

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-8136-2019 (O&M)
Date of Decision:07.02.2024

Pardeep Sethi and others

.....Petitioners

versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. B.S. Mittal, Advocate for the petitioners.

Mr. Sunil Kumar Dhanda, Advocate for respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing the order dated 23.08.2018 (Annexure P-5) to the extent vide which the arrears/monetary benefits were denied to the petitioners from the deemed date of promotion that is from the date when their juniors were promoted and the petitioners were granted the deemed date of promotion.

2. Learned counsel for the petitioners has submitted that the petitioners were working as Technical Subordinates in the office of respondents-Nigam and further avenue for promotion was to the post of Junior Engineers regarding which the respondents-department did not finalize the seniority list and rather only a tentative list was made on the basis of which the department wanted to make promotions ignoring the seniority and without deciding the objections of the different Technical Subordinates including the petitioner. The petitioners being aggrieved by

the aforesaid action of the respondent-Nigam who have started the process of promotions to the post of Junior Engineer without finalizing the seniority list, filed another writ petition before this Court bearing No. CWP 13394 of 2014 titled as ***Pardeep Sethi and others Vs. State of Haryana and ors.***, which came up for hearing before the Coordinate Bench of this Court on 16.05.2017 and the order of the same is Annexure P-1. By virtue of the aforesaid order, it was so directed that if the petitioners have not submitted their objections or suggestions, they are permitted to file it before the competent authority within a period of four weeks and after receipt of their objections or suggestions, the same shall be considered within a period of 03 months and finalize the tentative ranking list of Technical Subordinates. Thereafter the matter came up for hearing before another Coordinate Bench of this Court on 02.04.2018 vide Annexure P-4 whereby directions were issued to the respondents to consider and decide the representation of the petitioners within a period of 03 months and pass an appropriate order in accordance with law. In the meanwhile the juniors of the petitioners were promoted in the year 2012 on different dates and in pursuance of the aforesaid order passed by a Coordinate Bench of this Court vide Annexure P-4 an order was passed by the respondents-Nigam vide Annexure P-5 on 23.08.2018 whereby the benefit of deemed promotion from the date their juniors were promoted was granted to the petitioners and it was so directed that the grievance of the petitioners was considered by competent committee and found the petitioners to be eligible for deemed date of promotion and as such petitioners namely Pardeep Sethi, Lakshy Pal, Ganesh Gopal were granted deemed date of promotion as Junior Engineer w.e.f. 11.01.2012, the

date on which their junior namely Rajnish Chopra was promoted as Junior Engineer on 11.01.2012. Petitioner Het Ram was granted deemed date of promotion as Junior Engineer w.e.f. 31.07.2012 i.e. the date on which his junior namely Sh. Ajay Singh was promoted as a Junior Engineer on 31.07.2012. It was so ordered in the order dated 23.08.2018 (Annexure P-5) that the benefit due to deemed date of promotion for the aforesaid petitioners will count towards notional pay fixation and arrears, if any, will be paid from the actual date of joining as Junior Engineer.

3. Learned counsel further submitted that although notional pay fixation was done and all the benefits have been granted to the petitioners w.e.f. the date of deemed date of promotion when their juniors were promoted but the monetary benefit/difference of pay was not granted to the petitioners. He further submitted that the petitioners are aggrieved by the action of the respondents and the order passed by the respondents-Nigam (Annexure P-5) to the extent that monetary benefits of the difference of pay from the date of deemed date of promotion till the actual grant of the same be granted to the petitioners. He further submitted that it is a case where it was not because of the fault of the petitioners that the aforesaid date of promotion was delayed but it was because of the fault of the respondents who ignored the petitioners for promotion and have admittedly promoted the juniors to the post of Junior Engineers who worked on the post of Junior Engineer and they got the pay of the post of Junior Engineers but because of no fault of the petitioners they were prevented from working on the post of Junior Engineer because of the fault of the respondents-department which they rectified by passing of the order dated 23.08.2018 (Annexure P-5) and

in this way petitioners are entitled for the grant of monetary benefits as well. Learned counsel has also referred to a Division Bench judgment of this Court in ***Satyavir Singh Shekhawat Vs. State of Haryana and others 2014 (4) SCT 233***. He also submitted that the aforesaid judgment was assailed by the State of Haryana before the Hon'ble Supreme Court and the SLP bearing No.7253 of 2013 was also dismissed.

