

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

CWP-2262 of 2018

Date of decision: 01.02.2024

Amit Kumar Chakraborty

.....Petitioner

Versus

Haryana Power Generation Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Vikas Chatrath, Advocate, for the petitioner.
Mr. R.S. Budhwar, Advocate, for the respondents.

NAMIT KUMAR, J.

1. Petitioner has invoked the extraordinary jurisdiction of this Court by filing instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for quashing the impugned letters dated 31.07.2015 (Annexure P-18) and 13.08.2015 (Annexure P-19) whereby his claim for converting five advance increments into personal pay, has been rejected and the same have been adjusted against the increments due to the petitioner in future.

2. Brief facts, as have been pleaded in the writ petition, are that the petitioner was working with M/s Tata Davy Ltd. (T.D.L.), Panipat, as Erector of Coal Handling Plant Stq.-III before being selected and appointed in erstwhile Haryana State Electricity Board on 08.03.1990 as Foreman-II, vide appointment letter dated 12.04.1990. It is the case of the petitioner that he had passed higher secondary + CIT/ITI from West Bengal along with electrical working and installation license from P.W.D. Andheri, Bombay. He had 15 years

experience before joining respondent-department. His pay had been fixed at Rs.1400/- in the pay scales of Rs.1400-40-1600-EB-50-2300-EB-60-2600 along with allowances as applicable from time to time. Petitioner joined as Foreman-II on 03.08.1990. Thereafter memorandum was placed before the Board of Directors, HSEB, Panchkula, wherein it had been decided to grant five advance increments keeping in view petitioner’s previous experience which was duly approved by the Board of Directors. Relevant portion from the said memorandum dated 04.10.1991 (Annexure P-2) reads as under:

“(1) *SHRI AMIT KUMAR CHAKRABORTY*

(A) *His name was approved for the post of Foreman Grade-II vide Sr. No. 9 of Board's decision dt. 29.1.90 in Annexure 'A' Shri Chakraborty joined the duty at the Thermal Project in HSEB w.e.f. 3.8.90 on an assurance having been given to him by the Project Authorities that in his case 5 advance increments will be recommend for sanction by the Board so as to protect the emoluments drawn by him with is private employer. As intimated by the General Manager, Panipat vide his office Memo No. Ch- 15/ECM/ET-2001 dt. 28.3.91 Annexure 'C' the gross salary of the officials in HSEB works out to Rs. 2400 P.M. as against the following emoluments last drawn by him with M/s Tata Davy Ltd. as certified by them in Annexure 'D'.*

i)	Salary		Rs.2300 per month
	Increment		Rs.75/-
ii)	Perks		Rs.4100 per annum
	(a) LTA	Rs.2000	
	(b) Medical Self and family	Rs.1500	
	(c) Medical for parents	Rs.600/-	

	(d) Hospitalization medicines etc.	As per actual
(e)	Light refreshment allowance	Rs.30/- for working beyond normal 8 Hrs Holidays & Sundays

No other person (out of 45 Nos.) was given the assurance for the grant of advance increments as was given to Sh. Chakraborty. The assurance was given to him in view of the facts that he is very useful man who helps in all trouble shooting problems & works willingly for whole day & night on many occasions. The General Manager, Panipat recommends to grant 5 Nos. advance increments to him so as to keep up the assurance given to the incumbent.

