

Punjab State Electricity Board & Ors vs Dharam Singh & Ors on 21 November, 2007

Equivalent citations: AIRONLINE 2007 SC 198

Bench: R. V. Raveendran, P. Sathasivam

CASE NO.:

Appeal (civil) 8050 of 2001

PETITIONER:

Punjab State Electricity Board & Ors

RESPONDENT:

Dharam Singh & Ors

DATE OF JUDGMENT: 21/11/2007

BENCH:

R. V. Raveendran & P. Sathasivam

JUDGMENT:

JUDGMENT O R D E R CIVIL APPEAL NO.8050 OF 2001 RAVEENDRAN, J.

This appeal by special leave is directed against the judgment and decree dated 18.7.2000 in R.S.A. No.1199 of 2000 passed by the High Court of Punjab & Haryana, affirming the decision of the District Judge, Rupnagar, reversing the dismissal of Civil Suit No.159 dated 7.7.1997 by Civil Judge (Sr. Division), Rupnagar.

2. The facts necessary for the disposal of this appeal are briefly as follows : The respondents were earlier skilled workers on work-charge basis, under the Punjab State Electricity Board ('Board' for short). In the year 1993, the Board invited applications from such work-charged skilled workers, for selection as Loco Operators (work-charged) in the pay scale of Rs.1200- 2200. The respondents applied and were duly selected and offered the post of Loco Operators (work-charged) in the pay scale of Rs.1200-30-1560-40- 2000-50-2200. The respondents accepted the offer and were appointed as work-charged Loco-Operators in the years 1993 and 1994 and their pay was fixed under the said pay scale. More than three years later, the Board issued notices dated 15.4.1997 to the respondents, alleging that the pay scale of Rs.1200-2200 which was applicable only to regular Loco-Operators was wrongly applied to them, and called upon them to show cause why their pay should not be reduced by re-fixation in the lower pay scale of Rs.950-1800 applicable to work-charged Loco-Operators, and the excess recovered. This was followed by order dated 30.6.1997, whereby the Board substituted the pay-scale of Rs.1200-2200 by pay-scale of Rs.950-1800.

3. The said decision was challenged by the respondents in a suit filed before the Civil Judge, Senior Division, Roop Nagar, as being discriminatory, arbitrary, illegal and void. The Board resisted the suit on the ground that the pay scale had been inadvertently and by oversight mentioned as Rs.1200-2200 in the offers of appointment (Exs.P-11 to P-17) instead of Rs.950-1800 and by order dated 30.6.1997, it corrected the said mistake.

4. After considering the evidence led by the parties, the Trial Court by judgment dated 27.8.1998 dismissed the suit. The Trial Court held that the pay scale applicable to work charged Loco Operators was Rs.950-1800 and accepted the contention of the Board that it had "inadvertently" mentioned the pay-scale as Rs.1200-2200 in the Notice inviting applications for appointment as also in the letters of appointment. The aggrieved respondents filed an appeal. The Appellate Court by its judgment dated 22.11.1999 reversed the decision of the Trial Court and decreed the suit. It held that the respondents were offered employment and were employed as work-charged Loco Operators in the pay scale of Rs.1200-2200, which was on par with the pay scale of Loco Operators. It rejected the contention of the Board that it had granted a higher pay scale due to a mistake. The decision of the First Appellate Court was challenged by the Board. The Second Appeal was rejected by the High Court by a brief Judgment with the observation that the decision of the First Appellate Court did not suffer from any infirmity, and did not give rise to any question of law. The said decision is challenged in this appeal by special leave.

Contentions and points in issue :

5. The learned counsel for the appellants submitted that it is permissible for the Board to treat the work charged employees differently from regular employees. Reliance was placed on the decision of this Court in *State of Haryana v. Charanjit Singh* [2006 (9) SCC 321] in support of the contention that there can be different pay scales for work charged employees and regular employees, even though both had the same designations and discharged the same functions. Reliance was also placed on the decision of this Court in *Jaswant Singh vs. Union of India* [1979 (4) SCC 440] followed in *State of Rajasthan v. Kunji Raman* [1997 (2) SCC 517] which explain the nature of a work-charged establishment. It was submitted that though the pay scale applicable to the regularly appointed Loco Operators was Rs.1200- 2200 at the relevant time, the said pay scale was inapplicable to the work-charged Loco Operators having regard to the difference in nature of recruitment, nature of responsibilities and other factors; and that when the mistake was noticed, it was corrected in the year 1997 by applying the correct pay scale of Rs.950-1800 to the respondents.

