IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.3276 of 2019
Reserved on 18.08.2026
Decided on: 04.11.2026
Uploaded on:04.11.2026

Ashwani Kumar Sood ...Petitioner

Versus

Himachal Pradesh State Electricity Board Limited and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.
Whether approved for reporting?[1]

For the petitioner:	**Petitioner in person.**
For the respondents:	**Mr. Ravinder Thakur, Advocate.**

Jiya Lal Bhardwaj, Judge

The petitioner by way of present petition has prayed for the following substantive relief:-

> *"i) That impugned orders Annexure P-8 dated 1.12.2010, Annexure P-11 dated 16.9.2011, Annexure P-13 dated 26.12.2011 and Annexure P-15 dated 26.7.2012 may kindly be quashed and set aside and pay fixation of the petitioner made vide office orders dated 2.5.2011 (I & II) may kindly be declared legal, valid and in accordance with rules and respondents may be directed to allow to draw the same to the petitioner accordingly and to release all arrears to the petitioner within some time bound period alongwith interest."*

[1] *Whether the reporters of Local Papers may be allowed to see the judgment?*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner had joined the respondent-Board as Junior Engineer in the year 1982. After improving his qualification, he was promoted as Assistant Engineer on 31.12.1997 and thereafter as Senior Executive Engineer on 21.01.2010. The respondent-Board had allowed the revised scale of Rs.1800-3200 to the category of the petitioner i.e. Junior Engineer w.e.f. 01.01.1986, which was thereafter improved as Rs.2000-3500 w.e.f. 01.01.1986. As per the office order dated 13.11.2009, the respondent-Board had given time bound benefits of promotional scale after completion of 9/16 years of service as Assistant Engineer and name of the petitioner appeared at serial No.12 in the said order. Thereafter, his pay was to be revised and re-fixed in the pay-scale of Rs.1800-3200 as Junior Engineer with retrospective effect due to withdrawal of Rs.2000-3500 scales. As per the option exercised by the petitioner, the office of respondent No.2 had written to the Resident Engineer, Bassi Power House to re-fix the pay of the petitioner in the pay scale of Rs.1800-3200. Thereafter, his pay was re-fixed, vide office order dated 03.02.2010 (Annexure P-2). After fixation of pay of the petitioner as Junior Engineer, further pay fixation was to be done by the respondent-Board, as he was promoted as Assistant Engineer. The petitioner made a representation dated 06.02.2010, (Annexure

P-3) to fix his pay retrospectively, as he wanted to retain the old Master Scale of Rs.1800-3200 w.e.f. 31.10.1991 onwards.

3. The revision of scales was taken place with effect from 01.01.1986, and pay of the petitioner was to be re-fixed from the said date. Despite the option being exercised by the petitioner to opt pay scale of Rs.1800-3200 in Old Master Scale with effect from 31.10.1991, he was re-fixed in revised Master Scale with effect from 01.11.1993. The petitioner made a representation dated 10.05.2010 (Annexure P-6) to the competent authority stating therein that his pay has wrongly been fixed in the New Master Scale with effect from 01.11.1993, whereas he had opted to retain the Old Master Scale vide representation dated 10.05.2010 (Annexure P-6). However, the respondent-Board did not respond to the representation and thereafter the petitioner made another representation on 20.08.2010 (Annexure P-7). The respondent-Board replied on 01.12.2010 (Annexure P-8) that the case of the petitioner does not fall under the instructions dated 23.05.1995 and 31.07.1996 and thus the pay fixation done vide order dated 29.06.2010, is final and correct. It has further been averred that rejection of the representation of the petitioner is not correct as the case of the petitioner is duly covered under instructions dated 23.05.1995, which clearly provide that in case where pay of the employee

happens to be changed with retrospective effect due to change/amendment of the decision of Board, an affected employee is entitled to exercise fresh option for fixation of his pay. The decision dated 31.07.1996 relates to exercise of the option under Fundamental Rule 22 (a) (i) and, therefore, the instructions, which are applicable in the case of petitioner are dated 23.05.1995. Further, the letter dated 31.07.1996 has not superseded the instructions dated 23.05.1995 and hence the petitioner in entitled to get his option revised under instructions dated 23.05.1995. The representation made by the petitioner was considered by the respondent-Board and his pay was re-fixed in the Old Master Scale of Rs.1800-3200 vide order dated 02.05.2011 (Annexure P-10) as per Rules and in accordance with the Notification dated 23.05.1995. The aforesaid pay fixation was sent to the office of respondent No.2 in pursuance of the re-fixation and the petitioner was paid the amount under the Old Master Scale. However, subsequently, vide office order dated 16.09.2011 (Annexure P-11), the re-fixation done under Old Master Scale was withdrawn.

