

SUPREME COURT OF INDIA

Bhakra Beas Management Board

Vs.

Krishan Kumar Vij

C.A.No.3439 of 2007

(Dalveer Bhandari and Deepak Verma JJ.)

19.08.2010

JUDGEMENT

Deepak Verma, J.

1. This Judgment and Order shall govern disposal of C.A.No.3439 of 2007, C.A.No.3438 of 2007, C.A. No. 3418 of 2007 and C.A. No.3440 of 2007 as they project common question of law to be answered by this Court. Precisely, we are required to consider whether in the light of the Order/Circular issued by the appellant- Bhakra Beas Management Board (hereinafter shall be called as 'Board'), respondent No.1 - employee would be entitled to the benefit of higher scale of pay/upgradation/stepping up of salary sans pre- requisite qualification for the grant of the same.

2. For the sake of convenience, facts appearing in Civil Appeal No.3439 of 2007 are being taken into consideration. Respondent No.1, Krishan Kumar Vij had initially joined the services of the State of Punjab, Department of Irrigation as Tracer in 1949. He was thereafter promoted as a Draftsman in the year 1950.

“He was further promoted as Divisional Head Draftsman, some time in the year 1962. Thereafter, he was transferred in the services of the Board. There also, he earned promotion as Circle Head Draftsman and then as the Assistant Design Engineer. Regular promotion to respondent No.1 on the post of Asstt.

Design Engineer in Punjab Service of Engineers (II) was granted with retrospective effect from 1.6.1976.

Finally, on attaining the age of superannuation, he retired from service on 31.1.1987. Even though, respondent no.1 had earned several promotions, while in service, he still complained of stagnation in service as he was not able to earn further promotion.

This was the cause for triggering off the instant litigation.”

3. Brief history giving rise to this litigation is as under:-

4. State of Punjab was of the opinion that there existed stagnation amongst various cadres of regular employees. Pursuant thereto, an Office Order was issued by the Punjab State Electricity Board (for short 'PSEB') on 23.4.1990, adopted by the Board vide Order dated 26.06.1992. The aims and objects of the said Office Order issued by the PSEB are reproduced hereinbelow:

“The Punjab State Electricity Board have been seized of the problems of stagnation prevailing amongst the various cadres of regular employees and its consequent effect in their efficiency. It is felt that an employee should under ideal service conditions get normally two promotions from his initial recruitment level during his service. However, this is not always possible owing to non-availability of promotional posts. The aspiration of the employees can however, be met to a great extent, by allowing time-bound higher scales to the employees at two stages in their service career. The Punjab State Electricity Board has, therefore, decided to introduce scheme to allow time-bound benefit of promotional scales after the completion of 9/16 years of regular service in the PSEB, provided the maximum benefit on being placed in the time-bound promotional scales does not exceed five increments including promotional increment(s) to the subordinate employees having a maximum scale upto Rs.3500/- except the categories where the benefit of time-bound placement to higher scale is applicable on the Punjab Government pattern as in the case of teachers etc.”

5. The said scheme of time-bound benefit of promotional scale commenced from 1.1.1986 but the payment of arrears was spread over two years i.e. arrears from 1.1.1986 to 28.2.1989 were to be paid in 1990-91 and 1991-1992. As per this Circular, the benefit of first time-bound placement would be available to an employee on completion of 9 years of regular service on the post and second time-bound promotional scale would be available after completion of sixteen years of service. Para 7 thereof refers to those employees who do not fulfil the qualification/passing of examination essential for promotion to the next higher post, but they shall also be placed into the time bound promotional/devised promotional scale to be specified by the Board in the schedule as referred to in para 5. It has been mentioned in para 5 that the Board shall draw schedules indicating the lowest post(s) for direct recruitment in respect of various cadres for the purpose of this order, separately.

6. Pursuant to the said order, another order was issued by P.S.E.B. on 24.5.1990 (hereinafter for brevity shall be referred to as 'Order of 1990') specifying the promotional scales for Assistant Engineers and the conditions precedent for eligibility thereof, adopted by the Board.

7. The relevant part of the said Order of 1990, is reproduced hereinbelow:

“2. The above higher scales will only be available to the directly recruited Assistant Engineers as per regulation. (emphasis supplied by us) 7-A(i) read with regulation-9 of PSEB, Service of 7-A(i) read with Regulation-9 of PSEB, Service of Engineers(Electrical)Regulation-1965 Engineers (Civil) Regulations - 1965 The cases of Assistant Engineers appointed by promotion as per provisions of the Regulation 7-A (ii) read with Regulation - 10 of the Regulations ibid will be governed by Guidelines circulated vide Secretary Finance Officer Order No. 197/PRC/FIN-1988 dated 23.04.1990.