6. The Respondents do not dispute that they were appointed in 1993 and 1994 as work-charged Loco Operators and not as regular Loco-Operators. They contend that the principle of equal pay for equal work would apply to them and therefore, they are entitled to the same scale of pay as applicable to regular Loco-Operators which is Rs.1200-2200. The main thrust of their argument is however based on a different ground. They submit that the appellant Board invited applications in the year 1993 for the post of Loco Operators (work-charged) in the pay scale of Rs.1200-2200; that acting on the said invitation, they applied for the said posts; that the Board selected them and offered appointment in the years 1993 and 1994 (vide Ex. P-11 to P-17) as Loco Operators (work-charged) in the pay scale of Rs.1200-2200; that the said offer was accepted by them and they were accordingly appointed to the

said post with the scale of Rs.1200-2200; and as they were paid such salary accordingly for over three years, there was no question of any mistake or inadvertence. It is also pointed out that the Board had again invited applications for the posts of Loco Operators (work-charged), again by circular dated 15.7.1996 (vide Ex. P18) offering the pay scale as Rs.1200-2200, thereby demonstrating that the offer of appointment in the pay scale of Rs.1200-2200, made to the respondents in 1993 and 1994 was voluntary and willful. Alternatively, the respondents contended that even if there was unilateral mistake of fact on the part of the Board, that will not render the contract voidable, nor enable the Board to modify their pay-scale to their detriment, without their consent.

7. On the contentions raised, the following points arise for our consideration :

(i) Whether an employer can prescribe different pay-scales for regular employees and work-charged employees, doing similar or same work?

(ii) Whether the Board had in fact, prescribed different pay-scales for regular Loco-Operators and work-charged Loco Operators ?

(iii) Whether the Board acted under a mistake in offering a higher pay-

scale while employing respondents ?

Re : Point (i) :

8. All expenses including pay and allowances of employees borne on a work-charged establishment are charged to the cost of "works" and not the cost of general establishment. The appointment of an employee in a work- charged establishment being only for the execution of a specified work, the employment would terminate with the work. The employment in a work- charged establishment has, thus, been considered to be materially and qualitatively different from employment in regular establishment (Vide Jaswant Singh and Kunji Raman supra). Applying the principles laid down in Charanjit Singh (supra), there can be no doubt that the employer may provide different pay scales for the employees borne on the regular establishment and those borne on the work-charged establishment, even though the description of the job and the nature of functions may be the same. There is therefore no impediment for the Board to prescribe a pay scale for work-charged loco operators, which is lower than the pay scale applicable to regularly employed loco operators.

Re : Points (ii) and (iii) :

9. As the Board changed the pay scale in force by alleging that it was given by mistake in its part, the burden is on the Board to prove such mistake. The respondents-plaintiffs had led evidence to the effect that even before their appointment as Loco Operators, their services were being utilized as Loco Operators for several years (vide certificates marked Ex. P1 to P9) and that they were drawing basic pay ranging between Rs.950 and Rs.1125. They also got exhibited the office Note regarding their appointment as Ex. P10. The said office Note stated that the minimum number of Loco

Operators required was 18, the sanctioned posts were 12 and the regular Loco Operators were only 6. It was recommended that candidates with the requisite qualifications from the existing work-charged skilled staff, may be appointed as Loco Operators (work-charged). It also proposed that the qualifications to be prescribed and the pay-scale to be offered to the work-charged Loco Operators, should be the same as those applicable to regular Loco Operators. It recorded that the pay scale applicable was Rs.1200-30-1560-40-2000-50-2200. The Chief Engineer on 21.3.1993 approved the said note for selection and appointment of Loco Operators (work-charged) by applying the qualifications and pay scale applicable to regular Loco Operators.

10. The said evidence was not challenged or refuted by the Board. The Board examined only one witness -- Sri Avtar Singh, Superintendent of the Section, as DW1 and relied on four documents - Ex.D1 to D4 in support of its case. DW-1 (Avtar Singh) stated in his examination-in-chief that the Board had offered the higher pay scale of Rs.1200-2200 instead of Rs.950- 1800 'inadvertently and by oversight'. In his cross-examination, he admitted that respondents were selected by a Committee consisting of senior officers of the Board of which the Superintendent Engineer of the Coal Handling Plant was the Chairman; that a detailed Note was put up proposing selection and employment of work-charged Loco Operators in the pay scale Rs.1200- 2200, which was approved by the Chief Engineer, and only thereafter the offers of appointment were made to the respondents in the pay scale of Rs.1200-2200. He also admitted that the respondents, designated as 'work- charged Loco Operators', were discharging the duties of regular Loco Operators, namely, driving railway engines, and there was no difference between the work done by regular Loco Operators and the respondents.

11. The oral evidence does not establish the Board's claim that there was a mistake on its part when it offered the pay scale of Rs.1200-2200 to Respondents. We will next consider the documents produced by the Board. Ex. D1 and D3 related to regular Loco Operators. Ex. D2 related generally to existing work-charged workers in the year 1990. Ex. D4 was the office note preceding the impugned order dated 30.6.1997.

