

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9297 of 2021 (O&M)
Reserved on: 08.01.2024
Date of decision: 07.02.2024

Satinder Pal Singh
.....Petitioner
Versus
Punjab State Power Corporation Limited and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. D.S. Patwalia, Sr. Advocate
with Ms. Rishu Bajaj, Advocate
for the petitioner.

Mr. Sehajbir Singh, Advocate
with Mr. Baltej Pal Singh Walia, Advocate
for the respondents.

NAMIT KUMAR J. (Oral)

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of mandamus directing the respondents to consider and promote the petitioner to the post of Additional Assistant Engineer (Electrical), as per Rule 8 of the Punjab State Electricity Board Technical Service Class III Regulations, 1996 (hereinafter to be referred as ‘the Regulations of 1996’) and grant all the consequential benefits w.e.f. 01.09.2014 i.e. the day the petitioner was duly eligible and fulfilled all the eligibility conditions as prescribed under the statutory rules or in alternative w.e.f. 30.12.2020 i.e. the day the candidature of the petitioner was deferred, despite the petitioner fulfilling all the eligibility conditions as prescribed

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under the statutory rules.

2. Brief facts of the case as pleaded in the petition are that the petitioner was appointed as Lineman in the Punjab State Electricity Board (now Punjab State Power Corporation Limited) in September, 1985 and on 01.05.1986, the petitioner was arrested from the Golden Temple, Amritsar in FIR No.100 of 1986 while paying obeisance and he remained in custody and during the pendency of the said FIR, the respondent/Department vide Memo No.1766 dated 18.06.1986 and Memo No.2102 dated 29.07.1986, directed the petitioner to join his duty, however, vide letter dated 11.08.1986, the petitioner informed the respondent/Department that presently he is under arrest and would join the duty as and when he is released on bail. Thereafter, the petitioner was granted bail on 21.01.1987, however, his request to join the services was refused by the respondent/Department and rather, a charge-sheet bearing Memo No.1277 dated 25.06.1992, was issued to him for his period of absence from the service, however, pursuant to enquiry report dated 18.04.1994, the petitioner was exonerated and it was categorically held by the Inquiry Officer that the absence of the petitioner from service was not intentional and was only due to the fact that the petitioner was kept under arrest by the concerned police authorities, due to which he could not join the service. Even though, the respondent/Department refused to permit the petitioner to join the services. Thereafter, the petitioner filed a civil suit before the learned Civil Judge (Jr. Division), Amritsar, to the effect that his period of absence being unintentional should be deemed to be in service with a

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further direction to allow the petitioner to join the services, however, the same was dismissed on 14.01.1999. Feeling aggrieved, the petitioner thereafter, preferred an appeal against the said order and the same was partly allowed vide judgment dated 03.10.2002, and the respondent/Department was directed to allow the petitioner to join the services, however, the decision qua the period of unintentional absence of the petitioner was left open and the respondents/Department were at liberty to pass an order qua the period of absence of the petitioner as per rules and regulations. Thereafter, in pursuance to the aforesaid judgment, the petitioner joined the services w.e.f. 28.02.2003, however, the respondent/Department failed to pass any order for the period of absence of the petitioner. Thereafter, the petitioner filed an execution petition and in the execution, the respondents filed reply and stated that the period of absence of the petitioner of 17 years w.e.f. 01.05.1986 to 27.02.2003 was treated as leave of kind due vide Office Order No.309 dated 08.10.2004, however, the learned Executing Court vide order dated 30.09.2006, directed the respondents to pay the entire amount of back-wages and other emoluments to the petitioner w.e.f. 01.05.1986 to 27.02.2003. Thereafter, the respondents/Department preferred a revision against the order dated 30.09.2006, passed by the learned Executing Court vide CR No.54 of 2007, which was allowed by this Court on 15.05.2009 and the order passed by the learned Executing Court was set-aside. Thereafter, the petitioner filed a writ petition i.e. CWP No.13311 of 2009, praying for quashing of office order dated 08.10.2004 passed by the respondents/Department and to direct the

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respondents/Department to treat the period of unintentional absence of the petitioner as period in service and release all the emoluments and other consequential benefits to the petitioner w.e.f. 01.05.1986 to 27.02.2003, which is already admitted vide order dated 28.08.2009 and is pending adjudication before this Court. Thereafter, on 01.09.2009, the respondents/Department vide Memo No.400 promoted the petitioner to the post of Junior Engineer (Electrical) and since then he has been working to the utmost satisfaction of the respondent/Department, however on 30.12.2020, the respondent/Department promoted 96 Junior Engineers to the post of Additional Assistant Engineer (Electrical) but the case of the petitioner for promotion was deferred on the ground that his period of absence from 01.05.1986 to 27.02.2003, has not been regularized and therefore, he cannot be granted promotion. The said deference has been recorded in the letter dated 08.01.2021 (Annexure P-10) and reads as under:-

