

CWP-14361 of 2013

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-14361 of 2013
Reserved on: 15.01.2024
Pronounced on: 29.01.2024

Sudarshan Kumar

.....Petitioner

Versus

The Punjab State Power Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: - Mr. Anupam Bhardwaj, Advocate,
for the petitioner.

Mr. A.S. Chadha, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. Petitioner has approached this Court by way of filing present writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of *mandamus* directing the respondents to grant benefit of promotional increment to the petitioner on completion of 23 years of service w.e.f. 01.01.1996 in terms of instructions dated 28.04.1998 (Annexure P-1) and Finance Circular dated 28.07.2000 (Annexure P-2).

2. The brief facts leading to the filing of the present writ petition, as have been pleaded in the present petition, are that the petitioner was appointed as Lineman on 14.07.1970 and thereafter he

was promoted as JE-II on 04.01.1992 and further to the post of JE-I on 10.07.2008 and retired as such on 31.10.2008. The claim of the petitioner in the present petition is that he is entitled for promotional increment on completion of 23 years of service w.e.f. 01.01.1996 in terms of instructions dated 28.04.1998 (Annexure P-1) and Finance Circular dated 28.07.2000 (Annexure P-2). Since the said benefit was not granted to the petitioner, therefore, he served legal notice dated 12.11.2012 (Annexure P-6) upon the respondents, however, no action has been taken by the respondents on the said legal notice.

3. Learned counsel for the petitioner has relied upon the judgment and decree dated 15.12.2009 (Annexure P-4 Colly) whereby appeal preferred by Sukhdev Singh against the judgment and decree passed by the trial Court, partly decreeing his suit, has been allowed by the lower appellate Court and appeal preferred by the Punjab State Electricity Board, being RSA-1780 of 2010, has been dismissed by this Court vide judgment dated 10.05.2010. He further submits that the said judgment(s) have been implemented by the respondents and Sukhdev Singh has been granted the promotional increment on completion of 23 years of service w.e.f. 01.01.1996.

4. Written statement has been filed on behalf of respondents No.1 to 5 wherein it has been stated that date of birth of the petitioner is 09.10.1950 and he was eligible for promotion from JE-II to JE-I on 09.10.2000 but merely getting exemption from departmental examination will not make him entitled for further promotion.

However, the factum of grant of similar benefit to Sukhdev Singh has

not been denied in the written statement except the fact that he was involved in departmental/disciplinary cases.

5. Learned counsel for the petitioner submitted that the petitioner is entitled to the grant of promotional increment on completion of 23 years of service in terms of Finance Circular dated 28.07.2000 as he was fulfilling all the conditions mentioned therein. He further submitted that similarly situated person, namely, Sukhdev Singh was also denied the said benefit on the same grounds and he approached the Civil Court and his claim has been accepted by the Court of learned Additional District Judge (Ad-hoc) Fast Track Court, Amritsar, vide judgment and decree dated 15.12.2009. The relevant portion from the said judgment is as under: -

“10. The perusal of the above said circular shows that for the grant of the benefit of promotional increment to any employee on completion of 23 years service, there is no such condition precedent that the employee should pass the departmental examination, which may otherwise be the requirement for the members of the service and even the Member Incharge is authorized to grant exemption to any member of the service from passing the said departmental accounts examination. Therefore, there is no such condition laid down in circular no.20/2000 which has been mentioned by the defendants in para no.2 of the written statement and which has been made the basis of denial of increment to the plaintiff by the defendants. Even otherwise the contention of the learned counsel for the appellant is that on completion of 50 years an official is exempted from said departmental examination and he drew the attention of this court to the version of DW 1 in this regard. Another important factor in this case is that

the said circular no.20/2000 dated 28.7.2000 was not existing in the year 1992 and according to the appellant/ plaintiff, he became entitled to 23 years revised promotional scale in the year 1992 and a suggestion was given to DW 1 in this regard, which has been replied in the negative. Perusal of this circular reveals that it is clearly mentioned therein that this order will be effective with effect from 1.1.1996. The defendants have not shown anything before this court to conclude that the plaintiff did not become due for the grant of 23 promotional scale in 1992. Therefore it is clear that when this order/ circular came into operation only in the year 1996 it could not be made the basis of denial of 23 years revised promotional scale to the appellant. Thus in view of the aforesaid reasons, this court comes to the conclusion that the plaintiff /appellant's entitlement to his claim of 23 years promotional scale which was wrongly declined by the learned lower court and the findings of the learned lower court to that effect are liable to be and are hereby set aside.”

