

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

2024:PHHC:166706-DB



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LPA-1411-2024 (O&M)

Date of Decision: 12.12.2024.

Surinder Singh

...Appellant.

Versus

State of Punjab and others

....Respondents.

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Ms. Jigyasa Tanwar, Advocate
for the appellant.

Mr. R.S. Pandher, Sr. DAG, Punjab.

Mr. Ashok Kumar Bazaz, Advocate
for respondent No.3
(through video conferencing).

LISA GILL, J. (Oral)

1. Prayer in this appeal is for setting aside order dated 12.02.2024 passed by learned Single Bench whereby CWP-9721-2016 filed by appellant/ writ petitioner has been dismissed.

2. Appellant/ writ petitioner filed CWP-9721-2016 seeking directions to respondents to release/ grant due benefits/ increments along with arrears and interest @ 18% per annum, claimed to be due to him on his promotion to the post of Executive Engineer (XEN) since December, 1998 and thereafter to the post of Superintending Engineer since September, 2007. It is pleaded that appellant was appointed as lecturer in the year 1979 in Punjab

Technical Education Department, Government of Punjab and thereafter he was sent on deputation as Electronics Engineer on 21.04.1988 to Municipal Corporation, Ludhiana. He was absorbed in said Corporation in 1993 and was designated XEN (Electronics/ Computer) in the pay scale of Rs.3000-4500 vide order dated 04.12.1998 and subsequently designated as Superintendent Engineer in September, 2007. Appellant retired from the post of Superintendent Engineer (Electronics/ Computers) in April, 2008 while serving Municipal Corporation, Ludhiana. It is claimed that benefit of increment on account of promotion as above was not afforded. Learned Single Bench dismissed the writ petition filed by appellant, vide order dated 12.02.2024, while taking note of the fact that appellant had earlier filed CWP-9375-2015 claiming that service rendered by him in the department of Punjab Technical Education, should be counted for the purpose of grant of pension and retrieval benefits. He had also sought grant of proficiency step up under the Assured Career Progression (ACP) Scheme on completion of 4, 9 and 14 years of service from the date of his joining the Municipal Corporation, Ludhiana as Electronics Engineer. Above said writ petition was disposed of on 13.05.2015 directing that writ petition be treated as a representation on his behalf and if it is found to be covered by decision dated 12.08.2010 passed in CWP-7305-2009 titled as **Kulbhushan Rai Vs. State of Punjab and others**, decision be taken within three months and accrued benefits be released thereafter within next two months. The said benefit was admittedly afforded in the year 2017.

3. It was also noted by learned Single Bench in impugned order dated 12.02.2024, that appellant was in fact never promoted to the post of Superintending Engineer and mere designation on the said post does not confer any right to claim increment. Moreover, writ petition was found to suffer from

the vice of constructive resjudicata as relief claimed in the writ petition was available to appellant in CWP-9375-2015. Appellant was also found to be guilty of delay and latches. Aggrieved therefrom present appeal has been filed.

4. Learned counsel for appellant vehemently argues that once appellant was admittedly working on the post of Superintending Engineer, he was entitled to the pay scale, benefits and increments. Plea that it was mere designation cannot be used to reject appellant's claim. Furthermore, principle of resjudicata does not apply in the instant case. It is thus prayed that this appeal be allowed, impugned order dated 12.02.2024 passed by learned Single Bench be set aside as prayed for.

5. Learned counsel for the respondents have opposed the appeal while submitting that it is not open to appellant to first claim the benefit of ACP on completion of 4, 9 and 14 years of service and thereafter to seek the benefits as claimed on account of his officiating on the post in question on his own rank and pay.

6. Learned counsel for Municipal Corporation while referring to order dated 13.02.2017 whereby the benefit of ACP etc. was given pursuant to order dated 13.05.2015, submits that appellant is estopped from raising pleas as urged. Appellant at no point of time was promoted to post in question, however the benefit of pay scale has duly been given to him and required benefit of ACP has also been afforded. Dismissal of appeal is prayed for.

7. We have heard learned counsel for the parties and have perused the file with their able assistance.

8. The facts as stated above in respect to appointment of appellant with Punjab Technical Education Department and thereafter his deputation to Municipal Corporation, Ludhiana is a matter on record. In the earlier

writ petition filed by appellant i.e. CWP-9375-2015 relief claimed therein, as reproduced in impugned order dated 12.02.2024, is as under:-

“(i) count the service rendered by the petitioner in the department of Punjab Technical Education Department for the purpose of grant of Pension & retiral benefits; (ii) grant proficiency step up under the “ACP” scheme on completion of 4, 9 and 14 years of service from the date of joining the Municipal Corporation Service on deputation as Electronics Engineer and make payment of difference of revised pay from due date to date of till the date of disposal of the writ petition’ (iii) decide the representation dated 17.04.2013 (Annexure P-5) submitted by the petitioner: (iv) direction to respondent No.3, Municipal Corporation Ludhiana to make payment of all the above referred benefits along with interest @ 18% per annum on the whole amount calculated from the date the petitioner left the Govt. department and joined the Municipal Corporation Ludhiana on deputation to the actual date of payment.”

9. Once the appellant has claimed benefit of ACP on completion of 4, 9 and 14 years, which has admittedly been granted and since released, it is not open to appellant to turn around to say that he should also be granted increment on account of his so called promotion. Such subsequent prayer is clearly antithesis to his earlier prayer where appellant had sought benefit of ACP, which is admittedly released when requisite promotion has not been given to an employee. Furthermore, it has correctly been held that the writ petition suffered from vice of constructive resjudicata. Relief as claimed in the writ petition in question was definitely available to him at the time of filing of CWP-9375-2015. In the given factual matrix, we do not find

any merit in the arguments raised by learned counsel for the appellant that as relief sought in the present case, based on Rule 8 of Punjab Civil Services (Revised Pay) Rules, 1998 is a separate one, thereby justifying filing of subsequent writ petition. The question of inordinate delay of more than eight years on the part of appellant, in filing the writ petition has also been correctly dealt with by learned Single Bench.

10. Learned counsel for appellant is unable to point out any ground which calls for interference by this Court. In our considered opinion, there is no illegality, infirmity or perversity in the impugned order dated 12.02.2024, which is accordingly upheld.

11. No other argument has been addressed.

12. Keeping in view the facts and circumstances as above, this appeal is dismissed with no order as to cost.

13. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

12.12.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No