Note: The departmental (Technical Subordinate and Drawing Staff) who while in service of the Board have been promoted to the post of AE(Electrical) (Civil) against quota reserved for promotion from amongst them under Regulation 7-a(ii)read with Regulation 7-(A)ii) read with Regulation 10 (7) of the PSEB----- Regulation 10 (4) of the PSEB----- Service of Engineers (Electrical) Regulations-1965 Service of Engineers (Civil) Regulations - 1965 shall be deemed to have been appointed as Assistant Engineers like the Assistant Engineers appointed through direct appointment under Regulation 7 A (i) read with Regulation - 9 of the Regulation 7-a(i) read with Regulation-9 of the Service of Engineers (Electrical) Service of Engineers (Civil) Ibid for the purpose of grant of above next higher scales after 9/16 years of regular service as Assistant Engineer/Assistant Executive Engineer/ Executive Engineer, prescribed period to be counted from the date of joining the post of Assistant Engineer on regular basis. Similarly, Graduates in Electrical/ MechanicalEngineering/ AMIE qualified Civil Engineering/AMIE qualified hands who possesses this qualification before joining the service of the Board and subsequently promoted as Assistant Engineers against quota reserved for promotion from amongst them in terms of provisions of Regulation 7-a(ii)read with Regulation 10(9) of Regulation 7-a(ii) read with Regulation 10(6) of Service of Engineers(Electrical) Regulations-1965 Service of Engineers (Civil) Regulations-1965 will be treated likewise. "

Regulation 7 A has wrongly been described in the Order/Circulars instead, it be read as Regulation 7 (a), wherever it appears.”

8. Clause 2 of the aforesaid Order of 1990 categorically stipulates that it would be applicable only to directly recruited Assistant Engineers as per Regulation 7(a)(i) read with Regulation 9 of the Regulations and to none others.

9. In the case in hand, we are concerned only with Civil Engineers, directly recruited to the posts of Assistant Engineers (Civil).

10. Pursuant to the above two Orders, respondent no.1 had made several representations claiming grant of time-bound promotional scale of Rs.4500-6300 w.e.f. 1.1.1986.

11. Since several representations made by respondent no.1 did not bring required result, he was constrained to file C.W.P. No. 6945 of 2003 in the High Court of Punjab and Haryana, which came to be disposed of on 8.5.2003, with a direction to the Board to decide the representation in the light of relevant law, rules and instructions by passing a speaking order. In the aforesaid Writ Petition, no notice was issued to the appellant-Board. In consequence of the directions passed by the High Court as mentioned hereinabove, respondent No.1's representation was considered at length by the Board but was decided against him on 22.8.2003 which was again challenged by respondent No.1 before the Division Bench of the High Court of Punjab and Haryana. The High Court vide the impugned judgment and order passed on 6.12.2004 allowed respondent No.1's Writ Petition whereby and whereunder the order dated 22.8.2003, passed by the Board was set aside with further direction to grant to the said respondent the next higher pay scale after completion of 16 years of service. It is this order which is being assailed by the Board before us.

12. According to respondent No.1, since he had completed requisite length of service of 16 years on the post of Assistant Design Engineer, thus had become entitled for the higher pay scale. It appears, he took the cue for filing the 2nd Writ Petition on the strength of orders passed by the High Court in another petition filed by other employee, as mentioned hereinbelow.

13. It is pertinent to mention here that one of such employees Rajinder Singh Patpatia had also independently filed C.W.P.No. 9162 of 1994, which was allowed on 26.8.1999 by the learned Single Judge of the High Court of Punjab and Haryana.

“Letters Patent Appeal No.1127 of 1999 filed by the Board, against the aforesaid judgment and order of the learned Single Judge was dismissed on 13.1.2001 by the Division Bench of the said High Court.

Challenging the order of Division Bench as also that of the learned Single Judge of the High Court, the Board had preferred Special Leave Petition No.2393 of 2002 in this Court, which was dismissed on 15.2.2002. An application for review of the said order was filed by the Board in this Court but was similarly dismissed and met the same fate.”