(B) As per clause (i) of the general conditions mentioned in Board's decision Annexure 'A' the pay last drawn by an incumbent is to be protected only on account of the experience, if any, gained in a Government/public undertaking. Shri Amit Kumar Chakraborty Foreman-II does not fulfill this condition for the purpose of grant of 5 Nos. advance increments to him within the existing decision of the Board. As such the issue regarding grant of 5 Nos. advance increments to Sh. Amit Kumar Chakraborty in the pay scale of Foreman-II (Rs. 1400-40-1600-50-2300-EB-60-2600) raising his pay (basic) from the initial Rs. 1400/- of the pay scale of the extent of 5 annual increments viz Rs. 1600/- P.M. as recommended by the General Manager, Panipat, falls within the competency of Board to consider and decide.

x x x x

4. Administrative approval to place the issues before the Board for consideration and decision has been accorded by the Member Administration. The Board is requested to consider the desirability to review its decision dated

29.1.90 (Annexure-A) in respect of the following specific issues:-

- (i) *To accord sanction to the grant of 5 Nos. advance increments to Sh. Amit Kumar Chakraborty, Foreman Grade-II so as to keep up the assurance having been given to him by the Panipat Thermal Project authorities, to persuade him to join duty in the HSEB in the interest of Board's work, in relaxation of clause (i) of the conditions mentioned in Board's decision dated 29.1.90 that last pay drawn will be protected on a/c of the experience in Government/public undertaking which Sh. Chakraborty does not fulfill."*

3. Consequently, a letter dated 10.12.1991 (Annexure P-3) was addressed by the Additional Secretary, HSEB, Panchkula, to the General Manager, Plants, PTPS, HSEB, Panipat, wherein it was stated that the matter has been considered by the Board of Directors in its meeting held on 29.11.1991 and the same has been approved and further action in the matter be taken accordingly. Consequently, sanction was accorded for grant of five advance increments to the petitioner in the pay scale of Rs.1400-2600 by raising his pay from Rs.1400 to Rs.1600 per month with effect from his date of joining as Foreman-II in the Board vide letter dated 02.04.1992 and the same reads as under: -

"HARYANA STATE ELECY. BOARD.

Office Orders No. 207/EOM/G-233/Vol. II Dt: 2-4-92

In view of the approval of the Board accorded in its meeting held on 29.11.91 as conveyed by the Addl. Secretary HSEB Panchkula vide his Memo No. CH-

26/NGE/G-65/Vol. II dated 10.12.91, sanction is hereby accorded for the grant of 5 No. advance increments to Shri Amit Kumar Chakraborty Foreman Grade-II in the pay scale of Rs. 1400-40-1600-50-2300-EB-60-2600 raising his pay from Rs. 1400/- to Rs. 1600/- per month w.e.f. the date of his joining duty as Foreman Grade-II in the Board. This issues with the approval of General Manager/Thermal Plants PTPS HSEB Panipat.

*Administrative Officer,
For G.M./Plants PTPS HSEB,
Panipat.”*

4. Thereafter, when the petitioner was to retire in the month of November 2014 i.e. after many years of granting him advance increments, show-cause notice dated 14.08.2014 (Annexure P-7) was issued to the petitioner by Senior Accounts Officer for recovery of Rs.2,43,037/- from the leave encashment/gratuity/other dues on account of excess salary paid to him for the period 01.08.1991 to 30.06.2014. The same was duly replied by the petitioner vide his reply dated 20.08.2014 (Annexure P-8). Comments were sought by the Senior Accounts Officer from the Chief Engineer, H.P.G.C.L., Panipat, and in response thereto, the Chief Engineer vide letter dated 10.10.2014 (Annexure P-9) stated that the petitioner was rightly granted advance increments vide letter dated 02.04.1992 in accordance with the decision of the Board and as such no further action is required to be taken by the office in this case and it was requested to take appropriate action in the case at his end in accordance with the instructions applicable therein and decision taken by the Board. However, vide letter dated 22.10.2014 (Annexure P-10) again, reply of the petitioner was called by

