

(2014) 07 P&H CK 0654

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 530 of 2014 (O&M)

Onkar Singh

APPELLANT

Vs

Punjab State Power Corporation Limited

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2014) 07 P&H CK 0654

Hon'ble Judges : Jasbir Singh, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Naresh Kaushik, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Jasbir Singh, J.

Civil Misc. No. 1274-LPA of 2014

1. In view of averments made in this application, the same is allowed. Delay of 48 days in filing the appeal stands condoned.

Letters Patent Appeal No. 530 of 2014

2. This appeal has been filed against an order dated 5.12.2013 dismissing Civil Writ Petition No. 3359 of 1993 filed by the appellants. At the relevant time, the appellants were working as Special Foremen on work charge basis. By filing the above writ petition, they had claimed benefit of equal pay being paid to the Special Foremen appointed on regular basis. Their prayer was rejected by the learned Single Judge by stating that mode of entry into service for a regular employee and work charge employee is altogether different. It was noted as a matter of fact that Special Foreman (Regular) is a promotional post and to get promotion, an employee needs to have an experience of 12 years against the post of Lineman (Non-Matric), SSA (Non-Matric) & Electrician Grade-I (Distribution) and other employees need to have experience of 15 years and

Cable Jointer needs to have experience of eight years. In the case of the appellants, they were taken in service without adopting proper procedure of appointment and further they were appointed directly against the promotional post for which there was no provision in the Rules. Taking note of the above facts, the learned Single Judge, while declining relief to the appellants, has observed as under:-

I am of the considered view that the controversy and issue raised in the instant writ petition would be covered against the petitioners in the light of judgment rendered by the Hon''ble Supreme Court of India in *Bharpur Singh etc. Vs. Punjab State Electricity Board & Others* in Special Leave to Appeal (Civil) No. 19495-19496/2010 rendered on 05.01.2011. The issue in *Bharpur Singh's* case (*supra*) was also with regard to grant of similar pay scales to the holders of temporary work charged operators who had subsequently been promoted as Charge Men Assistant and Foremen at par with the regular holders of the corresponding post. It was held by the Hon''ble Supreme Court in the following terms:-

We have heard learned counsel for the parties and perused the record. In our considered view, the impugned judgment does not suffer from any legal infirmity requiring interference under Article 136 of the Constitution. The petitioners have not controverted the concurrent findings of fact that they were directly engaged by the concerned Executive Engineers without following a procedure consistent with the doctrine of equality and without insisting upon the requirement of any qualification; that regular recruitment is required to be made in accordance with the relevant statutory rules from among the persons who fulfill the conditions of eligibility and merit; that the age of superannuation of work charge employees is 60 years and that of the regular employees is 58 years and that they cannot be treated at par with regular employees. Therefore, there is no merit in the petitioners'' claim that they are entitled to be treated at par with regular employees in the matter of fixation of their pay in the regular time scale or that they are entitled to master scale and promotional scale on completion of 9 and 16 years service.

Applying the ratio of the judgment in *Bharpur Singh's* case (*Supra*), the claim raised in the instant writ petition cannot be accepted.

No benefit can enure to the petitioners in the light of Division Bench order dated 06.02.1992 passed by this Court in the case of *Krishan Lal etc. Vs. Punjab State Electricity Board* at Annexure P-4 as the issue with regard to the two posts in question carrying different qualifications, mode of recruitment etc. had never come up for consideration.

At this stage, it would be appropriate to deal with two other contentions raised by the learned counsel appearing for the petitioners. It has been argued that in relation to certain other categories, such as Junior Specialists, Assistant Junior Specialists, High Pressure Welder Foreman etc., who were also working on a

work charge basis for the two thermal plants, they have been paid salary equal to the holders of the posts, who are working on a regular basis. Counsel for the petitioners has also placed reliance upon Finance Circular dated 26.04.1990 issued by the Punjab State Electricity Board at Annexure R-5 appended along with the written statement in terms of which employees borne on work charge establishment would be entitled to the revised scales of pay applicable to the regular employees where ever corresponding posts/scales of pay on regular establishment exist.

Insofar as the other categories mentioned in para 5 of the writ petition are concerned, there are no averments made in the writ petition as regards the qualifications possessed by the holders of such categories of posts while working on a work charge basis as opposed to such employees who are working on a corresponding post on a regular basis. Without the necessary pleadings on record the plea of discrimination raised on behalf of the petitioners cannot be gone into.

As regards the circular dated 26.04.1990 at Annexure R-5 is concerned, the benefit thereof would extend only to such members borne on the work charge establishment, who otherwise possess qualifications at par with the holders of the posts working on the regular basis and have also secured employment in pursuance to a regular scheme of appointment. Such circular cannot benefit the petitioners, who do not even possess the qualifications for the post in question and were appointed directly by the Chief Engineer concerned. Such distinction would be relevant and has even been noticed by the Hon"ble Supreme Court in Bharpur Singh's case (supra).,

3. We feel that as per the facts and documents on record, the view taken by the learned Single Judge is perfectly justified. It is further noticed that there is no comparison so far as qualifications of the appellants and the regularly appointed Special Foremen are concerned. Theirs was a fresh appointment, whereas regular employees get a promotional post after getting sufficient experience, as referred to above. As the mode of recruitment and also the qualifications of the work charge employee and regular employee are altogether different, relief of equal pay has rightly been declined. It is not in dispute that thereafter service of the appellants were regularized and they are getting pay scale against the regularly appointed employees.

4. No case is made out to cause interference by this Court in the present case.

5. Dismissed.