

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(228)

CWP-29387-2019
Date of Decision: 06.02.2024

Shashi PrabhaPetitioner
Versus
State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Abhijeet Partap, Advocate, for the petitioner.

Mr. T.P.S.Walia, AAG, Punjab,

Mr. Arav Gupta, Advocate, for respondents No.2 to 4.

NAMIT KUMAR, J.(ORAL)

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking a writ in the nature of mandamus directing the respondents to refix the pension of the petitioner by taking into consideration the last pay drawn as on 12.04.2018.
2. The brief facts of the case are that the petitioner was working as Chief Engineer against a cadre post, and she was offered a tenure post of Director on 20.02.2014 and performed her duties on the said post up to 12.04.2018. The case of the petitioner is that as on 12.04.2018, the basic pay of the petitioner was Rs.79,000/- and whereas her basic pension has been fixed keeping in view the last pay drawn in the cadre of Chief Engineer i.e. Rs.77,500/-.
3. The petitioner had earlier filed CWP No.5339 of 2019, which was disposed of by this Court vide order dated 27.02.2019, with a direction to the respondents to consider and decide the legal notice dated 29.09.2018,

within a period of 3 months and in pursuance thereto order dated 14.08.2019 (Annexure P-8) has been passed and relevant para of the said order reads thus:

“.....It is pertinent to mention here that Er.Shashi Prabha while working as Chief Engineer/PSTCL was appointed as Director/Technical in Punjab State Transmission Corporation Limited on 20.02.2014 in the scale of Rs. 67000-79000 (Grade pay Nil) as per the terms and conditions issued by Govt. of Punjab. The scale of Director is equivalent to the scale of Engineer in Chief i.e. Rs. 67000-79000+ GP nil. The appointment of CMD/Director(s) in PSPCL/PSTCL is a tenure/selection post but not a cadre post. She was not granted the scale of Engineer in Chief before her retirement. She retired as CE from PSTCL on superannuation i.e. 31.05.2015 in the scale of Rs. 43000-67000+10500 GP through she continued to be Director/Technical PSTCL.

Although on the date of retirement she was drawing basic pay of Rs.79,000/- but for the purpose of fixation of basic pension at the time of retirement, last pay drawn in the cadre post of Chief Engineer was taken (i.e. Rs. 77500/-).

Also as per Pension rule 2.4 of Punjab CSR Vol-2 states that pension claim inadmissible:-

(a)When a Government employee is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged.

As such at the time of retirement, Er. Shashi Prabha was Chief Engineer. Also appointment of Director/Technical is a tenure/selection post not a cadre post. Being a tenure/selection post she is not entitled to the basic pension as per the scale of Director.

In view of the above position explained and keeping in view of the facts and rules & regulations, I Er. Dharm Bir

Thind/Chief Engineer/HRD, PSPCL, Patiala after going through the details of case of CWP No.5339 of 2019 titled “Shashi Prabha Vs. State of Punjab and others” is the firm opinion that as per Pension rule 2.4 of Punjab CSR Vol-2 Er. Shashi Prabha, CE/Retd. is not entitled for basic pension as per last basic pay drawn i.e Director/Technical, which is not a Cadre post. At the time of retirement Er. Shashi Prabha was drawing basic pay Rs. 77,500/- which means basic pension Rs. 38,750/- which has been correctly fixed. As such claim of Er. Shashi Prabha as raised in legal notice dated 29.09.2018 is hereby rejected.

*Chief Engineer/HRI
PSPCL, Patiala”*

4. On the other hand, learned counsel for the respondent Nos. 1 to 4 have jointly submitted that the relief claimed in the present petition is unwarranted and opposed the prayer made in the petition and further submits that speaking order has been passed by the authorities in justifiable manner.

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

6. Since the petitioner was holding a tenure/selection post as Director (Technical) PSTCL from 20.02.2014 to 12.04.2018, which is not a Cadre post, and therefore, while working as such, the last basic pay drawn by the petitioner as on 12.04.2018 cannot be considered for the purpose of grant of pension to the petitioner in terms of ibid Rule 2.4 of the Punjab Civil Services Rules, Vol-2, which is not under challenge, and the basic pension of the petitioner has rightly been fixed, keeping in view his basic pay of Rs.77,500/-, as on 31.05.2015, the date of retirement of the petitioner, against a cadre post of Chief Engineer as she was not granted the

scale of Engineer-in-Chief before her retirement i.e. Rs.67,000/- Rs.79,000/- which is equivalent to the post of Director/Technical in PSTCL. Even otherwise, no Mandamus can be sought against the provisions of the Rules as has been held by the Hon’ble Supreme Court in **Union of India Vs. S. K. Saigal, 2007(1) SCT 286 (SC)**. Therefore, in this view of the matter, there is no merit in the present writ petition and the same is hereby dismissed.

(NAMIT KUMAR)
JUDGE

06.02.2024
anil

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