4. The petitioner made a representation dated 29.10.2011 (Annexure P-12) regarding withdrawal of the pay fixation, however, the same was rejected vide order dated 26.12.2011 (Annexure P-13) observing that the exercise of option to retain Old Master Scale

w.e.f. 31.10.1991 cannot be accepted as the case of the petitioner does not fall under the relevant instructions. The pay of the petitioner was wrongly vetted and inadvertently order dated 16.09.2011 (Annexure P-11) was passed as evident from the communication dated 26.12.2011 (Annexure P-13) when his representation was rejected.

5. The petitioner on receipt of the aforesaid decision dated 26.12.2011 had made a representation on 27.04.2012, (Annexure P-14), stating that as per instructions dated 23.05.1995, it has been decided by the respondent-Board that in case where pay of the employee happens to be changed with retrospective effect due to change/amendment of the decision of Board, an affected employee is entitled to exercise fresh option for fixation of his pay and thus the version of the Accounts Officer that the decision relates to option under FR 22 (a) (i) is totally wrong and beyond the fact. However, the said representation was rejected vide communication dated 26.07.2012 (Annexure P-15).

6. The petitioner feeling aggrieved by the rejection of his representation and further re-fixation of his pay in an incorrect manner has approached this Court *inter alia* on the ground that the same is wrong, illegal, unjust and violative of Article 14 of the Constitution of India. It has further been averred that vide office

order dated 24.11.2009 (Annexure P-16), the respondent-Board had given an opportunity to exercise the option within three months from the date of issuance of the order to all the employees, including the petitioner to avail the benefit of 9/16 years' time bound promotional scale and accordingly, the petitioner had exercised the option within three months from the date of issuance of the communication and thereafter his pay was re-fixed retrospectively. The petitioner was held entitled to exercise his option as per the instructions dated 23.05.1995. Once the petitioner had exercised option within three months from the date of issuance of Board's clarification/decision, he was entitled to exercise option to retain the Old Master Pay Scale with effect from 31.10.1991 and thus the rejection of his representations by the respondent-Board on the ground that the petitioner cannot be re-fixed by accepting his option for retaining the Old Master Pay Scale of Rs.1800-3200 with effect from 31.10.1991 is factually incorrect. The decision to reject his representation is based on ill-founded and incorrect interpretation of the instructions and Rules. Further, the instructions dated 23.05.1996 have to be read along with instructions of the respondent-Board dated 31.07.1996 and the same relate to exercising of option under Fundamental Rule 22 (a)(i) and the case of the petitioner does not fall within the instructions dated

31.07.1996 and the entire interpretation of the respondent-Board regarding instructions dated 23.05.1995 is unwarranted and unconstitutional and as such the petitioner has prayed for quashing the orders whereby his claim for re-fixation of pay under the Old Master Pay Scale of Rs.1800-3200 has been rejected.

7. The petitioner has specifically pleaded in ground (D) of the petition that his pay was refixed vide order dated 02.05.2011 (Annexure P-10) and the same has been withdrawn without issuing show cause notice to him and, therefore, the impugned orders are against the principles of natural justice and he has been condemned unheard and as such prayed for quashing the same.

8. The respondent-Board filed reply to the petition and in preliminary submissions averred that the petitioner was appointed as Junior Engineer (Civil) in the respondent-Board on regular basis and joined as such on 20.09.1982. The petitioner was allowed the revised pay scale of Rs.1800-3200 as Junior Engineer with effect from 01.01.1986, which was thereafter improved to Rs.2000-3500 with effect from 01.01.1986 and pay of the petitioner was refixed in the improved pay scale. Thereafter, in view of the letter dated 25.06.1991, his pay was re-fixed in the pay scale of Rs.2000-3500 with effect from 31.10.1991 onwards as per the option exercised by him w.e.f. 31.10.1991. Thereafter, he was promoted as Assistant

