

SUPREME COURT OF INDIA

Haryana Power Generation Corporation Limited

Vs.

Harkesh Chand

C.A.No.100 of 2013

(K.S.Radhakrishnan and Dipak Misra JJ.)

07.01.2013

JUDGMENT

DIPAK MISRA, J.

1. Leave granted.

2. The present appeal by special leave is directed against the judgment and order dated 26th July, 2010 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No. 865 of 2010 whereby the Division Bench concurred with the view expressed by the learned single Judge in CWP No. 1383 of 2009 whereunder the respondents were held entitled for grant of Assured Career Progression Scale (for short “the ACP Scale”) on completion of ten years of service which included training as apprentice.

3. The facts as have been undraped are that the three respondents invoked the writ jurisdiction of the High Court claiming the benefit of the second ACP Scale on completion of twenty years of service on the base that their period of training as apprentice had to be taken into consideration. Such a claim was founded on the assertion that they had joined as trainees between 17.4.1987 to 30.4.1987 and were subsequently absorbed and brought into the cadre. On completion of ten years from the date they entered the service as trainees, the first ACP Scale was granted to them. However, when conferring of the benefit of the second ACP Scale arose, the same was not extended to them. The said action of the employer compelled them to knock at the doors of the High Court and during the pendency of the writ petition, by proceeding dated 23.4.2009, the benefits conferred under the first ACP Scale

was withdrawn referring to a notification issued on 11.3.1990 which stipulated in clause (4) that the trainees referred to therein would be entitled to increment only on successful completion of their training and in case of Plant Attendant Grade-II and Technician Grade- II, increment on successful completion of training would be granted but without arrears. Though the writ petition was confined to grant of the second ACP Scale, yet the learned single Judge required the counsel for both the sides to address about the justifiability of withdrawal of the benefit of the first ACP Scale and decided both the facets. The said exercise was undertaken by the learned single Judge as the primal issue in respect of both the ACP Scales rested on the question whether the period spent during training could be counted towards regular satisfactory service or not.

4. It is not in dispute that the respondents were appointed as Apprentice ITI Trainees by the erstwhile Haryana State Electricity Board (for short “the Board”) for a period of two years on fixed pay of Rs.350/- per month in 1987. The Board, vide Office Order No. 706/Finance dated 27.2.1998, set out the eligibility criteria for conferment of benefit of the ACP Scales. There is no dispute that the respondents, who were Technicians Grade-II, were not excluded from the application of the same. The only question that really emerged for consideration before the learned single Judge as well as by the Division Bench was the relevant date from which the regular satisfactory service was to be computed for grant of ACP Scales. The learned single Judge, after referring to the clause and the communications issued by the Board from time to time, came to hold that the regular satisfactory service would include the period spent by the persons as trainees. As regards the withdrawal of the first ACP Scale, the learned single Judge, referring to the notification dated 14.3.1990 and especially to clause (4) which dealt with grant of increment and thereafter applying the same reasoning, came to hold that clause (4) would have no operation to override the Office Order dated 27.2.1998 which provides how the regular satisfactory service could be reckoned and, eventually, came to hold that the ACP Scale that had been withdrawn during the pendency of the writ petition was absolutely erroneous. Being of this view, he quashed the withdrawal order and issued a writ of mandamus commanding the respondents therein to grant both the first and second ACP Scales reckoning the period of training towards the regular satisfactory service.

5. In the Letters Patent Appeal, the Division Bench analysed the anatomy of clause 3(q) dealing with grant of the second ACP Scale and the eligibility criteria, placed reliance on the memorandum dated 27.3.1991 circulated to all the departments to

the effect that the period of training of all employees should be treated as duty for all intents and purposes, referred to the memo dated 2.1.1992 which stated that the period of training shall be treated as duty for all intents and purposes, i.e., seniority, leave, etc. and for experience in service for the purpose of promotion and further relying on the memorandum dated 20.1.1992 which has laid down that such period would be counted as experience in service for the purposes of promotion, concurred with the opinion expressed by the learned single Judge and declined to entertain the appeal. Hence, the present appeal by the appellants.

6. We have heard Mr. Shivendra Dwivedi, learned counsel for the appellants, and Mr. R.K. Kapoor, learned counsel appearing for the respondents.

7. At the very outset, we may note that the respondents were granted the first ACP Scale on 16.6.1997, 13.1.1999 and 30.6.1998 with effect from 1.5.1997 instead of 1.11.1998 as on that date, they completed ten years of service. The same was withdrawn during the pendency of the writ petition where the grievance pertained to non-grant of the second ACP Scale in terms of the Scheme dated 27.2.1998 introduced by the Board. It is also apt to note here that the respondents have already been granted second ACP Scale with effect from 1.11.2008. Thus, the only grievance is that the period shall differ in respect of each respondent if the training period is not computed.

