

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-2834-2016
Date of Decision : 15.01.2024

Lubhaya Ram (deceased) through his LRsPetitioner

Versus

Punjab State Power Corporation Ltd. and anotherRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Lalit Attri, Advocate for
Mr. Sunil Kumar Sharma, Advocate
for the petitioner(s).

Mr. Abhilaksh Grover, Advocate with
Jashan Preet Singh Deol, Advocate
for the respondents in CWP-2834-2016.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India for setting aside the order dated 01.06.2015 (Annexure P-25) whereby the representation of the petitioner claiming promotion to the post of Upper Division Clerk from 01.04.2005 has been rejected.
2. The brief facts leading to the filing of the present petition are that the petitioner had joined the PSPCL in the year 1985 and retired as Upper Divisional Clerk from the office of Additional S.E. PSPCL, Sub Urban Division, Pathankot on 31.03.2015. During the course of his employment and while on duty, he had met with an accident and had to undergo amputation of his left upper arm. The petitioner is suffering from 70% permanent disability and he was given compensation by the

respondent-Corporation under the Workmen's Compensation Act. The respondent-Corporation issued instructions dated 02.08.1988 (Annexure P-8) wherein it has been clearly mentioned that an employee who has attained the age of 50 years and appeared four times in the departmental examination for promotion but has not qualified, can be promoted by granting exemption from qualifying the departmental examination. The petitioner before attaining the age of 50 years appeared seven times in the departmental examination for promotion but he could not qualify and resultantly he was not promoted. The petitioner approached respondent No.2 many times by submitting representation for granting him exemption from qualifying the departmental examination for promotion but no action was taken by respondent No.2. on the said representations. The case of the petitioner is that the petitioner was entitled to be considered for promotion from the post of LDC to UDC in terms of clause 18 of the Punjab State Electricity Board Ministerial Establishment Department Accounts Examination Regulations, 1988. Clause 18 of the said Regulation reads as under :-

“18. EXEMPTION

The grant of exemption from passing the examination shall be considered by the Secretary in extremely hard cases on the following considerations :-

- a) The number of the ministerial Establishment, making the request has attained the age of 50 years,*
- b) His record is consistently good and without blemish;*
- c) He has at least made four attempts to clear the examination.*

Once exemption has been granted to a member of the ministerial Establishment, by the Secretary, no

disability, whatsoever, shall attach to him in order to consider him for further promotion.”

3. Learned counsel for the petitioner submits that the petitioner was eligible to be considered for promotion to the post of UDC as he was fully eligible in terms of clause 18 (a), (b) and (c) of Regulation 1988 by granting exemption as firstly he had attained the age of 50 years; his record was consistently good and without any blemish and he had already made more than four attempts to clear the examination. He further submits that inspite of submitting repeated representations dated 26.10.2006, 22.04.2007, 26.11.2007, 01.04.2008, 25.08.2008 and 04.12.2009 (Annexures P-8 to P-13), his case was not considered for promotion by granting the exemption from the departmental examination and therefore, the petitioner was compelled to file *CWP No.10480 of 2014 titled as 'Lubhaya Ram Vs. Punjab State Power Corporation Ltd. and another'* which was disposed of by this Court vide order dated 26.05.2014 with the directions to the Corporation to dispose of the legal notice sent by the petitioner by passing a speaking order within a period of three months. In pursuance to the said order, the claim of the petitioner was rejected by the respondent-Corporation vide order dated 11.09.2014 (Annexure P-23) on the ground that inspite of writing letter dated 16.12.2009 to the petitioner for submitting relevant documents, the same were not supplied by him. The said order was challenged by the petitioner in CWP No.2155 of 2015 by stating that he was never issued the said letter dated 16.12.2009

which was disposed of by this Court vide order dated 10.03.2015 with the following directions :-

“Through the present petition, the petitioner impugns order dated 11.09.2014 (Annexure P-23), through which his representation claiming promotion w.e.f. 01.04.2005 i.e. the date, when the petitioner had completed 50 years of age, has been rejected.

A perusal of the impugned order shows that the representation of the petitioner has been rejected on the ground that he did not supply the documents/information so demanded from him by the respondent Authorities through letter dated 16.12.2009. Learned counsel for the petitioner disputes the receipt of letter dated 16.12.2009.

Without going into the issue whether the petitioner did or did not receive the letter dated 16.12.2009, I consider it appropriate to dispose of the present writ petition with a direction to the petitioner to now supply the documents/information so demanded from him through the above referred letter, within a week from today. In case, the petitioner does supply the above referred information, the same may now be considered by the competent Authority in the respondent – Corporation, in accordance with law and a decision thereupon be taken within a period of three months from the date of receipt of a certified copy of this order.

The writ petition stands disposed of in the above terms.”

4. He further submits that in pursuance to the abovesaid directions issued by this Court, the petitioner again submitted the required documents, however, the claim of the petitioner has again been rejected by the respondent-Corporation vide impugned order dated 01.06.2015 (Annexure P-25) by stating that since no such representation was received by the Corporation in the year 2005; the petitioner had already cleared the departmental examination for promotion in July, 2010 and he was promoted under qualified quota vide order dated

03.04.2012 and he has filed CWP No.4905 of 2013 seeking promotion from the date he cleared the departmental examination i.e. July 2010 instead of 03.04.2012 which is pending, therefore, the petitioner cannot be considered at this stage. Learned counsel for the petitioner also, contends that once the case of the petitioner was fully covered for grant of exemption in terms of clause 18 of the 1988 Regulations, therefore, the action of the respondents in rejecting the claim of the petitioner on flimsy grounds is totally illegal and arbitrary and he is entitled to be considered for retrospective promotion w.e.f. 01.04.2005 by granting exemption from passing the departmental examination and since the petitioner has already died, therefore, financial benefits on account of retrospective promotion be released to his legal representatives.

6. On the other hand, learned counsel for the respondents submits that since in the year 2005, the petitioner had not submitted the representation and thereafter, the relevant documents, therefore, his case was not considered and since thereafter, he has already passed the departmental examinations and has been promoted to the post of UDC, therefore, his claim has rightly been rejected vide impugned order dated 01.06.2015 (Annexure P-25).

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

8. From the above facts it is crystal clear that the petitioner was eligible for grant of exemption under Clause 18 of the 1988 Regulations as he was fully eligible for promotion to the post of UDC in terms thereof. Earlier, his case was solely rejected on the ground that he

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had not submitted the relevant documents and on the intervention of this Court in CWP No.2155 of 2015, the said documents were again furnished by the petitioner, however, his claim has again been rejected by stating that in the year 2005 he had not submitted any representation and thereafter, relevant documents were not submitted and that he had already passed the departmental examination and has been promoted as UDC. Once the petitioner has already submitted the required documents in compliance with the orders passed by this Court in CWP No.2155 of 2015 (supra) and directed the respondents to consider his case for promotion, it was not open to the respondents to again reject the claim of the petitioner on the flimsy grounds. Since the petitioner is claiming promotion w.e.f. 01.04.2005, when he became eligible and was entitled for exemption in terms of Clause 18 of the 1988 Regulations, he cannot be denied the said benefit.

9. In view of the above, the present petition is allowed, the impugned order dated 01.06.2015 (Annexure P-25) is set aside. The respondents are directed to reconsider the case of the petitioner and grant deemed date of promotion w.e.f. 01.04.2005. Since the petitioner had already died, the consequential benefits arising out of the said promotion shall be granted to the legal representatives of the petitioner, within a period of three months from the date of receipt of certified copy of this order.

15.01.2024 (NAMIT KUMAR)
Kothiyal JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No