

Before Surya Kant, J.

RATTAN CHAND,—Petitioner

versus

P.S.E.B. PATIALA AND OTHERS,—Respondents

CWP No. 2587 of 2009

12th August, 2010

Constitution of India, 1950—Art.226—Appointment of petitioner as an Assistant Lineman—Grant of time-bound promotional scale on completion of 9/16 years service in terms of a policy decision—Offer of promotion to post of Lineman not accepted—Retirement on attaining age of superannuation—Whether declining offer of promotion to post of Lineman petitioner incurred any disqualification to draw time bound promotional scales earlier granted to him—Circular dated 26th July, 1990 provides that if an employee is offered ‘promotion’ and he refuses to accept & foregoes the same, in that event, employee is not entitled for promotional pay scale—Circular nowhere provides that a promotion offered after 16 years of service would take away service benefit given to an employee on completion of 9 years’ service—Petitioner never refusing to accept promotion before he was granted time bound promotional pay scales—Subsequent offer for promotion cannot take away time bound promotional scales which were rightly granted—No opportunity of hearing before passing order—Violative of principles of natural justice—Petition allowed with cost of Rs. 10,000.

Held, that the clarificatory Circular dated 26th July, 1990 nowhere provides nor it can lead to such absurd consequences that a promotion offered after 16 years of service would take away the service benefit given to an employee on completion of 9 years’ service. Since the petitioner never refused to accept the promotion before he was granted the time bound promotional pay scales on completion of 9/16 years of service, the subsequent offer for such promotion and that too at the fag end of his career, cannot take away the time bound promotional scales which were rightly granted to him being a stagnated employee.

(Para 10)

Further held, that the impugned action of the respondents deserves to be struck down also being violative of the principles of natural justice. The withdrawal of the promotional pay scales has far-reaching civil consequences including reduction in the petitioner's pension and other retiral dues. Unfortunately, the respondents have acted with such a closed mind that they did not deem it proper to hear the petitioner before passing the order under challenge and that too at the time of his farewell on retirement.

(Para 11)

Further held, that the respondents withdrew the promotional pay scales without any notice to petitioner. He still expected justice and represented the authorities, followed by more than one reminders. The respondents deliberately slept over the matter and took no decision until commanded by this Court in the previous writ petition. The respondents, thus, cannot take advantage of their own *per se* illegal action. Secondly, the impugned action has led to reduction of the petitioner's monthly pension which undoubtedly gives rise to a recurring cause of action in his favour. Thirdly and factually, there is no delay on the part of the petitioner for the reason that the impugned speaking order was passed on 23rd December, 2008 and conveyed to the petitioner,—*vide* memo dated 15th January, 2009. Immediate thereafter the petitioner filed the present writ petition in February, 2009.

(Para 13)

Further held, that firstly, the petitioner has specifically sought the quashing of the order dated 23rd December, 2008, whereby his claim for restoration of the aforesaid pay scales has been turned down. Secondly, he has sought a writ of mandamus to direct the respondents "*to release the whole of the amount of pensionary benefits in accordance with law*". Thirdly, he has also sought refund of the amount deducted from his Gratuity. All the reliefs taken together cannot be granted without directing the respondents to restore the promotional pay scales as were granted to the petitioner on completion of 9/16 years of service. That apart, a writ court, while exercising its jurisdiction under Article 226 of the Constitution, is not bound by such technicalities and in order to bestow complete justice to the aggrieved, it can appropriately mould the relief.

(Para 14)

Arvind Kashyap, *Advocate for the petitioner.*

Vikas Chatrath, *Advocate for the respondents.*

SURYA KANT J. (ORAL)

(1) The petitioner seeks quashing of the order dated 23rd December, 2008 (Annexure P5), whereby his representation for withdrawal of the order, recalling the time-bound promotional scale earlier granted to him on completion of 9/16 years of service, has been turned down. The petitioner also seeks consequential direction to the respondents to refund the amount of Rs. 1,27,431 which was illegally deducted from the arrears of his Death-Cum-Retirement Gratuity (DCRG) at the time of his retirement.