6. He further submitted that judgment and decree dated 15.12.2009 has been upheld by this Court vide judgment dated 10.05.2010 passed in RSA-1780 of 2010. Relevant portion from the judgment of this Court is as follows: -

“Counsel for the appellants would submit that the condition for eligibility of 3rd promotion would stand in the way of the respondent plaintiff for grant of 23 years promotional scale. This circular, which was issued in the year 1999 cannot be made applicable to the case of the respondent plaintiff as he had retired on 31.12.2006 but had become eligible for promotion from 1992 onwards. This circular accordingly would not regulate the condition

of grant of promotion scale on completion of 23 years of service.

Faced with this situation, counsel for the appellants intends that there is another circular dated 23.4.1990 which would apply to the case of the respondent plaintiff. However, this circular was neither referred to or relied upon before the Courts below. Certainly this plea now cannot be permitted to be advanced at the stage of Regular Second Appeal. Without there being any application for leading any additional evidence, this circular accordingly cannot be taken into consideration. It appears that the Board has really failed to properly assist the court and is now making an attempt to mend the infirmities which were not taken care of. No case for interference is made out.”

7. Learned counsel further submitted that the said judgment has been implemented by the respondents vide order dated 28.02.2012 and Sukhdev Singh has been granted the promotional increment on completion of 23 years of service.

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

9. Before proceeding further, it is relevant to give reference to Finance Circular dated 28.07.2000, which provides that the Board has decided to grant the benefit of promotional increment(s) to an employee on completion of 23 years of service and the same will be governed by the following conditions: -

“i)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)He/she has not earned third promotion in his/her regular service between 16th and 23rd years of service.

iii)He/she has not been placed in a scale which is higher than the scale of his/her next higher post.

iv)The increment(s) 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.

2. This order will be effective from 1.1.96 without prejudice to the Assured Career Progression scheme to be devised consequent upon revision of pay scales.”

10. The facts are not in dispute that petitioner was initially appointed on 14.07.1970 as Lineman and was further promoted to the post of JE-II on 04.01.1992 and as JE-I on 10.07.2008 and he retired as such on 31.10.2008. It is also not in dispute that the petitioner is eligible for grant of increment in terms of Finance Circular dated 28.07.2000 (Annexure P-2). However, it is submitted by learned counsel for the respondents that the petitioner had not passed the departmental examination before 01.01.1996, therefore, he is not entitled for promotional increment on completion of 23 years of service w.e.f. 01.01.1996. The said contention of learned counsel for the respondents has been rebutted by learned counsel for the petitioner by stating that there is no such clause in the Circular dated 28.07.2000 of passing a departmental exam before the grant of promotional increment. It has further been pointed out that even the said stipulation of passing of departmental accounts exam has been waived off by the Board vide letter dated 28.04.1998 (Annexure P-1). The said plea was also taken by the respondents before the Civil Court in the suit filed by

a similarly situated person, namely, Sukhdev Singh and the said contention was repelled by the Lower Appellate Court in its judgment and decree dated 15.12.2009 and the said judgment having been upheld in RSA-1780 of 2010 decided on 10.05.2010, and the said judgments having been implemented vide order dated 28.02.2012 (Annexure P-5), the said contention of the respondents is liable to be rejected.

11. In view of the above, present writ petition is allowed. Respondents are directed to grant the benefit of promotional increment to the petitioner on completion of 23 years of service w.e.f. 01.01.1996, with all consequential benefits and re-fix the pay and pension of the petitioner accordingly and release the consequential benefits within a period of three months, from the date of receipt of certified copy of this judgment.

29.01.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No