

CWP-27584-2023

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2024:PHHC:012348

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27584-2023

Date of Decision:30.01.2024

SANJEEV KUMAR GARG

..... Petitioner

Versus

BHAKRA BEAS MANAGEMENT BOARD AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Varun Sharma, Advocate and
Ms. Aakriti Sharma, Advocate
for the petitioner.

Mr. Karan Nehra, Advocate and
Mr. Harvinder Singh, Advocate
for the respondent No.1-BBMB.

Ms. Nikita Goel, Advocate
for respondent No.2-HPGCL.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 24.08.2023 (Annexure P-1) whereby respondent has withdrawn first and second time bound promotional scales (for short 'TBPS') granted to the petitioner vide order dated 02.12.2015 while working with Bhakra Beas Management Board (for short 'BBMB').

2. The petitioner on 25.09.1989 joined Haryana State Electricity Board (for short 'HSEB') as Junior Engineer. The petitioner was promoted as Assistant Engineer on ad hoc basis w.e.f. 30.10.1998.

The petitioner with the consent of HSEB joined BBMB as Assistant

Engineer (ad hoc) and he opted for BBMB pay scales. In August' 1991, the HSEB came to be bifurcated into four organizations and Parent Department of the petitioner became Haryana Power Generation Corporation Limited (for short 'HPGCL'). The petitioner and various other employees, in compliance of judgment dated 17.12.2004 passed by this Court in LPA No.657 of 1997 were granted deemed promotion as Assistant Engineer (regular) w.e.f. 1992. The petitioner was promoted vide order dated 15.09.2005 as Assistant Engineer (regular) w.e.f. 19.02.1992. The said order was passed by Parent Department of the petitioner and pursuant to said order, BBMB accepted formal joining from the petitioner as Assistant Engineer (regular) w.e.f. 19.02.1992. The BBMB re-fixed pay of the petitioner w.e.f. 19.02.1992. The seniority assigned to petitioner and other employees came to be challenged by employees of Parent Department of the petitioner vide Civil Writ Petition No.16330 of 2005. This Court vide interim order dated 23.10.2006 stayed seniority granted to the petitioner. On account of stay granted by this Court, Parent Department of the petitioner vide communication dated 21.12.2006 informed BBMB that petitioner may not be granted further promotion and time scale as Assistant Engineer till interim order dated 23.10.2006 passed by High Court is in operation. In the said communication, it was categorically noted that petitioner and other employees are not required to be reverted because there is no stay on promotion of the petitioner. The relevant extracts of the letter dated 21.12.2006 read as:

“The requisite legal advice/clarification has now been received from the standing counsel of HPGCL vide his note dated 30.11.2006 and the same is given as under:-

"Reg. Point No. 1

The petitioner in CWP No. 16330 of 2005 - Parveen Arora and ors Versus Haryana Power Generation Corporation Limited etc. have not challenged the very promotion of Sh. Rajinder Singh Redhu and ors promoted as AE against the quota of direct recruits. The only grievance in the said writ petition was with regard to granting seniority to Rajinder Singh Redhu and others in the cadre of AE. Hon'ble High Court vide its order dated 23.10.2006 has stayed the operation of the order dated 15.09.2005 only qua grant of seniority with retrospective effect in the cadre of AE and not the promotion as AE as such. Thus Rajinder Singh. Redhu and others promoted as AE are not required to be reverted as per stay order dated 23.10.2006.

Reg. Point No. 2

As I have opined that Rajinder Singh Redhu and ors are not required to be reverted back to their original post, the question of issuance of a show cause notice does not arise. However, if the department still want to revert any employee a show cause is must.

Reg. Point No. 3

Rajinder Singh Redhu and others can not be given seniority in the cadre of AE and cannot considered for promotion on higher post on the basis of their service as AE till such time order dated 23.10.2006 is in operation. Even arrears of pay on account of deemed date of promotion as AE and time scale in the cadre of AE cannot be given to Rajinder Singh Redhu and others on account of stay order dated 23.10.2006."

The LR, HVPNL has agreed with the above advice/clarification as given by the standing counsel of HPGCL and desired to take further necessary

action in the matter accordingly.

You are, therefore, requested not to proceed further in the matter for grant of time scales to the officers promoted as AE and posted on deputation in BBMB vide this office order No. 330/HPG/GE-623 dated 15.09.2005 till such time the High Court's interim order dated 23.10.2006 are in operation and final decision in the CWP No.16330 of 2005 is pronounced by the Hon'ble High Court. A copy of the note dated 30.11.2006 of the standing counsel HPGCL is sent herewith."