4. Learned counsel appearing on behalf of the petitioner has also brought to the notice of this Court a judgment passed by a Coordinate Bench of this Court vide order dated 02.08.2016 (Annexure P-8) titled as ***Vinod Kumar Vs. Dakshin Haryana Bijli Vitran Nigam, Hisar and others*** which is pertaining to one Vinod Kumar who was also similarly situated as that of the present petitioners and he was also ignored for being promoted to the post of Junior Engineer since his name was also not included in the seniority list and the Coordinate Bench of this Court had granted the monetary benefits as well to the aforesaid petitioner namely Vinod Kumar. By way of the aforesaid judgment it was held that the aforesaid petitioner namely Vinod Kumar was entitled to consideration for promotion from the date when his juniors were promoted to the higher post with all consequential benefits flowing therefrom and the directions were issued to the respondents-Nigam to pass corrective orders immediately and to promote the petitioner as Junior Engineer, if there is nothing else against him and also to calculate the monetary benefits arising and pay the same to the petitioner within one month from the date of receipt of a certified copy of the order. Consequent upon the aforesaid order (Annexure P-8), the respondents themselves passed an order vide Annexure P-6 on 30.08.2018

thereby an order was passed by modifying the earlier order pertaining to aforesaid Vinod Kumar and was granted not only the deemed date of promotion from the date when his juniors were promoted but also granted notional pay fixation as also arrears.

5. Learned counsel also submitted that the aforesaid judgment Annexure P-8 was assailed by the respondents-Nigam by filing an LPA No.205 of 2017 which was dismissed by the LPA Bench. Thereafter, they assailed the aforesaid order by filing an SLP which was also dismissed and in this way the judgment at Annexure P-8 had attained finality. He further submitted that so far as the present petitioners are concerned they are exactly at parity with the aforesaid Vinod Kumar (petitioner in CWP-3403-2015) who has been granted monetary benefits as well and the judgment at Annexure P-8 qua him had attained finality and now there is no justification for denial of the monetary benefits to the petitioners because they are exactly at parity with the aforesaid Vinod Kumar and therefore directions may be issued to the respondents to pay the monetary benefits by way of arrears of difference of salary to the petitioners from the date of deemed date of promotion.

6. On the other hand Mr. Sunil Kumar Dhanda, Advocate appearing on behalf of the respondents-Nigam has submitted that although the petitioners were not promoted at the time when their juniors were promoted but thereafter when directions were issued by this Court then a speaking order was passed by which benefits were granted to the petitioners vide order dated 23.08.2018 at Annexure P-5 and the petitioners have been promoted by granting the benefit of notional promotion and also fixation of

notional pay but the petitioners were not entitled for the monetary benefits/arrears because they did not work on the aforesaid post and in view of principle of 'no work no pay', the petitioners are not entitled for monetary benefits.

7. I have heard learned counsel for the parties.

8. The petitioners earlier were not promoted to the post of Junior Engineer but their juniors were promoted in the year 2012. The petitioners filed a writ petition before this Court in which directions were issued to decide the writ petition. Consequent upon the same order (Annexure P-5) passed on 23.08.2018 whereby benefit of promotions was granted to the petitioners and the notional fixation of pay was also ordered from the date when their juniors were promoted and respective dates have been mentioned as aforesaid. However, they have been denied the arrears and monetary benefits in this regard. It is a specific case of the learned counsel for the petitioners that once the respondents-Nigam has rectified their mistake and now promoted the petitioners in the year 2018, then it was not because of any fault attributed to the petitioners but they were prevented from being promoted from the aforesaid date and therefore in view of the Division Bench judgment of this Court in **Satyavir Singh Shekhawat's** case (*supra*) they were entitled for the grant of monetary benefits as well which have been wrongly denied by the respondents. However learned counsel for the respondents has pressed into service the principle of 'no pay for no work' in this regard.