(2) The petitioner joined the erstwhile Punjab State Electricity Board as an Assistant Lineman on 15th June, 1977. He did not get any promotion till the respondent—Board notified the time-bound promotional scales for its stagnated employees on 23rd April, 1990 (Annexure P1). In terms of that policy, the petitioner was granted time bound promotional scale on completion of 9 years of service with effect from 11th October, 1990 followed by the 2nd time-bound promotional scale granted on completion of 16 years of service with effect from 18th June, 1993. It further appears that the petitioner was offered promotion to the post of Lineman,—*vide* letter dated 27th December, 2001 which he did not accept due to ‘familial circumstances’. Soon thereafter, the petitioner retired with effect from 30th September, 2002 on attaining the age of superannuation.

(3) It is not disputed by the respondents in their counter-affidavit that at the time of retirement when the petitioner was to be paid his pension and other retiral dues including DCRG, a sum of Rs. 1,27,431 was forcibly deducted, without any ‘show cause notice’ or opportunity of hearing to him, on the pretext that having foregone his promotion as Lineman offered on 27th December, 2001, the petitioner became ineligible/disentitled to draw the time-bound promotional scales earlier granted to him on completion of 9/16 years of service, respectively.

(4) The petitioner protested and represented to the respondent-authorities. As the representation did not find favour with the respondents, the petitioner approached this Court by way of CWP No. 17126 of 2008 which was disposed of with a direction to the respondent to decide the legal notice served on his behalf. In compliance thereto that the impugned order dated 23rd December, 2008 (Annexure P5) has been passed and conveyed to the petitioner through his counsel,—*vide* memo dated 15th January, 2009 (Annexure P6), giving rise to this writ petition.

(5) I have heard the learned counsel for the parties and perused the records.

(6) The solitary question that arises for consideration is as to whether the petitioner having declined the offer for promotion to the post of Lineman on 27th December, 2001 incurred any disqualification to draw the time-bound promotional scales which were earlier granted to him under the policy decision dated 23rd April, 1990 ?

(7) In order to justify their action, the respondents have placed reliance upon the circular dated 26th July, 1990 (Annexure R3/1) issued by the Finance Section of the Board as a "clarification in respect of grant of promotional/devised promotional scale". The relevant clause of the said Circular reads as follows :—

"Subject : Clarification in respect of grant of Promotional/Devised Promotional Scale.

Please refer to this office order No. 197/Fin/PRC-1988, Office Order No. 198/Fin/PRC-1988 both dated 23rd April, 1990 and office order No. 201/PRC/Fin-1988 dated 3rd May, 1990, regarding the grant of promotional/Devised Promotional scales. Certain points have been raised for clarification in respect of grant of promotional/Devised Promotional Scales, the procedure for which was laid down in the office order dated 23rd April, 1990. The matter has been considered in detail and the following clarifications are given to the various points :—

Points	Clarification
6. What will be effect if an employee foregoes a promotion	The employee who foregoes his promotion will not be entitled for promotional scale on completion of 9/16 years service."

(8) There is no room to doubt from the plain language of the Circular that if an employee is offered 'promotion' and he refuses to accept and foregoes the same, in that event, the employee is not entitled for the promotional pay scale on completion of 9/16 years of service. Point No. 6 (reproduced above) of the subject Circular is absolutely consistent

and in conformity with the Board's policy decision dated 23rd April, 1990 whereby time-bound promotional scales were decided to be granted to those employees who despite completion of 9 or 16 years of service were stagnated without any promotion. When an employee gets promotion as per his seniority/merit and/or eligibility, he cannot be said to be stagnated and obviously would not be entitled to the time-bound promotional scale. Conversely, an eligible employee cannot be denied the time bound promotional scale even after completion of 9 or 16 years of service merely on the assumption that he was likely to get promotion in near future.

(9) In the case in hand, the 1st and 2nd time-bound promotional scales were granted to the petitioner on 11th October, 1990 and 18th June, 1993, respectively. There is indeed no denial to the fact that the petitioner got no offer for promotion as Lineman before 18th June, 1993. As a matter of fact the first ever promotion offered to the petitioner was on 27th December, 2001 only, which he declined to accept may be due to the fact that he was nearing retirement and was not willing to shift to a new place of posting.

(10) The clarificatory Circular dated 26th July, 1990 (Annexure R3/1) nowhere provides nor it can lead to such absurd consequences that a promotion offered after 16 years of service would take away the service benefit given to an employee on completion of 9 years' service. Since the petitioner never refused to accept the promotion before he was granted the time-bound promotional pay scales on completion of 9/16 years of service, the subsequent offer for such promotion and that too at the fag end of his career, cannot take away the time bound promotional scales which were rightly granted to him being a stagnated employee.

