

Before M.M. Kumar & Jora Singh, JJ.

SHAM LABHAYA,—Petitioner

versus

**PUNJAB STATE ELECTRICITY THROUGH ITS SECRETARY
AND ANOTHER,—Respondents**

C.W.P. No. 3457 of 2006

17th September, 2008

Constitution of India, 1950—Art. 226—Punjab State Electricity Board (Revised Pay) Regulations, 1988—Reg. 8—Placement of petitioner in revised scale of post of UDC with effect from 1st January, 1986—No benefit of promotion to petitioner from post of UDC to Assistant Revenue Accountant—Petitioner further promoted to post of Internal Auditor having same pay scale of Assistant Revenue Accountant—Grant of time bound promotional scale by giving two increments on completion of 16 years service—Pay scale of petitioner continued same nor he was given benefit of placement in higher scale—Order of Deputy Chief Engineer reducing benefit of one increment to petitioner quashed being not sustainable in eye of law.

Held, that a perusal of circular dated 3rd September, 1993 would clearly show that in a case where an employee has already availed the benefit of placement to the time bound promotional/devised promotional scale(s) and such an employee is promoted to the next higher post, then his pay would be fixed at the next stage in the same scale without any change in the date of his increment. If the aforementioned provision is correctly applied to the petitioner, then it becomes evident that the petitioner was granted the scale of 1,800—3,200 with effect from 9th September, 1986 which was the revised pay scale of the post of Upper Division Clerk with effect from 1st January, 1986 and he also became entitled to be placed in that scale of 1,800—3,200 on the completion of 16 years service on 15th January, 1991. He was further promoted to the post of Internal Auditor on 6th June, 1995 in the same pay scale of 1,800—3,200. The Finance Circular

dated 3rd September, 1993 would not apply to the case of the petitioner as he has not been promoted and his pay scale continued to be Rs. 1,800—3,200 nor he was given the benefit of placement in the higher scale of 1,800—3,200. Therefore, impugned order dated 17th January, 2006 passed by respondent No. 2 is not sustainable in the eyes of law.

(Para 8)

Ashwani Talwar, Advocate, *for the petitioner.*

H.S. Sran, Advocate, *for respondent Nos. 1 and 2.*

M.M. KUMAR, J.

(1) The petitioner has approached this Court with a prayer for quashing order dated 17th January, 2006 (Annexure P.5) passed by respondent No. 2 whereby the benefit of two increments granted to him *vide* order dated 15th January, 1991 has been reduced to one increment.

(2) Brief facts of the case are that the petitioner joined as Upper Division Clerk in the office of respondent Board on 31st June, 1974. He was promoted/posted as Assistant Revenue Accountant/Circle Assistant on 19th July, 1985. He was further promoted as Internal Auditor on 6th June, 1995. In view of the time bound promotional scale scheme introduced by Finance Circular No. 17/90 *vide* order dated 15th January, 1991 (Annexure P.1), the petitioner was granted the time bound promotional scale on completion of 16 years service in the Board and accordingly two annual increments were given to him. His pay was fixed in the scale of 1,800—3,200. At the time of grant of second promotional scale the petitioner was posted as Assistant Revenue Accountant with effect from 19th July, 1985 and continued to be the same after the grant of scale. He was not actually promoted to any higher post nor he was assigned any higher responsibility. On 12th May, 2004 (Annexure P.2) the respondent board passed an order reducing the benefit of two increments granted to the petitioner *vide* office order dated 15th June, 1991 to one. Accordingly a consequential order was passed by fixing his pay with effect from 31st May, 1990. The order dated 12th May, 2004 was challenged by the petitioner in this Court by filing CWP No. 8773 of 2004 which was disposed of by this Court on 26th April, 2005. The Division Bench while quashing order dated 12th May, 2004 directed the respondents to pass a fresh order in

accordance with law after hearing the petitioner. The petitioner made a representation on 5th September, 2005 (Annexure P.4) which has been declined *vide* order dated 17th January, 2006 (Annexure P.5). The afore-said order is subject matter of challenge in the instant petition.

(3) The stand taken by the respondent Board in the written statement is that the petitioner was already granted first promotion as Assistant Revenue Accountant on 9th July, 1985 and therefore he was not entitled to the first time bound promotional scale. It is further stated that petitioner completed 16 years of service on 31st May, 1990. The petitioner was promoted from the post of UDC to that of Assistant Revenue Accountant on 9th July, 1985 in the pay scale of Rs. 620—1,200 which scale was revised to 1,800—3,200 with effect from 1st January, 1986. As the next promotion from the post of Assistant Revenue Accountant is to that of Senior Assistant/Internal Auditor having the same pay scale of 1,800—3,200 which is equivalent to the post of Assistant Revenue Clerk i.e. the lower post and therefore on completion of 16 years of Service on 31st May, 1990 the petitioner could not get second promotion. Therefore, according to the instructions dated 3rd September, 1993, the petitioner was entitled to only one increment whereas due to inadvertence he was granted two increments. The said mistake was rectified *vide* order dated 12th May, 2004 (Annexure P.2).

