



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
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CWP-19379-2017 (O&M)
Date of decision: 20.01.2026

Prem Chand

....Petitioner

Versus

Punjab State Power Corporation Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Bansal, Advocate
for the petitioner.

Mr. Tushar Madaan, Advocate
for the respondents.

HARPREET SINGH BRAR J. (Oral)

CM-5549-CWP-2024

Prayer in the instant application filed under Section 151 of CPC is for placing on record replication to the written statement filed by respondents along with document (Annexure P-24).

Allowed as prayed for subject to all just exceptions.

CWP-19379-2017 (O&M)

1. Prayer in this writ petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *certiorari*, for quashing the Office Order dated 19.11.2015 (Annexure P-12) whereby the sanction granted to the petitioner for changing his induction post from Test Mechanic to JE/Testing was cancelled and for quashing the impugned reply dated 27.04.2017 (Annexure P-19)



rejecting the legal notice and the impugned order of recovery dated 10.08.2017 (Annexure P-20). Further a writ of *mandamus* has been sought, directing the respondents to restore the induction post from Test Mechanic to JE/Testing as sanctioned to the petitioner in the year 2010 with all consequential benefits and refund of the recovered amount.

2. Learned counsel for the petitioner, *inter alia*, contends that the action of the respondents in cancelling the sanction for change of induction post from Test Mechanic to JE/Testing after a lapse of nearly five years, that too without issuing any show cause notice or affording any opportunity of hearing, is patently illegal and in gross violation of the principles of natural justice. He submits that the petitioner had strictly complied with the provisions of Finance Circular No.19/2003 dated 15.09.2003 by opting to change his induction post to JE/Testing and surrendering all monetary benefits earlier availed in the lower post of Test Mechanic, which was duly accepted by the respondents. He further argues that the impugned recovery of Rs.46,047/- is impermissible in law as the petitioner has not misrepresented any facts, the benefits were granted after due process including pre-audit by the Accounts Officer, and the respondents themselves have admitted that recovery for the 9 years Time Bound Pay Scale (TBPS) granted in 2004 cannot be effected due to lapse of five years. Learned counsel for the petitioner highlights the patent anomaly where juniors of the petitioner in the cadre of JE/Testing are drawing higher salaries than the petitioner, which is contrary to the settled legal position that a senior employee



cannot be paid less than his junior in the same cadre, as established by the judgments rendered by the Hon'ble Supreme Court in ***Kamlakar vs. Union of India, (1999) 4 SCC 756*** and ***Union of India vs. P. Jagdish, 1997 AIR SC 1783***.

3. *Per contra*, learned counsel for the respondents submits that the writ petition is liable to be dismissed, as the petitioner has not approached the Court with clean hands. He contends that as per Finance Circular No.19/2003 dated 15.09.2003 and Finance Circular No.18/90 (Annexure P-22) dated 23.04.1990, if an employee already in service is directly appointed to a higher post through open selection, then he is entitled to 9/16 year TBPS in that cadre. Since the petitioner was promoted on seniority basis and not through open selection/CRA, he was not entitled to change his induction post to JE and thus, is not eligible for 9/16 year time bound promotion to the higher post of JE. He further argues that the matter was referred to the legal section, which opined that recovery cannot be made where 5 years have elapsed from the date of payment of 9 years TBPS (i.e., 29.09.2004), but for the 16 years TBPS granted on 28.09.2011 w.e.f. 01.09.2011, recovery could be effected by issuing a show cause notice. Learned counsel submits that a show cause notice was duly issued and after considering the petitioner's reply, recovery of Rs.46,047/- was rightly effected in accordance with law.

4. I have heard learned counsel for the parties and perused the records with their able assistance.



5. Admittedly, the petitioner was initially appointed as Test Mechanic on 11.07.1986 and was promoted as JE/Testing on 31.10.2001 with deemed date of promotion as 29.09.1995. After complying with the requirements of Finance Circular No.19/2003 and surrendering the benefits availed earlier in the lower post, the petitioner was granted 9 years TBPS w.e.f. 29.09.2004 by taking his induction post as JE/Testing. Subsequently, he was granted 16 years TBPS w.e.f. 01.09.2011. These benefits were duly pre-audited and found correct by the Accounts Officer. The respondents now seek to reverse these benefits on the ground that the petitioner, being a promotee, cannot change his induction post to JE/Testing.

