

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. LPA No.883 of 2012 (O&M)

Executive Engineer, Punjab State Electricity Board

..... Appellant

Versus

Paul Singh JE (Retd) and others

..... Respondents

2. LPA No.884 of 2012 (O&M)

Executive Engineer, Punjab State Power Corporation Ltd.

..... Appellant

Versus

Mulakh Raj and others

..... Respondents

3. LPA No.885 of 2012 (O&M)

Executive Engineer, Punjab State Electricity Board

..... Appellant

Versus

Subhash Chander Sharma and others

..... Respondents

4. LPA No.886 of 2012 (O&M)

Executive Engineer, Punjab State Power Corporation Ltd.

..... Appellant

Versus

Sukhdev Dutt and others

..... Respondents

Date of Decision: 03.07.2012

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Rajiv Malhotra, Advocate,
for the appellant.

HEMANT GUPTA, J.

1. This order shall dispose of LPA No.883 of 2012 titled as Executive Engineer, Punjab State Electricity Board vs. Paul Singh JE (Retd) and others, LPA No.884 of 2012 titled as Executive Engineer, Punjab State Power Corporation Ltd. vs. Mulakh Raj and others, LPA No.885 of 2012 titled as Executive Engineer, Punjab State Electricity Board vs. Subhash Chander Sharma and others & LPA No.886 of 2012 titled as Executive Engineer, Punjab State Power Corporation Ltd. vs. Sukhdev Dutt & Others arising out of common order passed by the learned Single Judge of this Court on 24.01.2012 whereby writ petitioners were found entitled to promotional increments in terms of the Circular dated 23.04.1990.

2. Though before the learned Single Judge, it was admitted that the petitioners fulfilled the criteria mentioned in the Circular but it was argued that a decision of this Court rendered in second appeal cannot be applied in a writ proceeding. The learned Single Judge found that since the petitioners fulfilled the criteria mentioned in the Circular, therefore, the petitioners are entitled to promotional increments.

3. Before this Court, learned counsel for the appellant relied upon a Circular dated 17.3.2010 to contend that passing of a departmental examination is a condition precedent for grant of promotional increment. It is contended that since the writ petitioners have not qualified the departmental examination, therefore, they are not entitled to promotional increments. Reliance is also placed on a judgment in ***Bhakra Beas Management Board vs. Krishan Kumar Vij and another, (2010) 8 SCC***

701 to contend that the conditions as are specified in the Scheme for the grant of increments are required to be satisfied before the promotional increments are released to the employees.

4. We do not find any merit in any of the argument raised by learned counsel for the appellant. The writ petitioners have retired much prior to the circular as issued on March 2010. Therefore, the claim of the writ petitioners for promotional increments is required to be considered in terms of the Circular dated 23.04.1990 i.e. Circular applicable at the time of their retirement. In the aforesaid Circular, there is a specific clause that the employees who do not fulfill the qualification of passing of the examination essential for promotion shall also be placed into time devised promotional scale. The relevant clause reads as under:-

“7. In case of employees who do not fulfill the qualification/passing of examination essential for their promotion to the next higher post, they shall also be placed into time promotional/devised promotional scale to be specified by the Board in the Scheduled as referred to in para 5 (above).”

5. The pre-condition of passing of the departmental examination came subsequently in the year 2010. Therefore, such condition cannot be applied in case of the writ petitioners, the claim of whom is required to be considered in terms of the circular applicable before their retirement.

6. The judgment in Krishan Kumar Vij's case (supra) is not applicable to the present case. The eligibility of the writ petitioners have to be examined in terms of the circular. There is no condition in the circular which restricts the right of promotional increments to a person who has not passed the examination. Such is the view of this Court in RSA No.2726 of

2008 titled as Punjab State Elec. Board & Ors. vs. Jiwan Singh decided on 09.09.2008 and RSA No.4046 of 2005 titled as Chaman Lal vs. Punjab State Elec. Board & Ors. decided on 03.04.2006.

7. In view thereof, we do not find any illegality in the order passed by the learned Single Judge which could warrant interference from this Court.

8. Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJIV NARAIN RAINA)
JUDGE

03.07.2012
manju

सत्यमेव जयते