of benefit to Surinder Kumar Modgill is concerned, it may be stated that the judgment and decree dated 28.01.1997 passed by the learned Civil Judge, is not binding. Although, the said judgment has been upheld by this Court in RSA No.819 of 1999, however, in the said judgment passed by the learned Civil Judge, the effect of Finance Circular No.58 of 1990, has not been considered.

The operative part of Finance Circular No.58 of 1990, reads as follows:-

Ministerial Establishment		Group IV	Group IV
LDC/LDC	i. 400-600	i. 950-18--	950-1800 Basic entry scale with initial start of 1000. This scale is to be given to the total No. posts in the cadre minus the post which are to be placed in the scale of pay of Rs.1200-2100 and 1500-2640 as specified in item (ii) & (iii) below.
Cashier	ii. 510-800 (50:50)	ii. 1200-2100 (50:50)	
			ii) 1200-2100 This scale is to be allowed to about forty percent of the total No. of posts to LDC's in cadre and the incumbents are to be designated as senior clerk.

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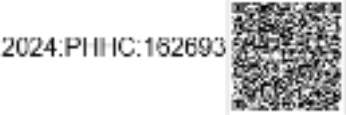


			iii) 1500-2640 This scale is to be given upto 40% of the total number of posts of LDC's in a cadre after a minimum period of ten years of service taken together as LDC and Sr. Clerk in the cadre and the incumbents are to be designated as Junior Assistant.
	Note:- 1. The method of working out the percentage of posts of LDC's in a cadre in the aforesaid three scales viz 950-1800, 1200-2100, 1500-2640 as given in the Annexure of this order. 2. Typewriting allowance @ Rs.30/- per mensem will be given to those LDC having proficiency in typewriting as per standards specified by and deployed on typing work on full time basis during the period from Nov. 1988 to 30th April, 1990, The rate of type writing allowance to the typist clerks in the scale of 950-1800 (with initial start of Rs.1000/- shall be Rs.50 per mensem w.e.f. 1st May, 1990 and for sanctioning typewriting allowance a certificate to the effect that the concerned LDC was actually deployed on typing work from the Head of Office will be required every month.		

10. Once the petitioner does not fulfill the terms and conditions of the aforesaid Finance Circular viz. she did not complete 10 years of service as Lower Division Clerk (LDC), therefore, she cannot be granted the said benefit as she had already been promoted to the next higher post of Upper Division Clerk (UDC) before completion of 10 years of service.

11. The Hon'ble Supreme Court in **S.K. Saigal vs Union of India, 2007(1) SCT 286**, has held that the decision which is contrary to law and rules does not form a precedent and a decision is a precedent when it decides the law in accordance with the Acts and Rules.

12. Since the judgment and decree dated 28.01.1997, passed by the Civil Court is without considering the Finance Circular No.58 of



1990, therefore, the same cannot be treated as a precedent for claiming the same relief.

13. In view of the above, I do not find any merit in the present petition and the same is, accordingly, dismissed.

(NAMIT KUMAR)
JUDGE

16.12.2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No