14. We have heard learned Senior Counsel Shri Jawahar Lal Gupta, Mr. D.S. Nehra and Ms. Nidhi Gupta, Advocate for the appellant-Board. Shri Mahabir Singh, Ms. Reena Singh, Mr.Sanjeev Kumar, Mr. Mahipal, advocates, Mr. T.S. Doabia, Sr. Advocate, Mr.Anil Mittal, Mr.Rajiv Kataria, advocates appeared for the respondents at length and perused the records.

15. Mr. Jawahar Lal Gupta, learned Senior Counsel appearing for appellant strenuously challenged, attacked and hammered the impugned judgment broadly on the following grounds:

“(i) Respondent No.1's Writ Petition could not have been entertained, belatedly after a lapse of 8 years, thus was liable to be dismissed on the ground of delay and laches.

(ii) Respondent No.1 herein had already earned 3/4 promotions before he attained the age of superannuation. Thus, his case would not fall under the category of stagnated employee.

(iii) Order of 1990 has wrongly been interpreted by the Division Bench of the High Court.

(iv) Clause 2 of Order of 1990 clearly stipulated that the same would be applicable only to directly recruited Assistant Engineers (Civil) and to none others. Admittedly, respondent No.1 does not fall in that category, consequently would not be entitled for it.

(v) The Division Bench also lost sight of the fact that unless an employee had pre-requisite qualification for promotion, the question of grant of time-bound higher pay scale or upgradation in salary, would not arise.”

16. Per contra, the learned counsel for respondent no.1 contended that issue is no more res integra in the light of the order passed in the matter of Rajinder Singh Patpatia by learned Single Judge of the High Court, confirmed in LPA by Division Bench, further approved by this Court, by dismissing the Board's Special Leave Petition at the threshold and then rejection of review petition. It has been contended by them that stagnation would be applicable at all stages and to all the employees, who have not been granted promotion, otherwise the very purpose of the word 'stagnation' would stand defeated.

17. They have also submitted before us that there was no question of granting promotion to them but the actual relief on the strength of the order/circular which could have been granted to the employees was stepping up, upgradation/ revision of the pay scale without being actually promoted to next higher post.

“In other words, they have contended that no interference is called for in the impugned judgment and the appeals being devoid of merits and substance, deserve to be dismissed.”

18. As mentioned herein above while granting relief to respondent no.1, Division Bench has placed reliance on the earlier Division Bench judgment rendered in the case of Rajinder Singh Patpatia, whereby and whereunder the Board's Writ Appeal was dismissed and the order dated 26.8.1999 passed by Learned Single Judge was confirmed. Special Leave Petition (C) No. 2393 of 2002 was dismissed on 15.2.2002 and a Review Petition filed by the Board also came to be dismissed by this Court.

“They have thus contended that the same reliefs ought to have been granted to respondent no.1 also as he was similarly situated and the High Court committed no error in doing so.”

19. Thus, we are required to first consider this aspect of the matter, where earlier Special Leave Petition and Review having been dismissed at the preliminary stage by this Court, what would be its effect on the impugned judgment. Whether the same can still be assailed and challenged even though, earlier view of the High Court in identical matter has a seal of approval of this Court.

20. However, this issue should not detain us any longer in view of well considered judgment of a three- Judge Bench of this Court reported in wherein this Court categorically held that mere dismissal of a Special Leave Petition at a preliminary stage does not constitute a binding precedent, and accordingly, any order passed by the High Court placing reliance on earlier order, can still be challenged subsequently.

21. The relevant para of the aforesaid judgment in Kunhayammed (supra) authored by most illustrious learned Judge (Hon'ble Mr. Justice R.C. Lahoti as he then was) in his lucid and concise language has held as under: (at page 377) :

“27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country.

No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court.

The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the

doctrine of merger does not apply. The Court sometimes leaves the question of law open.

Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court."

It was further held in para 40 reproduced hereinbelow :

"40. In any case, the (page 382) dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order."

Thus, according to the law laid down by the Bench of three learned Judges of this Court, it is clear that dismissal of a matter by this Court at the threshold, with non-speaking order, would not fall in the category of binding precedent. Meaning thereby that the impugned order of the Division Bench can still be challenged on merits by the Appellant Board. Thus, the earlier order of the High Court and this Court passed in Rajinder Singh Patpatia's case, creates no bar from re-examining the matter on merits."

22. We have already mentioned hereinabove with regard to Clause 2 of Order of 1990 read with Regulation 9 which restricts the benefit only to directly recruited Assistant Engineers/Assistant Executive Engineers, meaning thereby that one must possess the requisite qualification as prescribed under the Regulations, then only the benefit would accrue to the employee, not otherwise.