(4) When the matter came up for hearing on 9th September, 2008, the following order was passed :

“During the course of arguments it has transpired that the circular dated 3rd September, 1993 (Annexure P.6) has placed reliance on another circular to which reference has been made in para 3. On a close scrutiny, we find that the aforementioned circular is to be applied when an employee is promoted to the next higher post and his pay is to be fixed in that scale. However, in the present case the petitioner has been promoted from the post of Upper Division Clerk to the post of Assistant Revenue Accountant who started getting the pay scale of 1,800—3,200 with effect from 1st January, 1986 which scale, he also becomes entitled to on 31st May, 1990 i.e. after completing 16 years of service. The circular Annexure P.6 cannot be applied to the case of the petitioner as it talks of promotion to the next higher post

i.e. promotion to the post which carries pay scale higher than 1,800—3,200.

After hearing learned counsel for the parties, we find that it would be appropriate if we asked the counsel for the Board to find out as to whether, the Board is following the policy of passing such like orders, in all the cases or it is only an individual case. Mr. Sran shall obtain instructions in this regard.....”

(5) The learned counsel for the Board could not point out any case of such a nature. Therefore, we proceed to dispose of the matter.

(6) We have heard the learned counsel for the parties at some length and have gone through the paper book with their able assistance. It is admitted position that on his posting from the post of UDC to that of Assitant Revenue Accountant on 9th July, 1985 the petitioner was not granted any increments in terms of Regulation 8 of the Punjab State Electricity Board (Revised Pay) Regulation, 1988 which would be admissible to an employee on his promotion. The action of the respondents in reducing the benefit of two increments to one increment is not sustainable in view of the provisions contained in Para 3 of Finance Circular No. 17/90, dated 23rd April, 1990 which reads thus :

“At the time of placement in the time bound promotional/devised promotional scale, the employee will be allowed promotional increment(s), as are admissible on promotion under the provisions of Regulation 8 of the PSEB (Revised Pay) Regulations, 1988 and as amended from time to time.”

(7) It is thus evident that when the petitioner was promoted from the post of Assistant Revenue Accountant to that of Senior Assistant/Internal Auditor on 6th June, 1995, his pay scale continued to be the same at 1,800—3,200. The Circular dated 3rd September, 1993 (Annexure P-6) has not been correctly interpreted and applied to the case of the petitioner. It would be necessary to read operative part of the Circular which is as under :—

“In case an employee has already availed of the benefit of placement to the time bound promotional/devised promotional scale(s) and is promoted to the next higher post,

his pay would be fixed at the next stage in the same scale and his next date of increment will remain unchanged. In case, he is promoted to a post which is lower than the scale in which he has already been placed on time bound promotional devised promotional scale; he will not be entitled to any increment and continue to draw the pay of the scale in which he has already been placed.”

(8) A perusal of the afore-mentioned para would clearly show that in a case where an employee has already availed the benefit of placement to the time bound promotional/devised promotional scale(s) and such an employee is promoted to the next higher post, then his pay would be fixed at the next stage in the same scale without any change in the date of his increment. If the afore-mentioned provision is correctly applied to the petitioner, then it becomes evident that the petitioner was granted the scale of 1,800—3,200 with effect from 9th September, 1986 which was the revised pay scale of the post of Upper Division Clerk with effect from 1st January, 1986 and he also became entitled to be placed in that scale of 1,800—3,200 on the completion of 16 years service on 15th January, 1991. He was further promoted to the post of Internal Auditor on 6th June, 1995 in the same pay scale of 1,800—3,200. The Finance Circular No. 34/93, dated 3rd September, 1993, would not apply to the case of the petitioner as he has not been promoted and his pay scale continued to be Rs. 1,800—3,200 nor he was given the benefit of placement in the higher scale of Rs. 1,800—3,200. Therefore, impugned order dated 17th January, 2006 (Annexure P.5) passed by the respondent No. 2, is not sustainable in the eyes of law. We further find that the Circular dated 23rd April, 1990 was amended later on 3rd September, 1993 and the amendment does not suggest that it is to operate retrospectively with effect from 23rd April, 1990. For this additional reason, we also find that any instruction contrary to Circular dated 23rd April, 1990 issued at the hands of respondents, in any case, cannot be applied to the case of the petitioner.

(9) In view of the above, the writ petition succeeds and the same is allowed. Order dated 17th January, 2006 (Annexure P.5) is quashed. Respondents are directed to release the difference of pay to the petitioner within a period of two months from the date of receipt of certified copy of this order.

R.N.R.