6. The Hon'ble Supreme Court in ***Kamlakar v. Union of India 1999 (4) SCC 756***, has categorically held that when promotees and direct recruits are in the same cadre, there shall be no distinction between them with respect to the payment of pay scale. Speaking through Justice M. Jagannadha Rao, the following was observed:

*“12. We have considered the limited issue. **We are of the view that all these appellants should get the same relief as the appellants in the Civil Appeal which arose out of Special Leave Petition No. 16646 of 1995. Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given. The birth marks have no relevance in this connection.** If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale - which were matters common to all of them before the impugned order of the Government of India was passed on 2.7.1990 - then any distinction between Data Processing Assistants who were direct*



recruits and those who were promotees, is not permissible. We, therefore, reject the respondent's contention. We have examined the record and the common points arising in this case and those in Civil Appeal which arose out of Special Leave Petition 16646 of 1995 and **we are unable to find** any lawful distinction between the appellants and those in the other appeal which has been allowed.”

7. Further, the Hon’ble Supreme Court in ***Union of India v. P. Jagdish 1996 INSC 1948*** and ***Union of India v. C.R. Madhava Murthy 2022 INSC 397*** has reiterated that a senior employee cannot be paid less pay/salary than his junior. In order to fix such an anomaly, the pay of the senior ought to be stepped up.

8. Admittedly, the petitioner was granted the said benefits after following the due process, including pre-audit by the Accounts Officer. The petitioner had also surrendered the benefits availed by him earlier in the lower post and the same was also duly accepted by the respondents. The excess payment, if any, was made by the respondents on their own, based on their interpretation of Finance Circular No.19/2003, which, initially, was also found to be correct by the Accounts Officer. However, the same was subsequently sought to be reversed upon discovering that the Circular (supra) was supposed to be prospective in nature and thus, could not have been made applicable to the petitioner. Be that as it may, in the absence of any misrepresentation or fraud on the part of the petitioner, he cannot be subjected to recovery post-retirement due to misinterpretation on the part of the respondents.



9. In *Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475, a three-Judge Bench of the Hon'ble Supreme Court, speaking through Justice B.N. Agrawal, made the following observations:

"27. This Court, in a catena of decisions, has **granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.** The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana*, 1995(1) SCT 668 : 1995 Supp. (1) SCC 18, *Shyam Babu Verma v. Union of India*, 1994(2) SCT 296 : [1994]2 SCC 521; *Union of India v. M. Bhaskar*, 1996(4) SCT 57 : [1996]4 SCC 416; *V. Ganga Ram v. Regional Jt., Director*, 1997(3) SCT 72 : [1997]6 SCC 139; *Col. B.J. Akkara [Retd.] v. Government of India & Ors.*, (2006) 11 SCC 709; *Purshottam Lal Das & Ors. v. State of Bihar*, 2006(4) SCT 537 : [2006]11 SCC 492; *Punjab National Bank & Ors. v. Manjeet Singh & Anr.*, 2006(4) SCT 570 : [2006]8 SCC 647 and *Bihar State Electricity Board & Anr. v. Bijay Bahadur & Anr.*, [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants- teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bonafide mistake on their part. **The excess payment made was the result of wrong interpretation of the rule**



that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”

10. In view of the above, this Court has arrived at the following conclusions:-

(i) Once employees are in the same cadre, the distinction between direct recruits and promotees disappears for the purpose of equal treatment in payment of Time Bound Pay Scales. The 'birth marks' shall have no relevance in this regard.

(ii) Where an employee, in accordance with the due process, exercises his option to change his induction post to a higher post and surrenders the benefits already availed by him in the lower post, the department cannot unilaterally cancel such sanction without issuing any show cause notice or affording him an opportunity of hearing. Such action would be considered contrary to the principles of natural justice.

(iii) In the absence of any misrepresentation or fraud on part of the employee, recovery of any amount paid to an employee due to misinterpretation by the employer, especially after a lapse of several years, is impermissible in law.

11. As such, the respondents have erred in cancelling the change of the induction post of the petitioner from Test Mechanic to



JE/Testing. Having induced the petitioner to surrender his earlier benefits and accept the change in induction post, the respondents cannot now resile from their stand to his detriment. Such action would fall foul of Articles 14 and 16 of the Constitution.

12. In view of the above discussions, the present writ petition is allowed. The impugned Office Order dated 19.11.2015 (Annexure P-12), the impugned reply dated 27.04.2017 (Annexure P-19), and the impugned order of recovery dated 10.08.2017 (Annexure P-20) are hereby quashed and set-aside.

13. Further, the respondents are directed to:

(i) Restore the induction post of the petitioner from Test Mechanic to JE/Testing as sanctioned vide Office Order No.5 dated 24.01.2011 (Annexure P-4), with all consequential benefits;

(ii) Refund the amount of Rs.46,047/- recovered from the petitioner along with interest @ 6% per annum from the date of recovery till the date of actual payment;

(iii) Grant all consequential benefits arising from the above directions within three months from the date of receipt of a certified copy of this order.

14. Pending miscellaneous application(s), if any, shall stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

20.01.2026

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No