the Senior Accounts Officer, within 15 days failing which recovery will be effected from his pay for the month of November 2014. Petitioner replied to the said letter on 12.11.2014 (Annexure P-11) by stating that he has already submitted the reply dated 20.08.2014 and his case for converting five advance increments into personal pay is under process. Therefore, no deduction of any amount be made from his salary till the case is finalized. This was followed by other two representations submitted by the petitioner dated 18.11.2014 and 30.03.2015 (Annexures P-13 and P-14). However, when the petitioner retired on 30.11.2014, a sum of Rs.2,43,037/- was deducted from the retiral benefits of the petitioner and memorandum regarding conversion of five advance increments into personal pay of the petitioner was put up before the Board of Directors vide letter dated 06.04.2015 (Annexure P-15) and the petitioner was called for personal hearing vide letter dated 20.04.2015 (Annexure P-16) before the Chief Engineer/PTPS-2, HPGCL, Panipat, on 21.04.2015 at 11.30 a.m. The petitioner duly appeared for personal hearing and submitted that his pay had been increased by granting him advance increments by erstwhile Board upon approval by the Board of Directors and he had also submitted that similarly situated employees, namely, Sh. Mohinder Singh and Sh. Ram Nagina had been granted similar benefits keeping in view Rule 2.47(b) of the Punjab Civil Services Rules, as applicable to Corporation for grant of advance increments. He also submitted that since there was no mis-representation on his part when his pay was fixed, therefore, the recovered amount of Rs.2,43,037/- should be refunded to him keeping

in view the law laid down by the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others, 2015(1) SCT 195*** and thereafter the Corporation refunded the said recovered amount to the petitioner vide cheque No.640609 dated 26.05.2015, which was given to the petitioner vide letter dated 06.07.2015 (Annexure P-17). Although the said recovered amount was refunded to the petitioner, however, the matter for converting five advance increments into personal pay still remained pending along with grant of increment due w.e.f. 01.07.2014 and refixation of the pension by taking into account advance increments granted to him and vide impugned orders dated 31.07.2015 and 13.08.2015 (Annexure P-18 and P-19) the same have been rejected by relying upon instructions of the State Government dated 22.07.2002, which have not been placed on record by the respondents, and whereas the five advance increments were granted to the petitioner on 02.04.1992 with effect from his date of joining as Foreman-II i.e. 03.08.1990. The said orders have been challenged by the petitioner in the present writ petition.

5. Written statement on behalf of the respondents has been filed wherein the abovesaid facts have not been disputed, however, with regard to grant of similar benefits to other similarly situated employees has been replied as under: -

“It is submitted that Sh. Ram Nagina, FM-IV was granted four advance increments vide office order no.949/EOM/G-129 dated 26.10.1998 for his exemplary and excellent performance of duties on 4x110MW Turbine Equipments and its Auxiliaries during overhauling as well as routine/preventive maintenance of Unit-4 during

February-April, 1997. Similarly, Sh. Mohinder Singh, FM-II was granted two advance increments vide office order no.105/EMD-402/Vol. IV dated 24.04.1985 for his outstanding services as Work Charge AFM. The services of Sh. Mohinder Singh, FM-III were regularized w.e.f. 15.01.1986 as FM-III and he was subsequently granted 2 no. advance increments with the approval of WTD vide C.E./Admn., HPGCL, Panchkula office order no 154/PS/CE/Admn-M&P dated 13.11.2000 for his outstanding and exemplary services to HPGCL. While granting the advance increments to the above mentioned officials, it was intended that the benefits of advance increments is of the permanent nature i.e. in addition to his normal subsequent earned increments and to be counted towards pensionary benefits. As such, the case was put up to the Board of Directors for kind consideration and accorded approval for converting the 4 no. advance increments into personal pay already sanctioned to them from the date of sanction of advance increments. As such, the advance increments of Sh. Mohinder Singh and Sh. Ram Nagina were converted into personal pay from the date of sanction of advance increments after taking approval of BODs in its meeting held on 14.01.2010.”