9. However it has been brought to the notice of this Court by learned counsel for the petitioner that similar stated person namely Vinod Kumar

also filed a different writ petition which was decided by this Court vide Annexure P-8 thereby directions were issued as follows:-

4. The only reason assigned to deny the petitioner promotion is that he did not submit his representation for promotion by the cut off date i.e. July 31, 2011. This is a specious plea based on an improper premise that one must ask for promotion like a beggar otherwise he will be denied consideration. Since all the material facts relating to the petitioner are in his service book and available in custody of the promoting authority it remains under bounden duty to place his name in the DPC for its consideration to make recommendations. In any case, in the matter of seniority and promotions there can be no discrimination in passing by names without valid reason. The right to seniority is a shared right with others. In the impugned order it is not disputed that respondents No.5 & 6 are junior to the petitioner. It is no argument or defence that the petitioner's name was added in the revised ranking list of 2011 after he made a representation in the matter. The petitioner has been wrongly ignored for promotion when his juniors were considered and promoted.

5. Accordingly, the writ petition is allowed with costs assessed at Rs. 10,000/- to be paid to the petitioner. The impugned order is thereby quashed by writ of certiorari issued. The petitioner is held entitled to consideration for promotion from the date when his juniors were promoted to the higher post with all consequential benefits flowing therefrom. A direction is issued to the respondent-Nigam to pass corrective orders immediately and promote the petitioner as Junior Engineer, if there is nothing else against him, which seems unlikely in the face of the impugned order, and thereafter calculate the monetary benefits arising and pay the same to him within one month from the date of receipt of a certified copy of this order. Copy of this order be sent to the respondents for due compliances.

10. Consequent upon the aforesaid orders, respondents-Nigam

themselves passed an order vide Annexure P-6 by granting the benefits of arrears to aforesaid Vinod Kumar as well. The relevant portion of Annexure P-6 is reproduced as under:-

“In partial modification to this office order No.503/SE/HR dated 21.05.2018, vide which the name of Sh. Vinod Kumar, ALM, included in the Ranking list which was circulated by this office for the period from 01.08.2010 to 31.07.2011 and was granted deemed dated promotion with notional pay fixation of pay/arrears.

Now the matter has been reconsidered and decided that the monetary benefits will be paid from the date from which he has been granted deemed date promotion as JE that is from 31.07.2012 as per Hon'ble High Court's judgment dated 02.08.2016.

Other terms and condition of ibid O/o will remain unchanged.”

11. The learned counsel for the petitioners has also brought to the notice of this Court that the aforesaid Annexure P-8 was assailed by filing an LPA which was dismissed and thereafter even SLP filed by the respondents-Nigam was also dismissed. He also referred to para No.8 of the petition wherein it has been so specifically stated by the petitioner that in the similar case arrears were granted to one Vinod Kumar, Junior Engineer. In reply to para 8 of the writ petition it has been mentioned in the reply of respondents that the contents of para 8 of the petition are matter of record and hence need no reply. It would, therefore, necessarily mean that the respondents are not drawing any distinction with regard to the parity of the petitioners with the aforesaid Vinod Kumar. Therefore, on this ground as well the principle of 'no pay for no work' will not apply to the present petitioners considering the parity which has not been denied by the

respondents.

12. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The order at Annexure P-5 dated 23.08.2018 to the extent of denial of the arrears/monetary benefits to the petitioners from the date when they have been granted deemed date of promotion, is hereby set aside. The respondents-Nigam is directed to calculate the arrears arising out of the monetary benefits from the date of deemed date of promotion of the petitioners till the actual date of promotion and to pay to the petitioners alongwith interest @ 6% per annum within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

07.02.2024
shweta

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