8. In the backdrop of the aforesaid narrow controversy, we think it apposite to scrutinize the various documents brought on record and how they are to be understood, appreciated and interpreted regard being had to the contextual meaning of the term 'training'.

9. The respondent No. 1 was appointed as Apprentice ITI Trainee vide letter dated 28.3.1987 by the Board. It was stipulated in the said letter that during the period of training, he would get a fixed pay of Rs.350/- per month and on successful completion of the training, he may be appointed as Plant Attendant Grade-II/Technician Grade-II in the scale of Rs.400-700 on temporary basis and he would be exclusively posted in the Thermal Organisation. It was also stipulated therein that he would enter into an agreement with the Board that he would serve the Board for at least five years after successful completion of training and in case he would leave the service of the Board, he would remit the entire cost incurred by the Board in connection with the training during the period and thereafter during the course of his appointment together with interest. Similar letter was issued to the other respondents. Vide Office Order No. 303/EOM/G-263 dated 6.6.1989,

number of persons including the respondents were appointed as Officiating Technicians Grade-II in the pay-scale of 950- 20-1150-ED-25-1500 with effect from the dates mentioned against their names. The respondents were appointed on regular basis with effect from 30.10.1988, 17.10.1988 and 25.10.1988 respectively with the stipulation that they would remain on probation for a period of two years.

10. As the factual narration would exposit, the Board, in exercise of power under Section 79 of the Electricity (Supply) Act, 1948, issued a notification on 14.3.1990 by bringing certain amendments in the recruitment and promotion for employees working in Thermal Power Projects. The relevant part of the amendment reads as follows: -

“Para 3(i) of Part-A shall be substituted and read as follows:

50% posts shall be filled-up by direct recruitment from amongst persons having passed 2 years ITI Course with Matric as minimum qualification. Such directly recruited Plant attendant Gr-II shall remain on training for a period of two years in regular pay scale of Plant Attendant Gr-II to be allowed by the Board from time to time. The Competent Authority may terminate the services of a Plant Attendant Gr-II (Trainee) without notice and without assigning any reason, if his work and conduct during the period of training is not found satisfactory.”

“Para-3 (i) of Part-B shall be substituted and read as follows:

50% posts shall be filled-up by direct recruitment from amongst persons having passed 2 years ITI Course with Middle examination with 2 years experience or ITI one year course and Middle Examination and with 3 years experience on similar works. Such directly recruitment Technician Gr-II shall remain on training for a period of two years in the regular pay scale to be allowed by the Board from time to time. The Competent Authority may terminate the services of a Technician Gr-II (Trainee) without notice and without assigning any reason, if his work and conduct during period of training, is not found satisfactory.

The trainees referred to above shall be entitled to the increment only on successful completion of their training. In case of Plant attendant Gr-II and Technician Gr-II, increment on successful completion of training shall be granted, but without arrears.”

[underlining is ours]

11. We have referred to the substituted clauses in extenso to appreciate the use of the word 'training' therein after appointment to a post and the stipulation relating to the grant of increment. In the context of this notification, the policy relating to ACP Scale granted under the ACP Scheme and the clarificatory communications are to be understood.

12. Coming back to the narration, recruitment and promotion policy as amended, the F.A. C.A.O., PTPS, HSE, Panipat, vide Memo dated 7.12.1990 sought certain clarification in relation to grant of increments. The clarification sought was to the following effect: -

“In this connection it may please be clarified whether the period of training in all the cases will count towards increment, leave salary and pension. The above clarification may please be issued at the earliest so that the cases are dealt with accordingly on account of grant of increment and leave salary etc.”

13. On 27.3.1991, the Secretary, HSEB, clarified the position by stating as follows:
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“Board vide its notification No. 57, 58, 59, 60/Reg-137, dated 14.03.1990 and Notification No. 76/Reg-39/L, dated 13.09.90 have granted regular pay scales to the trainee(s) of all categories w.e.f. 29.1.1990. In this respect the Field Officers have sought for a clarification whether the period spent by the trainee on training is to be treated as duty for all intents and purposes or not.

After considering the pros and cons of the case, it has been decided that the period spent by the trainee(s) of all categories on training shall be treated as duty for all intents and purposes i.e. grant of increment in accordance with the provisions as contained in the Policy, leave and seniority i.e. from the date of joining in this cadre.”