6. Learned counsel for the petitioner submitted that the petitioner was granted five advance increments vide order dated 02.04.1992 (Annexure P-4) after a conscious decision was taken by the Board of Directors and on the approval of the Board in its meeting held on 29.11.1991, his pay was raised from Rs.1400/- to Rs.1600/- per month with effect from his date of joining and at the fag end of his service career, petitioner was issued show-cause notice dated

14.08.2014 (Annexure P-7) when he was due to retire on 30.11.2014, by the Senior Accounts Officer, PTPS-I, HPGCL, Panipat, who had no authority to issue the same and without considering his reply, an amount of Rs.2,43,037/- was also recovered though later on it was refunded to the petitioner, however, the said five advance increments have not been treated as personal pay and the said claim has been rejected by the respondents vide impugned orders dated 31.07.2015 and 13.08.2015 (Annexure P-18 and P-19) by relying upon instructions of the State Government issued in 2002, which cannot be made applicable retrospectively and further once the said benefit was granted to the petitioner after approval by the Board of Directors, Chief Engineer has no competence to withdraw the said benefit. He further submitted that the petitioner continue to get the benefit for 26 years and it is only at the fag end of his service that the said issue has been raked. He further submitted that it is a case of discrimination and arbitrariness and violation of Articles 14 and 16 of the Constitution as similar benefit has been granted to two employees, namely, Sh. Mohinder Singh and Sh. Ram Nagina. He has further referred to Rules 1.3, 2.44, 2.47, 2.52 and 4.10 of the Punjab Civil Services Rules in support of his contentions. He also submitted that the impugned orders passed by the respondents being non-speaking and cryptic are liable to be set aside.

7. *Per contra*, learned counsel for the respondents submitted that case of the petitioner is not at par with the employees, namely, Sh. Mohinder Singh and Sh. Ram Nagina, as the said persons were granted benefit of advance increments in lieu of their exemplary service

rendered in the Corporation itself and whereas the petitioner was granted the benefit of five advance increments for his 15 years experience in Tata Davy Limited, which he gained prior to joining the Corporation.

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

9. *Ex facie*, the facts are not in dispute. A perusal of memorandum (Annexure P-2) shows that petitioner was assured by the authorities before his joining duties as Foreman-II that he will be compensated by granting five advance increments keeping in view his vast experience in M/s Tata Davi Limited, Panipat, where he was working as Erector of Coal Handling Plant and also keeping in view his educational/professional qualifications. Accordingly, the matter was placed before the Board of Directors and after approval granted by it, petitioner was sanctioned five advance increments vide order dated 02.04.1992 by raising his pay from Rs.1400/- to Rs.1600/- per month with effect from his date of joining in the Board. The same was required to be treated as personal pay and was not required to be adjusted in the future increments. If the same is to be adjusted in the future increments then no benefit would have accrued to the petitioner as his pay would have been at par with other Foreman-II after five years. Further, the factum of his 15 years experience in a private company and not of the Corporation was considered while granting him five annual advance increments and now also his claim has been rejected on this ground.

10. Rule 4.10 of the Punjab Civil Services Rules, Vol. I (as application to Haryana) as applicable to the HPGCL is reproduced as under: -

“4.10. Subject to any general or special orders that may be made by the competent authority in this behalf, an authority may grant a premature increment.

***Note 1:-** A proposal to grant an increment in advance of the due date should always be scrutinized with special jealousy as it is contrary to the principle of a time-scale of pay to grant an increment before it is due. Such a grant should not be made or advised except in very rare circumstances which would justify a personal pay to a Government employee whose pay is fixed.*

***Note 2:-** The expression "scale of pay" represents the maximum of the scale which is to be taken into account for determining the authority competent to sanction increments rather than the stage of it.*

***Note 3:-** The grant of premature increments to members of the Provincial Civil Medical Service is governed by the rules in Appendix XI to the Punjab Medical Manual.*

***Note 4:-** In the case of increments granted in advance, it is usually the intention that the Government employee should be entitled to increments in the same manner, as if he had reached his position in the scale in the ordinary course and in the absence of special orders to the contrary he should be placed on exactly the same footing, as regards future increments, as a Government employee, who has so risen."*