(11) The impugned action of the respondents deserves to be struck down also being violative of the principles of natural justice. The withdrawal of the promotional pay scales has far-reaching civil consequences including reduction in the petitioner's pension and other retiral dues. Unfortunately, the respondents have acted with such a closed mind that they did not deem it proper to hear the petitioner before passing the order under challenge and that too at the time of his farewell on retirement.

(12) Learned Counsel for the respondents would still urge that the petitioner's challenge to the impugned action is hopelessly time-barred at this stage and suffers from delay and laches. It is argued that the petitioner has "no continuous or recurring cause of action" since the recovery was effected from him at once in the year 2002. Reliance is placed upon a decision of the Hon'ble Supreme Court in **Raja Ram Maize Products versus Industrial Court of M.P. (1)**.

(13) I, however, do not find any merit in the contention noticed above. Firstly, the respondents withdrew the promotional pay scales without any notice to petitioner. He still expected justice and represented the authorities, followed by more than one reminders. The respondents deliberately slept over the matter and took no decision until commanded by this Court in the previous writ petition. The respondents, thus, cannot take advantage of their own *per se* illegal action. Secondly, the impugned action has led to reduction of the petitioner's monthly pension which undoubtedly gives rise to a recurring cause of action in his favour. Thirdly and factually, there is no delay on the part of the petitioner for the reason that the impugned speaking order was passed on 23rd December, 2008 and conveyed to the petitioner,—*vide* memo dated 15th January, 2009 (Annexure P6). Immediate thereafter the petitioner filed the present writ petition in February, 2009.

(14) It is then urged that the 'restoration' of time-bound promotional pay scales being not a specific prayer made in this writ petition, this Court cannot grant such a relief to the petitioner. I find no force in this contention too for more than one reason. Firstly, the petitioner has specifically sought the quashing of the order dated 23rd December, 2008 (Annexure P5), whereby, his claim for restoration of the aforesaid pay scales has been turned down. Secondly, he has sought a writ of mandamus to direct the respondents "to release the whole of the amount of pensionary benefits in accordance with law." Thirdly, he has also sought refund of the amount deducted from his Gratuity. All the reliefs taken together cannot be granted without directing the respondents to restore the promotional pay-scales as were granted to the petitioner on completion of 9/16 years of service. That apart, a writ court, while exercising its jurisdiction under Article 226 of the Constitution, is not bound by such technicalities and in order to bestow complete justice to the aggrieved, it can appropriately mould the relief.

(1) (2001) 4 S.C.C. 492

(15) Learned counsel for the respondents maintains that if the writ petition is read as a whole, the petitioner is aggrieved *qua* the recovery only. In my considered view, the objection is totally based upon hyper-technicalities and that too not supported by the pleadings.

(16) The petitioner, in so many words, has averred in paras 2 to 6 of the writ petition that he was rightly granted the time-bound scales on completion of 9/16 years service. In addition, having regard to the plea taken by the respondents, moreover, once this Court has come to the conclusion that the petitioner was rightly granted the time-bound promotional pay scales, there is no rhyme or reason to deprive him from the consequential relief merely for want of twisted averments of the facts already stated in the petition.

(17) For the reasons afore-stated, the writ petition is allowed ; the impugned order dated 11th October, 2002 (Annexure P2) and the subsequent speaking order dated 23rd December, 2008 (Annexure P5) are hereby quashed. The respondents are directed to restore the time-bound promotional pay scales to the petitioner w.e.f. 11th October, 1990 and 18th June, 1993, respectively on completion of 9/16 years of his service, besides refunding the amount of Rs. 1,27,431 deducted from the DCRG of the petitioner. The respondents are further directed to re-fix the pension and other retiral dues of the petitioner accordingly. The petitioner shall be paid the deducted amount as well as the arrears of the promotional pay-scales and pension etc. along with interest @ 9% per annum. In addition, the petitioner shall also be entitled to cost of Rs. 10,000 which the respondents shall be at liberty to recover from the officer(s)/official(s) who raised the objections leading to the withdrawal of the promotional pay scales from the petitioner. The needful shall be done within a period of *three months* from the date of receipt of a certified copy of this order.

(18) Ordered accordingly.

(19) **Dasti.**