23. The note appended thereto clearly stipulates that even those employees who were promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be deemed to have been appointed by direct recruitment. This legal fiction is limited. It is applicable only to those employees who have been promoted in conformity with the provisions contained in clause 4. Thus, the employees who had passed both parts (A) and (B) of the AMIE Examination and were promoted against 9% posts reserved for that class were fictionally treated as direct recruits. Thus, it clearly stipulates that only those Assistant Engineers who were either directly recruited or had acquired the requisite qualifications prescribed for direct recruitment were chosen to be granted higher scale if they had been promoted against the post falling within the quota of 9% of the cadre strength of the said post.

24. Order of 1990 contemplates that it is to be followed as per Regulation which provides that only such persons as have been promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be treated as direct recruits. In other words, it does not apply to the promotees irrespective of their academic qualifications nor they can be treated at par with the direct recruits. There was a purpose of treating them so, otherwise, it would have the effect of violating the constitutional mandate contained in Articles 14 and 16 of the Constitution of India, on the premise that unequals have been treated as equals. It is with that intention, to avoid criticism and future litigation that such persons who possessed qualifications for direct recruitment and could be promoted against the posts falling vacant, would become entitled to claim the benefit. Since respondent no.1 did not fall in this category, obviously, he was not entitled to the higher scale.

25. Thus, there appears to be no illegality committed by the Board in rejecting respondent no.1's representation. So, in our considered opinion, the High Court has clearly erred in setting aside and quashing the same. Critical examination of the impugned judgment passed by the Division Bench of the High Court completely defeats primary purpose of the Order of 1990 and provisions applicable to the employees of the Board. No doubt, it is true that the Order of 1990 was issued only with an intention to remove the stagnation but this would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he does not fulfil pre-requisite qualifications for holding the higher post.

“In other words, if he possesses the required qualifications but is unable to get the higher post on account of non-availability of such post, then only he can be categorised as suffering from stagnation as per Order of 23.4.1990.”

26. Obviously, an employee who does not fulfil the qualification as per Regulation 10(4) for the higher post would be ineligible for promotion and/or higher pay scale. In that eventuality, such an employee cannot complain of stagnation.

27. Moreover, even while adopting the Order of 1990, it was made clear by the Board vide its Order dated 26.6.1992 that the time bound promotional/devised promotional scales after 9/16 years' service are admissible only in respect of the posts in which the initial induction is through direct recruitment.

28. It is pertinent to mention here that the Regulations had been notified in the year 1965.

“Respondent no.1 was in service with the Board for two decades or so after promulgation of the Regulations.

All the employees claiming benefit of the Order of 1990 had retired long after the promulgation of the Regulations. Thus, they were fully aware and conscious of the fact that the relevant Regulation puts a partial embargo and impediment on their future career for promotion. They were aware that unless they are able to acquire these requisite qualifications, the benefit of the Order of 1990 cannot be extended to

them. Even though, they had enough opportunity and time to do so, but they did not improve their respective qualification. In such a fact situation, they cannot complain of stagnation.

They have to thank their own stars that despite having knowledge of the provisions of the Regulations applicable to them, they did not make any attempt to acquire the qualifications.”

29. It is also to be noted that even though respondent no.1 was junior to Rajinder Singh Patpatia who was granted relief by the High Court, still respondent No.1 took such a long time to approach the High Court. The aforesaid legal and factual aspect of the matter specially the interpretation of the order of 1990 read with the Regulations was not properly and reasonably appreciated by the Division Bench. In this regard, it is necessary to quote the stand of the appellant-Board right from the very beginning when it had proceeded to reject the representation of respondent no.1.

30. The relevant portion of the reason of the Board so assigned to reject the respondent's representation is reproduced hereinbelow:

“in view of the principles/features enunciated in the scheme for grant of time-bound placement into the promotional/devised promotional scale after 9/16 years of regular service as introduced on the PSEB pattern, the case of Diploma Holder SDOs does not fall within the ambit of grant of 1st and 2nd Time-bound Promotional Scale after completion of 9/16 years regular service as admissible to the directly recruited Degree Holder AEs and departmental employees (Technical Subordinate and Drawings Staff) who have been promoted on the basis of the AMIE/Degree in Engineering against their share quota on the PSEB pattern.”

The aforesaid reasoning of the Board entirely rests on the Order of 1990 and the Regulations applicable to such employees.”

31. During the course of the hearing, a question was posed to the learned counsel for the appellant Board:- if an employee is able to acquire the requisite qualification and has also served the Board for the minimum required length of years as Assistant Engineer whether such an employee would be entitled to get the benefit of the order of 1990 or not.