Engineer (Civil) on acting basis, vide office order dated 14.01.1993. The petitioner was ordered to look after the work of Assistant Engineer with 20% acting allowance and assumed as Acting Assistant Engineer on and with effect from 12.02.1993 (F.N.). The pay of the petitioner in the revised master scale was re-fixed with effect from 01.11.1993. The petitioner was promoted as Assistant Engineer (Civil/Mech.) on regular basis with effect from 20.12.1997 and accordingly his pay was fixed under FR 22(I) (a) (i) on 12.05.1998, as per option exercised by him under saving clause, after earning accrual of increment with effect from 01.01.1998 with next date of increment as on 01.01.1999. Thereafter, he was promoted as Senior Executive Engineer on 21.01.2010. The respondent-Board vide office order dated 24.11.2009 had offered an opportunity to exercise option within three months from the date of issue of the order to avail the benefit of 9/16 years' time bound promotional scale, either in the grade of Junior Engineer or Assistant Engineer/Assistant Executive Engineer and in the eventuality of exercising of said option, the improved pay scale of Rs.2000-3500 and time bound promotional scale benefits already availed by such officers in the grade of Junior Engineer shall be withdrawn. Thereafter, the pay of the petitioner was to be revised and re-fixed in the pay scale of Rs.1800-3200 as Junior Engineer with

retrospective effect due to withdrawal of Rs.2000-3500 scale as per option exercised by him with effect from 31.10.1991. The pay of the petitioner was re-fixed as Assistant Engineer on acting basis with 20% acting allowance with effect from 12.02.1993 and further his fixation in the revised master scale w.e.f. 01.11.1993, as per option exercised by him in the revised master scale. The petitioner had made a request to the respondent-Board that he may be allowed an opportunity to exercise the option for fixation of pay in revised master scale with effect from 01.11.1993. However, the matter was examined by the respondent-Board and his request was not found to be covered under the provisions of the Rules, as a result of change/amendment of Board's decision/clarification to exercise fresh option for fixation of pay on promotion or otherwise and thus his claim was rejected. It has further been averred that the petition is not maintainable on the ground of delay and lackness. The petitioner has no legal and vested right, which has been infringed by the respondent-Board, so as to entitle him to invoke the jurisdiction of this Court.

9. On merits, it has been averred that as per the office order dated 24.11.2009 (Annexure-VI), the respondent-Board had afforded an opportunity to exercise an option within three months from the date of issue of the order, to avail the benefit of 9/16

years' time bound promotional scale, either in the grade of Junior Engineer or Assistant Engineer/Assistant Executive Engineer and in the eventuality of exercising the said option, the improved pay scale of Rs.2000-3500 and time bound promotional scale benefits already availed by such officer in the grade of Junior Engineer, shall be withdrawn. The pay of the petitioner was re-fixed by withdrawing the 1st time bound promotional scale benefit already availed by him in the induction post of Junior Engineer and his pay was to be re-fixed in the pay scale of Rs.1800-3200. The petitioner had made a representation to the respondent-Board to exercise the option for fixing of pay in revised master scale with effect from 01.11.1993, in view of the clarification issued by the respondent-Board dated 23.05.1995 and even as per letter dated 31.07.1996. The decision taken by the respondent-Board on 23.05.1995 and 31.07.1996 pertains to the cases where the pay of an employee happens to be changed with retrospective effect for any other reason not attributable to the concerned employees, as a result of change/ amendments of Board's decision/clarification and such employees shall be entitled to exercise fresh option for fixation of pay on promotion or otherwise, accruing to them during such intervening period as admissible under various provisions of FR's/pay regulation. The matter was examined by the respondent-Board and his request

was not found to be covered under the provisions of Rules, as a result of change of amendment of Board's decision/clarification and, therefore, his claim to allow him opportunity to exercise fresh option to retain Old Master Scale is not maintainable and deserves outright rejection.

10. The petitioner has placed on record noting sheets while dealing with the instructions dated 23.05.1995, whereby the pay of an employee, which happens to be changed with retrospective effect for any other reason not attributable to the concerned employees, as a result of change/amendments of Board's decision/clarification and such employees shall be entitled to exercise fresh option for fixation of pay on promotion or otherwise.

11. I have heard the petitioner who is present in person and Mr. Ravinder Thakur, learned counsel for the respondents-Board. The record has also been perused carefully.