11. Similar issue arose before this Court in ***Priya Sood v. State of Punjab and others, 2011(3) SCT 319***, wherein the judicial officer was granted three advance increments in lieu of her qualification of

‘special’ and while considering the provisions of Rules 4.7, 4.9 and 4.10 of the Punjab Civil Services Rules and recommendations made by Justice Shetty Pay Commission, it was held that advance increments granted to the judicial officer possessing higher qualifications cannot be treated as a temporary measure only to be adjusted against their future increments to which they are otherwise entitled to as a matter of right and it was held that the advance increments granted on account of acquiring higher qualifications to be treated over and above the annual increments admissible to them. Against the said judgment, matter went in appeal and the said judgment was upheld by the Division Bench of this Court in ***Punjab and Haryana High Court v. Priya Sood and others, 2011(3) SCT 334***, wherein it was held as under:

“2. The writ petitioner-respondent No. 1 was aggrieved that advance increments have been given but they are not considered as 'additional' or 'special' increments. In other words, those increments have been regarded as advance as a substitute to the annual grade increment which an officer is otherwise entitled. Accordingly, the learned Single Judge after referring to various paras of the recommendations of the Shetty Commission, has come to the conclusion that the expression 'advance increment' has been interchangeably used with phrase 'additional increment'. According to the learned Single Judge the solitary object of such recommendation was to grant extra benefit to those officers who joined the judicial service with higher qualification and therefore, the word 'advance' is to connote the same meaning as the word 'additional' is understood in common parlance. The learned Single Judge further held that under no circumstance the Shetty Commission can be said to have recommended the grant

of increment as a short term gain in the manner it has been construed by the appellant because such a restrictive meaning would lead to anomalous result and would bring equality amongst un-equals.

3. *We have heard learned counsel for the appellant at a considerable length and are of the view that the opinion expressed by the learned Single Judge is un-exceptionable and deserves to be sustained in law. In our view, the learned Single Judge has rightly concluded that the words 'advance increment' have been interchangeably used by the Shetty Commission with the words 'additional increment'. Moreover, educational qualifications are always the basis for grant of higher pay scale, as has been held by Hon'ble the Supreme Court in the cases of **State of Mysore v. P. Narasinga Rao**, AIR 1968 SC 349; **V. Markendeya v. State of Andhra Pradesh**, (1989) 3 SCC 191; **State of Rajasthan v. Gopi Kishan Sen**, 1992(3) SCT 490 : 1993 Supp (1) SCC 522; **Shyam Babu Verma v. Union of India**, 1994(2) SCT 296 : (1994) 2 SCC 521; **Rajasthan State Electricity Board Accountants Association, Jaipur v. Rajasthan State Electricity Board**, 1997(2) SCT 18 : (1997) 3 SCC 103; **Government of West Bengal v. Tarun K. Roy**, 2004(1) SCT 78 : (2004) 1 SCC 347; **M.P. Rural Agriculture Extension Officers Association v. State of M.P.**, 2004(2) SCT 431 : (2004) 4 SCC 646 and **U.P. State Sugar Corporation Ltd. v. Sant Raj Singh**, 2006(3) SCT 56 : (2006) 9 SCC 82.*

4. *In the present case the degree of Masters of Laws would certainly bring efficiency in discharging duties by a Judicial Officer in comparison to those who do not possess such a degree. There is no real benefit of advancing advance increments if in the due course of time the writ petitioner-respondent No. 1 is to become equal to those who do not have additional higher qualification. Such an*

interpretation adopted by the appellant would not advance the basic object of the recommendation made by the Shetty Pay Commission. Therefore, we are of the view that the instant appeal does not merit admission and the view taken by the learned Single Judge deserves to be upheld.