42	Satinderpal Singh, J.E., 1.1.1964/9486	CE/Distributi on Border Zone, Amritsar	His case of promotion has been deferred due to non- regularization of the period of his absence from 01.05.1986 to 27.02.2003.
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3. Learned senior counsel for the petitioner submits that the petitioner is a diploma holder in Electrical Engineering and has even completed more than 14 years of service on the post of Junior Engineer (Electrical), however, in terms of Rule 8 of the Regulations of 1996, a person, who worked as a Junior Engineer for a period of 05 years and holding a 03 years diploma in Electrical/Mechanical Engineering, is

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eligible to be promoted to the post of Additional Assistant Engineer (Electrical) and thus, it is outside the ambit of Rule 8 of the Regulations of 1996 as to whether the earlier period of absence of the petitioner from 01.05.1986 to 27.02.2003, has been regularized or not. He further submits that once the petitioner has already been promoted to the post of Junior Engineer on 01.09.2009, he cannot be denied next promotion to the post of Additional Assistant Engineer.

4. Learned Senior counsel further submits that the officers, who were appointed/promoted as Junior Engineer (Electrical) much after the petitioner and are junior to the petitioner, have already been promoted by the respondent/Department vide order dated 30.12.2020, despite the fact that the petitioner has completed a longer period of service on the post of Junior Engineer (Electrical) and thus, fulfilled all the eligibility conditions, as required under the Regulations of 1996.

5. Lastly, learned senior counsel submits that the period of absence of petitioner from service w.e.f. 01.05.1986 to 27.02.2003 which has been considered as leave of kind due, has not been regularized, however, the said fact could not have been an impediment while considering the candidature of the petitioner as admittedly, the petitioner has served for more than 14 years as Junior Engineer (Electrical).

6. On the other hand, learned counsel for the respondents solely contested the present writ petition on the ground that the petitioner, despite being issued a Memo No.580 dated 31.01.2019, has not submitted his leave for the period i.e. from 01.05.1986 to

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27.02.2003 and thus, the services for the absence period of the petitioner has not been regularized and he has not been granted the benefit of promotion to the post of Additional Assistant Engineer.

7. However, learned Senior counsel for the petitioner rebutted the submissions made by learned counsel for the respondents on the ground that the petitioner has already filed a writ petition i.e. CWP No.13311 of 2009, praying for quashing of office order dated 08.10.2004 passed by the respondents/Department and to direct the respondents/Department to treat the period of unintentional absence of the petitioner as period in service and release all the emoluments and other consequential benefits to the petitioner w.e.f. 01.05.1986 to 27.02.2003, which is pending adjudication and is already admitted by this Court vide order dated 28.08.2009 and if the petitioner submits his leave application for the period 01.05.1986 to 27.02.2003, then it would prejudice his rights and affect the merits of writ petition i.e. CWP No.13311 of 2009 and as per Rule 8 of the Regulations of 1996, there is no impediment to look into the earlier period of absence from service and rather the only conditions prescribed under Rule 8 is that a person, who worked as a Junior Engineer for a period of 05 years and holding a 03 years diploma in Electrical/Mechanical Engineering, shall be eligible to be promoted to the post of Additional Assistant Engineer (Electrical).

8. I have heard learned senior counsel for the petitioner as well as counsel appearing for the respondent and perused the record.

9. Admittedly, the petitioner is a diploma holder in Electrical Engineering as per the Certificate dated 06.05.1985, issued by the

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Punjab State Board of Technical Education and has completed more than 10 years of service when some of his juniors were promoted and now 14 years on the post of Junior Engineer (Electrical) whereas only 05 years service on the post of Junior Engineer (Electrical) is required for promotion to the post of Additional Assistant Engineer and now, the petitioner stands superannuated on 31.12.2021.

10. The case of the petitioner for promotion was deferred solely on the ground that his period of absence from 01.05.1986 to 27.02.2003, has not been regularized by the respondents/Department as he has refused to submit the leave application for the said period, however, the approach is not correct on the part of the respondents/Department as the said issue is already pending consideration before this Court vide CWP No.13311 of 2009, and any such application, if submitted by the petitioner, would directly affect the merits of the said writ petition.

11. As per Rule 8 of the Regulations of 1996, the only conditions for promotion prescribed therein is that a person, who worked as a Junior Engineer for a period of 05 years and holding a 03 years diploma in Electrical/Mechanical Engineering, shall be entitled to be promoted to the post of Additional Assistant Engineer (Electrical) and therefore, the respondent/Department has wrongly declined the benefit of promotion to the petitioner on the post of Additional Assistant Engineer as he has admittedly, completed more than 10 years of service on the post of Junior Engineer (Electrical) and fulfills all the requirement and eligibility conditions as required under the aforesaid

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Service Rules. It is relevant to mention here that once the petitioner has been promoted to the post of Junior Engineer under same circumstances, he cannot be denied next promotion to the post of Additional Assistant Engineer.

12. In view of what has been discussed hereinbefore, the present petition is allowed and the respondent/Department is directed to consider the case of the petitioner for promotion to the post of Additional Assistant Engineer (Electrical) w.e.f. 30.12.2020 i.e. the day the candidature of the petitioner was deferred and his juniors were promoted and thereafter, the respondent/department shall refix the pay and pension and grant other consequential benefits of the petitioner and release the same within a period of 04 months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

07.02.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No