

SUPREME COURT OF INDIA

Er. Gurcharan Singh Grewal

Vs.

Punjab State Electricity Board

C.A.Nos.65-67 of 2009

(Altamas Kabir and Markandey Katju JJ.)

09.01.2009

JUDGMENT

Altamas Kabir, J.

1. Leave granted.
2. These three appeals arise out of orders dated 23rd September, 2005, 21st April, 2006 and 23rd February, 2007, relating to Civil Writ Petition No.16811 of 2003 and Review Petitions filed therein before the High Court of Punjab and Haryana at Chandigarh.
3. The appellants herein filed the aforesaid writ petition, inter alia, for the following relief:-

“(iv) Quashing the order no. 202 dated 9.7.2002 (Annexure Indian Penal Code-3) passed by the respondent No.3 withdrawing the benefits of pay fixation already granted to petitioners Satinder Singh and directing the respondent to step-up the pay of the petitioners to that of their junior Sh. Ram Prakash Shori and the petitioners may be granted all arrears of Pay, retiral benefits and other consequential benefits with interest @ 18% per annum.”

4. In the written statement/counter affidavit filed on behalf of the respondent, Punjab State Electricity Board, and its officers, it was stated in Paragraph 7 that the relief claimed by the petitioner had already been granted. When the writ petition came up for final hearing the High Court on 23rd September, 2005, disposed of the same by passing the following order :-

“In view of the averments made in paragraph 7 of the written statement, the writ petition has been rendered infructuous. Disposed of as such.”

5. Subsequently, a review petition came to be filed by the writ petitioners before the High Court claiming that the statement made in paragraph 7 of the written statement, concerned only the writ petitioner No.2, and without considering the case of the respondent No.1 on a

separate footing he too was denied relief, although he was not covered by such statement. When the Review Petition came up for hearing on 21st April, 2006, learned counsel for the petitioners was not present and on the submissions made on behalf of the respondents that no relief had been claimed in the writ petition on behalf of the petitioner No.1, the High Court dismissed the review petition by passing the following order:-

“Learned counsel for the respondent submits that the relief claimed in the review petition is not claimed in the main petition for petitioner No.1. Therefore, the review petition is not maintainable. Dismissed.”

6. On dismissal of the review petition in the absence of the counsel for the petitioners, a miscellaneous application was filed for modification of the order passed in the review petition, which was also dismissed by the High Court on 23rd February, 2007.

7. It is against the said three orders of the High Court that these appeals have been filed.

8. Appearing for the appellants Mr.Nidesh Gupta learned senior advocate submitted that when the writ petition was filed on behalf of both the appellants, it was only natural that the reliefs therein had been claimed in respect of both and it could not be confined to the appellant No.2 alone, as was done in the instant case, merely on account of the statement made in the written statement of the respondents that the grievance of the appellant No.2 had already been addressed. Mr.Gupta submitted that the appellants were similarly situated and it was their common ground that they were receiving lesser salary than their junior. Mr. Gupta submitted that Paragraph 7 of the writ petition was absolutely clear that it was the common case of the appellants that since they were receiving lesser pay than their junior, Shri Ram Prakash Shori, who was receiving a higher salary, their salaries were also required to be stepped up to that of Shri Shori. Mr. Gupta also urged that the position would be further clarified from the question of law formulated in Paragraph 9 of the writ petition. It was urged that it was, therefore, wrong to say that no case had been made out on behalf of the appellant No.1 and hence no relief could be granted in his favour.

9. Referring to prayer (iv) in the writ petition, Mr.Gupta urged that specific reference had been made to the appellant No.2, Satinder Singh, since his pay had been stepped up but was, thereafter, reduced by an order dated 9th July, 2002, passed by the respondent No.3 withdrawing the benefit of pay fixation which had already been given to him. Mr. Gupta urged that the prayer, however, was not confined to the appellant No.2 alone, but to the appellant No.1 also, as otherwise the very purpose of him being made petitioner No.1 in the writ petition would be meaningless. Mr. Gupta submitted that the High Court was misled into relying on the statement made in paragraph 7 of the written statement filed by the respondent in dismissing the writ petition as far as the appellant No.1 was concerned. Even while considering the review petition, in the absence of learned counsel for the appellants the Court was persuaded to accept the statement made on behalf of the respondent that relief claimed in the review petition had not been claimed in the writ petition itself as far as the appellant No.1 is concerned and the review petition was not, therefore, maintainable. Mr. Gupta submitted that the orders passed on the writ petition and review petitions were passed

on an erroneous understanding that the appellant No.1 had not prayed for any relief in the writ petition and he was not therefore entitled to the reliefs prayed for by the appellants.

10. Mr. Jagdish Singh Chhabra, who appeared for the Punjab State Electricity Board and its authorities, reiterated the submissions made before the High Court that in the absence of any case being made out or any relief being claimed on behalf of the appellant No.1 in the writ petition the High Court had quite correctly dismissed the writ petition on the ground that no relief could be given to the appellant No.1 and the relief prayed for by the appellant No.2 had already been given to him.

11. Mr. Chhabra also attempted to justify the disparity in the pay of Shri Shori and the appellant No.1 by urging that the appellant No. 1 had been granted the promotional scale with effect from 1st January,1996, where the benefits of increment in the scale were lower. On the other hand, Shri Shori who joined the services of the Board in 1974, was granted the promotional scale on 17th May, 2006, with effect from 1st September, 2001, when the increments and the pay-scales were higher. Mr. Chhabra submitted that it is the disparity in the incremental benefits that led to the anomaly of the appellant No.1 getting a lower salary in the promotional scale.

12. Having regard to the submissions made on behalf of the respective parties, we have little hesitation in accepting Mr. Gupta's submissions that since the writ petition had been jointly filed on behalf of the appellants, whose interest was common, the prayer therein should not have been confined to the appellant No.2 alone and that the High Court should have granted relief to the appellant No.1 also by directing that his pay also be stepped up to that of his junior, Shri R.P. Shori. Although, this question does not appear to have been gone into by the High Court for the simple reason that the writ petition was disposed of only on the averments contained in paragraph 7 of the written statement filed on behalf of respondents that the grievance of the appellant No.2 duly addressed, there ought to have been at least some discussion in the judgment of the High Court regarding the claim of the appellant No.1. Unfortunately, the case of the appellant No.1 was not considered at all by the High Court.

13. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No.1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No.1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No.1 was also stepped up to that of Shri Shori, as appears to have been done in the case of the appellant No.2.

14. We are unable to accept the reasoning of the High Court in this regard or the submissions made in support thereof by Mr. Chhabra, since the very object to be achieved is to bring the pay scale of the appellant No.1 at par with that of his junior. We are clearly of the opinion

that the reasoning of the High Court was erroneous and the appellant No.1 was also entitled to the same benefits of pay parity with Shri Shori as has been granted to the appellant No.2.

15. We, accordingly, allow the appeals and set aside the judgment of the High Court. Consequently, the writ petition is also allowed and the respondents are directed to extend the benefits of pay parity with Shri Shori to the appellant No.1, as was done in the case of the appellant No.2.

16. The writ petition is allowed to the aforesaid extent.

17. There will, however, be no order as to costs.