12. As per the record, it is crystal clear that the petitioner was granted the revised pay scale of Rs.2000-3500/- w.e.f. 01.01.1986 and his pay was re-fixed accordingly. Thereafter, the petitioner was promoted as Assistant Engineer (Civil) on acting basis, vide order dated 14.01.1993 and he was granted 20% acting allowance w.e.f. 12.02.1993, when he assumed the office as acting Assistant Engineer. Thereafter, his pay in the revised Master Pay

Scale was re-fixed as per option exercised and later on, he was promoted as Assistant Engineer on regular basis w.e.f. 20.12.1997 and accordingly, his pay was fixed under FR 22(a) (i) on 12.05.1998. Thereafter, he was promoted as Senior Executive Engineer on 21.01.2010. He was afforded with an opportunity to exercise option within three months from the date of issuance of the order to avail the benefit of 9/16 years' time bound promotional scale, either in the grade of Junior Engineer or Assistant Engineer/Assistant Executive Engineer and in the eventuality of exercising of said option, the improved pay scale of Rs.2000-3500 and time bound promotional scale benefits already availed by such officers in the grade of Junior Engineer shall be withdrawn.

13. The petitioner had furnished the fresh option to allow him an opportunity to exercise option for fixing his pay in the Old Master Scale w.e.f. 01.11.1993, as per instructions dated 23.05.1995 read with communication dated 31.07.1996, which was initially accepted vide order dated 02.05.2011 (Annexure P-10), but later on the said fixation of his pay scale was withdrawn vide office order dated 16.09.2011 (Annexure P-11) without issuing show cause notice to him, which is against the principles of *audi alterm partem*.

14. It is settled law that any order, which has civil consequences if passed without granting an opportunity to show

cause is unsustainable in law. In the present case, the pay of the petitioner was reduced without issuing him show cause notice and, therefore, the order on this sole ground is quashed. Reference in this regard is made to the decision of the Hon'ble Supreme Court in ***Bhagwan Shukla versus Union of India and others***, (1994) 6 SCC 154 and relevant para is quoted hereinbelow:

> *"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs 181 p.m. from Rs 190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic. employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned*

before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs 190 to Rs 181 w.e.f. 18.12.1970."

15. A similar view has been taken by the Hon'ble Supreme Court in ***Canara Bank and others versus Debasis Das and others***, (2003) 4 SCC 557, wherein it has held that in the absence of a notice of kind and such reasonable opportunity, the order passed becomes wholly vitiated. The relevant para of the judgment reads as under**:-**

"15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, the principle was thus stated: (ER p.420)

"[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), "where art thou? Hast thou not eaten of the tree whereof, I commanded thee that though shouldest not eat?"

> *Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond."*

16. The respondent-Board has not disputed the fact that the petitioner has not been given any show cause notice before passing the order dated 16.09.2011 (Annexure P-11). Once show cause notice was not issued to the petitioner before passing the order, whereby his pay has been reduced, the impugned order of reduction of pay on this sole ground is unsustainable in the eyes of law and as such quashed.

17. The respondent-Board has taken a plea that the petition is not maintainable on the ground of delay and lackness, since the petitioner has not exercised option earlier to opt for the Old Master Scale. However, the said plea is untenable for the reason that once the respondent-Board had accepted the request made by the petitioner to grant him the scale under Old Master Scale, vide order dated 02.05.2011 and his pay was revised, subsequently the said order could have been altered or varied only after hearing the petitioner. Since the impugned order dated 16.09.2011 (Annexure P-11) has been passed without hearing the petitioner as already observed above, the impugned order is not sustainable in law and thus, the subsequent orders passed by the respondent-Bard while rejecting the representation of the petitioner and also passing

the order thereby fixing the pay of the petitioner under the master pay scale are also unsustainable in law and as such quashed.

18. Resultantly, in view of the observations made herein above, the impugned orders dated 01.12.2010 (Annexure P-8), 16.09.2011 (Annexure P-11), 26.12.2011 (Annexure P-13) and 26.07.2012 (Annexure P-15) are quashed and set aside and pay of the petitioner fixed as per order dated 02.05.2011 (Annexure P-10) is restored. However, it is made clear that the respondent-Board may pass fresh orders after giving an opportunity of being heard to the petitioner. No order as to costs.

The petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

04th November, 2026 (**Jiya Lal Bhardwaj**)
(naveen) **Judge**