5. As a sequel to the above discussion, this appeal fails and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

(GURDEV SINGH)
JUDGE”

May 30, 2011

12. Therefore, in this view of the matter, the said five advance increments granted to the petitioner are required to be considered as his personal pay. Further, once the said benefit was granted after the approval was accorded by the Board of Directors, the said benefit cannot be withdrawn by the Chief Engineer as it is well-settled proposition of law that even successor in office cannot review the order passed by the predecessor. Reference can be made to the Division Bench Judgment of this Court in ***Sarv Mittar Sharma, Special Secy., Punjab and Haryana High Court v. Punjab and Haryana High Court, Chandigarh through its Registrar, 1992(3) SCT 392.*** Although, at one point of time a sum of Rs.2,43,037/- was recovered from the retiral benefits of the petitioner on his retirement and thereafter after issuance of show-cause notice to the petitioner, to which he submitted his reply and after considering the comments of the Chief Engineer, the sum was refunded back to the petitioner vide memo dated 06.07.2015 (Annexure P-17). The said benefit was granted to the petitioner vide order dated 02.04.1992 (Annexure P-4) with effect from

03.08.1990 and the said benefit cannot be withdrawn from the petitioner or cannot be treated in any other manner to his dis-advantage especially when no mis-representation or fraud was committed by the petitioner.

13. Further, the present case appears to be a case of discrimination and arbitrariness particularly when similar benefit was granted to similarly situated employees, namely, Sh. Mohinder Singh and Sh. Ram Nagina after the approval by the Board of Directors. Learned counsel for the respondents has tried to distinguish the cases of these two persons by stating that they were granted the advance increments on account of their exemplary services rendered in the Board/Corporation itself and whereas petitioner was granted the benefit of advance increments on account of his 15 years experience on the post of Erector of Coal Handling Plant in the Tata Davy Limited. To my mind, petitioner cannot be discriminated on this ground as the object of grant of advance increments in both the cases is the same and in case of the petitioner he was given assurance by the Corporation before his joining to the post of Foreman-II to the effect that he would be compensated for his vast experience of 15 years gained by him. Accordingly, the respondents cannot be allowed to act in arbitrary and discriminatory manner and it is a case of sheer harassment to the employee who was first given assurance that he will be compensated for his vast experience of 15 years and acting upon the said assurance, petitioner joined and was granted benefit of five advance increments.

However, the same are not being treated as his personal pay to enable

him to enjoy the said benefit, who has already retired in the year 2014 after rendering 24 years of service and now he is 67 years old and pursuing his cause since 2018. The net effect of the action of the respondents is that although the petitioner has been granted the advance increments, however, the said benefit would not be meaningful to the petitioner if the same is not treated as his personal pay. Adjusting the said advance increments in future annual increments would frustrate the very purpose of grant of advance increments.

14 It is worth mentioning that the petitioner has an experience of 15 years in a private company, not in the Corporation, which was considered by the Board of Directors in its meeting held on 29.11.1991 and on approval, the said benefit was granted and for same reason the said benefit of advance increments is not being treated as special pay. It has also been noticed that despite the fact that approval was accorded by the Board and acting upon the said approval, five advance increments were granted to the petitioner. However, at the fag end of the retirement of the petitioner, show-cause notice was issued by the Senior Accounts Officer for recovery of a sum of Rs.2,43,037/- and comments of the Chief Engineer were sought, who again opined that since the benefit has been granted to the petitioner after approval by the Board, therefore, nothing further is required to be done.

15. In view of the foregoing discussion and settled proposition of law, present petition is allowed. Impugned orders dated 31.07.2015 and 13.08.2015 (Annexure P-18 and P-19) are hereby quashed and the respondents are directed to treat five advance increments granted to the

petitioner vide order dated 02.04.1992 (Annexure P-2) as personal pay of the petitioner and accordingly grant consequential benefits to him after revising his pay and pension, within a period of three months from the date of receipt of certified copy of this order.

01.02.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No