32. Mr. J.L Gupta, learned senior counsel appearing for the Board categorically submitted that such employees would be entitled to get the benefit provided, they fulfilled the requisite conditions.

“Learned counsel for the appellant has agreed that if an employee has acquired qualifications for grant of promotion and has suffered stagnation, then he would be entitled for stepping up/revision of his pay scale.

Meaning thereby that all such employees who have cleared both parts of the AMIE examination, but have not put in required experience of working as Assistant Engineer in consonance with the order of 1990 and the Regulations, the Board would be fully justified in rejecting their claims.”

33. If the interpretation of the High Court to the Order of 1990 is to be implemented, then it would lead to unsustainable consequences. It would then mean that every Assistant Engineer irrespective of his conduct, qualifications, performance or behaviour would become entitled to the higher scale on completion of particular length of service. If that be so, then even those employees with poor service record and doubtful integrity would also become entitled to claim higher scale merely because they had completed a particular length of service. If such an interpretation is to be given to the Order of 1990, then it would not only be improper but would also be against public policy and interest of the Board. It is too well settled that a statute or any enacting provision must be so construed as to make it effective and operative. Any such construction which reduces the statute to a futility has to be avoided.

34. It has been stated by Lord Dunedin, in the case of *Murray v. IRC* (1918) AC 541 at p. 553 that, 'it is our duty to make what we can of statutes, knowing that they are meant to be operative and not inept and nothing short of impossibility should in my judgment allow a judge to declare a statute unworkable'. The principle was reiterated by him in a later judgment in the case of *Whitney v. IRC*², where he observed, 'a statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable.

35. The aforesaid observations make it abundantly clear that the courts will, therefore, reject the construction which is likely to defeat the plain intention of the legislature even though there may be some inexactitude in the language used. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided.

36. In view of this, to attain the fruitful results of the Order of 1990 we have to give it a meaningful and proper construction which would achieve the object for which it was passed, rather than to give a narrower construction which may defeat the very purpose of passing the said order.

37. In somewhat similar circumstances, a Bench of two learned Judges of this Court in the case of *M.V. Joshi v. M.U. Shimpi*³ eloquently said as under:

“... But these rules do not in any way affect the fundamental principles of interpretation, namely, that the primary test is - the language employed in the Act and when the words are clear and plain the court is bound to accept the expressed intention of the legislature.”

At the cost of repetition, we reiterate that the clear and plain reading of the Order of 1990 is as has been interpreted by us hereinabove.”

38. No doubt, it is true that the Order of 1990 is not happily worded, but even then the only inevitable conclusion that can be deciphered from the same is that the benefit thereof would accrue to only those directly recruited Assistant Engineers/Assistant Executive Engineers who have pre-requisite qualification for appointment to the higher post.

“Obviously, if an employee does not have the required qualification, then under what circumstances he would be entitled to claim benefit of the Order of 1990. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. In our considered opinion, the Order of 1990 cannot be logically interpreted in any other manner than what we have done. It is also too well settled that when the words of the statute are clear, plain or unambiguous and are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning only which serves the cause and purpose irrespective of the consequences.”

39. Yet, another question that draws our attention is with regard to delay and laches. In fact, respondent no.1's petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal.

40. It is not in dispute that all the respondents of various appeals have since demitted the office on attaining the age of superannuation. While they were in service, may be on account of orders of the High Court, to save itself from being hauled up for committing contempt of court, Board has made payments to them towards arrears etc. After such a long lapse of time, more so, when the respondents have already retired, it will be harsh on our part to direct recovery thereof. Thus, we direct that the amounts already paid to the respondents would not be recovered by the Board.

41. At the cost of repetition, we may reiterate that the effect of the Order of 1990 read with the Regulations would be that only those employees who fulfilled the pre-requisite qualification for further promotion along with certain length of service as required would only be entitled to the benefit as per the Order of 1990. The other Assistant Engineers, even though they had completed the requisite length of service would not be entitled to claim the benefit, unless they had fulfilled the basic qualifications and minimum experience as required.

42. In the facts and circumstances of the case, we are of the considered opinion that the impugned order cannot be sustained. It has to be set aside and quashed and we accordingly do so. The appeals are accordingly allowed as indicated hereinabove. The parties to bear their costs.

¹2000(6) SCC 359

²(1926) AC 37 at p.52

³AIR 1961 SC 1494 = 1961 (3) SCR 986