[emphasis supplied]

14. In continuation of the aforesaid clarificatory memorandum dated 27.3.1991, the Board issued another memorandum on 22.11.1991. The said clarification related to

grant of regular pay scale to the trainees of all categories and in that letter, it has been stated as follows: -

“In this connection, it is stated that some field offices have sought for a clarification as to whether the benefit for the grant of annual increment under the provisions as contained in letter dated 27.3.91 is to be given to all trainee(s), who were appointed during the year, 1987, 1988 1989 etc.”

15. After referring to the issue which required clarification, the Board clarified that it has decided that monetary benefits of regular pay scale had to be granted to the trainee(s) of all categories with effect from 29.1.1990 but the benefit of grant of annual increment under the provisions as contained in letter dated 27.3.1991 has to be given to the trainee(s) of all categories whose services have been regularized on 29.1.1991 or thereafter. It had been further stated that the consequential benefits would accrue only from the date on which the regular pay scale has been granted to the trainees of all categories.

16. As the facts have been further uncurtained, on 27.1.1998, the Board introduced the Assured Career Progression Scheme (for short “the ACP Scheme”) with the objective to provide such Board employees who fall within the scope of the Scheme at least two financial upgradations including the financial upgradation, if any, availed by such Board employees as a consequence of the functional promotion. Clause 2 excludes certain categories of employees, namely, appointed on ad hoc basis, work charged basis, part time paid out of contingencies and a daily wager from getting the benefit of the Scheme. Clause 3 deals with the definitions. It defines in Clause 3(b) “direct recruit fresh entrant”. The same, being relevant, is reproduced below: -

“(b) “Direct Recruited Fresh Entrant” with reference to a post or a Board Employee means the post on which such Board employee was recruited as a regular and direct recruitee in the Board service and is in continuous employment of Board since such recruitment;”

17. Clause 5 deals with the eligibility for grant of ACP Scales. That being the thrust of the controversy the relevant part of the said clause is reproduced below: -

“5. Eligibility for Grant of ACP Scales:

(1) Every Board employee who, after a regular satisfactory service for a minimum period of 10 years, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as direct recruited fresh entrant: -

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawal of pay; be eligible for placement into the First ACP scale with reference to him.

(2) Every Board employee who, after a regular satisfactory service for a minimum period of 20 years, has not got more than one financial upgradation in terms of grant of pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995 on which he was recruited as a direct recruited fresh entrant: -

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequences of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawal of pay; be eligible for placement into the First ACP scale with reference to him.

Provided that grant of ACP scale shall also be considered financial upgradation for the purpose of this para.

NOTE : For the purposes of this scheme regular satisfactory service would mean continuous service counting towards seniority under H.S.E.B. including continuous service in P.S.E.B. before reorganization, commencing from the date on which the board employee joined his service after being recruited through the prescribed procedure or rules regulations etc. for regular recruitment, in the cadre in which he is working at the time of being

considered his eligibility for grant of ACP scales under this scheme and further fulfilling all the recruitments prescribed for determining the suitability of grant of ACP scales. The period spent on ad hoc basis; work charged basis; contingent basis and daily wages will not be counted for the purpose of counting of prescribed length of “Regular Satisfactory Service” for this scheme.”

[emphasis supplied]

18. In this backdrop, it is to be seen whether the period spent in apprenticeship would be counted towards regular satisfactory service. The learned single Judge as well as the Division Bench has returned a finding in favour of the respondents solely on the basis of the clarificatory letters and communications. Before we advert to the quintessential tenor of the said communications, it is necessitous to understand the nature of appointment, the concept of an apprentice, his rights under the law and the basic ingredients of regular satisfactory service.

19. As has been stated earlier, the respondents were appointed as apprentices ITI trainee for a period of two years. Each of them were paid a fixed salary of Rs.350/- . After completion of the training, it was mentioned in the letter of appointment that they may be appointed to the post of Officiating Technical Grade-II in the pay scale of Rs.400/700 on temporary basis.

20. Section 2(aa) of the Apprentices Act, 1961 (for short “the 1961 Act”) defines “apprentice” which means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

21. Section 2(aaa) defines “apprenticeship training” which means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. Section 18 clearly states that apprentices are trainees and not workers.