3. The petitioner vide letter dated 06.12.2012 requested the respondent-BBMB to grant TBPS and arrears on account of promotion with retrospective effect. The application of the petitioner came to be rejected vide order dated 27.05.2013. The Civil Writ Petition No.16330 of 2005 against seniority came to be disposed of vide order dated 09.01.2014. In the said order, it was specifically mentioned that order dated 15.09.2005 whereby petitioner was promoted would not effect rights of other parties. The respondent-HPGCL was directed to reconsider question of seniority of all the effected parties. The relevant extracts of order dated 09.01.2014 read as:

"The Haryana Power Generation Corporation Limited was directed to work out a solution so that rights and entitlement of the petitioners and the respondents, inter se, is not harmed. In response thereto, on 17.5.2012, a proposal was placed on record. The said proposal reads thus:-

"Matter discussed today i.e. on 15.5.2012 in the chamber of Chairman of Haryana Power Utility wherein all M.Ds were also present. As per the discussion held only workable solution which is also legally sustainable is that the quota post of promotees be calculated as per availability of quota in terms of policy in vogue and they may be re-assigned seniority

from the date their quota post is available. The above will settle grouse of direct recruits who were otherwise appointed in the year 1993 i.e. much after date of promotions/deemed dates given in 1991 to Rajinder Singh Redu & others. Even otherwise as per the settled law a direct recruit will get seniority from the date he is borne on the cadre while a promotee will get seniority from the date quota post is available.

Re-fixation of seniority may entail reversion of promotions carried out in excess of quota or non-availability of quota and consequently re-fixation of pay. The Standing Counsel may be apprised of the above stand of Utilities by way of short affidavit in order to comply with the directions contained in order dated 9.5.2012."

In the proposal made, a solution has been offered. Counsel for the petitioners are satisfied with the proposal made and have no objection to the same. Counsel for respondents No.3 to 17 states that in earlier round of litigation, some favourable judgments were passed in favour of the respondents, protecting their rights and those may be kept in mind when acting upon the proposal, so made. Those judgments have been placed on record as Annexures P7 & P8, respectively.

In view of above facts, the above writ petitions are disposed of. The authorities are directed to act in terms of the decision taken on 15.5.2012 which was placed on record of this Court on 17.5.2012. In terms of that decision, let fresh exercise be done to settle right of the parties. When making that exercise, judgments, passed in favour of respondents No.3 to 17 and similarly situated other persons be kept in mind. When making above said exercise, the decision taken on 15.9.2005 (Annexure P1) shall not affect rights of the parties. The exercise shall be done within five months from the date of receipt of a certified copy of this order. Liberty

shall remain with the parties not satisfied with the order to be passed to approach this Court.”

4. The petitioner after disposal of the aforesaid writ petition filed application dated 14.08.2015 seeking benefit of first and second TBPS, considering him as Assistant Engineer. The respondent-BBMB without seeking opinion of Parent Department, allowed application of the petitioner and he was extended benefit of first and second TBPS. On account of extension of benefit of TBPS, a substantial amount was released to the petitioner.

5. The respondent-BBMB on a complaint initiated investigation with respect to grant of TBPS to the petitioner and others. The respondent concluded that petitioner in connivance with other officials has got released TBPS as AE though, he was holding post as AE (ad hoc) whereas TBPS as AE could be issued, had he been holding post of AE (regular). Forming this opinion, the respondent has issued demand notice to the petitioner which is under challenge.

6. Mr. Varun Sharma, learned counsel for the petitioner asserts that there was no concealment of fact on the part of petitioner. The petitioner since 1998 was discharging duties of AE with BBMB and he was promoted as AE (regular) pursuant to order passed by this Court. The promotion of the petitioner was never under challenge though, there was dispute of seniority among directly appointed vis-a-vis promoted officers. The claim of the respondent that BBMB was unaware of litigation pending between directly recruited and promotees is fallacy because respondent is relying upon letter dated 21.12.2006 addressed to BBMB and foundation of said letter was stay order dated 23.10.2006 granted by this Court in Writ Petition No.16330 of 2005. The petitioner had joined

JE with his Parent Department in 1989 and as per rules applicable to JE, he is entitled to 3 TBPS i.e. 9 years, 16 years and 23 years. If the petitioner is considered JE, he would be entitled to 3 TBPS whereas he has been granted two TBPS as AE.