22. In U.P. State Electricity Board v. Shiv Mohan Singh and Another[1], A.K. Mathur, J., speaking for Hegde, J. and himself, while dealing with the status of apprentice, has stated thus: -

“Therefore a combined reading of the sections as well as Rules makes it clear that apprentices are only persons undergoing training and during that

training they are entitled to get a particular stipend, they have to work for fixed hours and at the end of period of training they have to appear in the test and a certificate is issued to them. There is no obligation on the part of the employer to give them any employment whatsoever. The position of the apprentice remains as an apprentice trainee and during the period of training they will not be treated as workmen. Only obligation on the part of the employer is to impart them training as per provisions of the Act and Rules and to pay them stipend as required under Rule 11 and beyond that there is no obligation on the part of the employer to accept them as his employees and give them the status of workmen. There is no relation of master and servant or employer and employee.”

23. Be it noted, in the said case, in paragraph 51, it has been laid down that the 1961 Act is a complete code in itself and it lays down the conditions of the apprentices, their tenure, their terms and conditions and their obligations and what are the obligations of the employer. It also lays down that the apprentices are trainees and not workmen and if any dispute arises, then the settlement has to be made by the Apprenticeship Advisor as per Section 20 of the Apprentices Act, 1961 and his decision thereof is final. The nature and character of the apprentice is nothing but that of a trainee and he is supposed to enter into a contract and by virtue of that contract, he is to serve for a fixed period on a fixed stipend and that does not change the character of the apprentice to that of a workman under the employer where he is undergoing the apprenticeship training. Sub-section (4) of Section 4 only lays down that such contract should be registered with the Apprenticeship Adviser, but by non-registration of the contract, the position of the apprentice is not changed to that of a workman. From the scheme of the Act, the apprentice is recruited for the purpose of training as defined in Section 2(aa) of the Apprentices Act, 1961 and from the language employed in Sections 6 and 7, it is more than clear that the nature and character of the apprentice is that of a trainee only and on the expiry of the training, there is no corresponding obligation on the part of the employer to employ him.

24. Thereafter, the majority, referring to Section 22 of the Act, opined as follows: -

“Section 22 makes it abundantly clear that at the end of the apprenticeship training, it is not obligatory on the part of the employer to offer an employment to an apprentice who has completed the period of apprenticeship. It is only if the terms of the contract of the apprenticeship lay down a condition that on successful completion of an apprenticeship

training, an employer will offer him an employment then it is obligatory on the part of the employer to do so. If there is no such condition stipulated in the apprenticeship contract then the employer cannot be compelled to offer employment to such apprentice. At the same time, it is not obligatory on the part of the apprentice to serve that employer if there is no such stipulation to this effect. So it is a mutual thing and it depends on the terms of contract. The survey of all these provisions of the Acts and the Rules as mentioned above, makes it clear that the character and status of apprentice remains the same and he does not become workman and labour laws are not attracted.”

S.B. Sinha, J., in his concurring opinion, has stated thus: - “Moreover in terms of Section 22 of the Act, the employer has no statutory liability to give employment to an apprentice.”

25. In *Narinder Kumar and Others v. The State of Punjab and Others*[2], a two-Judge Bench dwelt upon the letter of appointment of apprentices and came to hold that the employer was bound to appoint the apprentices in the available vacancies because of Section 22(2) of the 1961 Act and the contractual obligations arising out of para 2 of the letter of appointment which stated that the apprentices shall be absorbed in the department if there are vacancies. Be it noted, emphasis was laid on the nature of the contract.

26. In *Dhampur Sugar Mills Ltd. v. Bhola Singh*[3], while dealing with an award passed by the Labour Court under the U.P. Industrial Disputes Act relating to apprentices, a two-Judge Bench opined thus: -

“14. If the respondent was appointed in terms of the Apprentices Act, 1961, he will not be a workman, as has been held by this Court in *Mukesh K. Tripathi v. Senior Divisional Manager, LIC*[4] and *U.P. SEB v. Shiv Mohan Singh* (supra).

15. In terms of the provisions of the Apprentices Act, 1961, a trainee or an apprentice has no right to be absorbed in services.”

27. We have referred to the aforesaid pronouncements solely for the purpose that an apprentice does not have a statutory right to claim an appointment and the employer is not under any statutory obligation to give him employment. However, if the terms of the contract of apprenticeship lay down a condition that on successful completion of apprenticeship an employer would offer him an

employment, then it is obligatory on his part to do so. In the absence of such a condition, there is no obligation. It depends on the terms of the contract. In the case at hand, as the letter of appointment would show, the employer had only stated that on successful completion of the training, the apprentice may be appointed as Plant Attendant/Technician Grade-II. Thus, it was not a mandatory term incorporated in the agreement casting an obligation on the employer to appoint him.

28. Having dealt with the rights of an apprentice, we may presently proceed to dwell upon the issue whether any of the clarificatory letters/circulars conferred any benefit on these employees so that they could be treated to be in regular service. On a perusal of the notification issued by the Board, it is clear as crystal that it relates to two categories of direct recruits who shall undergo training for a period of two years in the regular pay scale. Thus, the said notification has no application to apprentices who avail the training. In the clarification issued on 27.3.1991, there is a mention with regard to the regular pay scale in the notification dated 13.9.1990. The query was limited to the issue whether the training period of such a trainee would be counted for all intents and purposes or not. In that context, it was clarified that the period spent by the apprentice of all categories shall be treated as duty for all intents and purposes, i.e., for grant of increment in accordance with the provisions as contained in the policy, leave and seniority, i.e., from the date of joining in this cadre. It is worth noting that the Board had issued further clarification that the benefit of grant of annual increment under the provisions as contained in the letter dated 27.3.1991 was to be given to the trainees of all categories whose services had been regularized on 29.1.1991 or thereafter, and the consequential benefit should accrue only from the date on which the regular pay scale has been granted to the trainees of all categories. Clause 5 of the ACP Scheme which provides for eligibility criteria, in its note stipulates that for the purpose of the scheme, regular satisfactory service would mean continuous service counting towards seniority under the Board including the continuous service in PSEB before reorganization. It has been clearly stated that period spent on ad hoc basis, work charged basis, contingent basis and daily wages would not be counted for the purpose of counting the prescribed length of regular satisfactory service for the scheme. The respondents, as is evident, were appointed on different dates, i.e., 30.10.1988, 17.10.1988 and 25.10.1988 respectively as Technicians Grade-II in the pay scale on regular basis. Their period of probation was for two years. The letter/circular dated 27.3.1991 emphasizes the terms from the date of joining in the cadre. As is perceptible from the clarificatory letter dated 27.3.1991, the trainees of all categories have been granted regular pay scale from 21.1.1990 and decision had been taken that the training period or period spent as trainees of all categories shall

be treated as duty for all intents and purposes. On 20th of January, 1992, it was further clarified that the period spent by the trainees of all categories on training would be counted as experience in service for the purposes of promotion. On a scrutiny of the promotion policy, the ACP Scheme and the communications, we find that the High Court has erred in its appreciation of the contents of the promotion policy and the conditions incorporated in the scheme and the clarificatory letters issued from time to time and their essential purport. The Board, on 14.3.1990, substituted and added certain clauses to the recruitment and promotion policy. We have reproduced the same earlier and on a proper scrutiny, it is perceivable that 50% posts are to be filled by direct recruitment from amongst persons who have passed 2 years ITI course with Matric as minimum qualification and such directly recruited Plant Attendants Grade-II would remain on training for a period of two years on the regular pay scale of Plant Attendant Grade-II to be allowed by the Board from time to time, and the other 50% is to be filled up by direct recruitment from amongst persons who have passed two years ITI course with middle examination with two years experience or ITI one year course with middle examination and with three years experience of similar works. Such directly recruited Technician Grade-II shall remain on training for a period of two years in the regular pay scale. The clarificatory letter has to be read in the said context and we are disposed to think so as the persons appointed under the policy in the regular pay scale are required to go on training. The clarification sought related to grant of increment and computation of period that is spent as trainee in the capacity of Plant Attendant Grade-II and in that context, the clarification issued was that the training of all categories on training would be counted. It is worthy to note that the respondents were not recruited under the said policy. They were appointed as apprentices ITI trainee on 28.3.1987 and they were not given any kind of post. It is only mentioned that they may be appointed as Plant Attendant Grade-II/Technician Grade-II. Thereafter, they were appointed on different dates as Officiating Technician Grade-II. The regular pay scale was given from the date of appointment. Prior to that, it was a fixed pay. They were not working on a post. They did not belong to any cadre. In fact, they were not recruited and, hence, the term trainee which has been referred to in various clarificatory letters has been misconstrued by the High Court.

29. In view of the aforesaid analysis, we conclude and hold that the judgments rendered by the learned single Judge as well as by the Division Bench are unsustainable and are, accordingly, set aside. However, we clarify that if any financial benefit had been availed by the respondents, the same shall not be recovered, but their dates for grant of ACP Scale shall remain as determined by the

appellants. Accordingly, the appeal is disposed of. The parties shall bear their respective costs.

[1] (2004) 8 SCC 402

[2] AIR 1985 SC 275

[3] (2005) 2 SCC 470

[4] (2004) 8 SCC 387