7. Mr. Karan Nehra, learned counsel for the respondent-BBMB asserts that it is a case of embezzlement on the part of petitioner. The application of the petitioner was specifically rejected in 2013 still he filed second application which was processed by another beneficiary of same benefit. The matter was investigated by Vigilance Department of the respondent and misappropriation committed by petitioner was detected. The petitioner was never promoted as AE (regular), thus, he was not entitled to benefit of TBPS as AE (regular).

8. On being asked, learned counsel for the respondent concedes that petitioner since 1998 has worked with BBMB as AE and he was paid salary as AE. He further confirms that petitioner during the entire period with BBMB has discharged duties of AE. If petitioner is denied benefit of TBPS as AE, he would be entitled to benefit of TBPS as JE, however, he submits that petitioner has not filed application in this regard.

9. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

10. The conceded position emerging from the record is that the petitioner was appointed JE on 25.09.1989. He was promoted to the post of AE (ad hoc) by his Parent Department i.e. HPGCL. The petitioner, under State quota joined BBMB as AE (ad hoc) on 06.11.1998. The petitioner vide order dated 15.09.2005 passed by HPGCL was promoted as AE (regular). The said promotion was made w.e.f. 19.02.1992. The BBMB pursuant to said order accepted his joining w.e.f.. 19.02.1992 as AE (regular). This

Court initially stayed seniority of the petitioner and thereafter while passing final order categorically mentioned that letter dated 15.09.2005 shall not effect rights of the parties. The said petition was relating to seniority between direct and promotee employees. There was no dispute with respect to promotion and it was confined to seniority. The said order was based upon proposal dated 15.05.2012 furnished by HPGCL. It was conceded by HPGCL that seniority of all the parties would be re-fixed and it would be as per available quota and re-fixation may entail reversion of promotion carried out in excess of quota or non-availability of quota. The HPGCL has carried out exercise of re-fixation of seniority of all the employees holding post of JE/AE. As per the tentative list, the petitioner would become AE from 2007 instead of 1992. The dispute has emanated on account of grant of two TBPS to the petitioner. As per respondent, the petitioner has been wrongly extended two TBPS and respondent-BBMB has every right to effect recovery because petitioner by concealment of facts has availed benefit, to which he otherwise was not entitled.

11. There was dispute between petitioner and directly appointed employees with respect to seniority. The petitioner was promoted as AE (regular) by order dated 15.09.2005. The petitioner is working with BBMB as AE since November' 1998. The petitioner has not been extended benefit of further promotion. As per rules and regulations of BBMB, an employee is entitled to time bound promotion scale, if he does not get promotion within specified period. The petitioner has availed two TBPS as AE i.e. on completion of service of 9 years and 16 years. As per respondent, the petitioner was never promoted to the post of AE (regular), thus, he is not entitled benefit of TBPS as AE, however, respondent is unable to controvert the fact that petitioner has discharged duties as AE and if he is considered as

JE still he is entitled to benefit of TBPS.

12. Keeping in mind, order dated 27.05.2013 whereby application of the petitioner seeking TBPS was rejected and communication dated 21.12.2006 whereby parent department of the petitioner had informed BBMB not to grant TBPS as AE, this Court is of the considered opinion that petitioner could not be extended benefit of TBPS as AE, however, he cannot be denied benefit of TBPS as JE. He joined his parent department w.e.f.. 25.09.1989 as JE. If he is not considered as AE for the purpose of TBPS, he needs to be considered as JE for the said purpose. The respondents have denied benefit of TBPS as AE, however, they have not calculated benefit of TBPS as JE. The petitioner cannot be denied benefit of TBPS as AE as well as JE.

13. In the wake of aforesaid discussion and findings, this Court is of the considered opinion that petitioner though is not entitled to benefit of TBPS as AE, however, he is entitled to said benefit as JE. The respondents are directed to re-calculate TBPS benefit of petitioner as JE and adjust the same against the benefit already availed. If it is found that petitioner has availed excess benefit, he would return the differential amount within 3 months from the date of re-determination. Till the re-calculation of benefits, the respondent shall not effect further recovery.

14. Disposed of in the above terms.

(JAGMOHAN BANSAL)

JUDGE

30.01.2024

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No