11.1 Ex. D1 is the office order dated 24.4.1988 by which the Board prescribed the qualifications and experience for Loco Operators in the pay scale of Rs.400-600. Ex. D3 is the office order dated 9.11.1993 by which the Board merged, for purposes of promotion, the existing category of Loco Operators Grades I and II into a single category under the designation of Loco Operators in the pay scale of Rs.1200-2200. The respondents have produced before this Court, Board's notification dated 21.3.1989 (not marked in evidence) by which the pay scale of Rs.1100-2200 applicable to Loco Operators was improved as Rs.1200-2200. But it will not be necessary to refer to this document which was not marked in evidence. Suffice it to note that in Para 4 of the written statement, the Board has specifically admitted that the pay-sale of regular Loco Operators, at the relevant time, was Rs.1200-2200. The documents exhibited in evidence also establish that the pay scale of regular Loco Operators was Rs.1200-2200 in 1993-94.

11.2) By order dated 26.4.1990 (Ex.D-2), the Board notified its following decisions :

(1) The employees borne on the work-charged establishment would be entitled to the revised scales of pay applicable to regular employees, where corresponding

posts/scales of pay on regular establishment exist as per provisions contained in concluding para of First Schedule attached to office order No.129/PRC/FIN.1988 dated 11.11.1988;

(2) The categories of work-charged employees who are not drawing the identical pay scales applicable to similar regular categories will be allowed revised replacement scales corresponding to their pre-revised scales of pay as under :

Sl No. Existing Scales Corresponding Replacement of Pay Scale x x x x x x x x x

4) (i) Rs.400-600 Rs.950-1800

(ii) Rs.400-660

5) Rs.400-800 Rs. 950-2100

6) Rs.430-800 Rs.1050-2100

7) (i) Rs.450-800 Rs.1200-2200

(ii) Rs.510-800 x x x x x x x x x (3) Special pay would not be admissible to the work-charged category of employees.

(4) The pay in the revised scale shall be fixed under the provision of PSEC (Revised Pay) Regulation, 1988 notified vide office order No.129/PRC/FIN/1988 dated 11.11.1988 and as amended from time to time.

(5) The work-charged employees shall exercise an option within a period of four months from the date of issue of the orders.

It is clear from Ex.D-2 that employees borne on the work-charged establishment were entitled to the revised scale of pay applicable to regular employees where corresponding posts/scale of pay on regular establishment existed as per concluding part of First Schedule attached to office order dated 11.11.1988. The Board has not, however, exhibited or produced the said office order dated 11.11.1988. Nor was any attempt made to establish that the post of Loco Operator was not one of the posts contemplated in the concluding para of First Schedule to office order dated 11.11.1988. Admittedly, the respondents were appointed as loco operators on the work- charged establishment and corresponding posts of loco operators existed in the regular establishment in the grade/pay scale of Rs.1200-2200. If clause (1) was applicable, the work-charged Loco Operators would be entitled to the same pay-scale as regular Loco Operators. Having produced Ex.D-2 dated 26.4.1990, no effort was made to show that para (1) thereof was inapplicable to the post. Further, the fact that pay-scales of certain categories of work-charged employees were revised under office order dated 26.4.1990, has no bearing on the Board offering in future, the pay-scale of regular Loco Operators to those to be recruited as Loco Operators (work charged). It should be remembered that Ex.D-2 is not a

Notification fixing the pay scale of Loco Operators (work-charged). Hence Ex. D2 is of no assistance to the Board to contend that the pay scale applicable to work-charged Loco Operators to Rs.950-1800. Therefore, it has to be held that Board has not shown that it had at any time notified the pay scale of Loco Operators (work-charged) as Rs.950-1800.

11.3) The office note date 25.6.1997 (Ex.D-4) states that 'due to some confusion and disinformation created by the local employees union', the respondents appointed as Loco Operators (work-charged) in the pay scale of Rs.1200-2100 which is applicable to regular loco operators and therefore, the lesser pay scale should be applied to Loco Operators (work-charged). We have already referred to Ex. P10 (office note) preceding the appointment of respondents which shows that the pay scale applicable to the newly recruited work-charged Loco Operators was fixed, being aware that it was the pay scale of regularly appointed Loco Operators and there was no mistake on the part of the Board in offering the said pay scale. Ex.D4 also shows that the view of the Employees' Union was also considered while deciding the pay-scale. Ex.D-4 does not show that there was any mistake on the part of the Board when the pay scale of Rs.1200-2200 was offered to respondents.

12. It is thus evident that while issuing the notice inviting applications for recruitment of work-charged loco operators in the year 1993, the Board was conscious and aware of the fact that what was offered was the pay scale of regular Loco Operators. The evidence let in by the Board does not show that there was any mistake on its part while offering employment to respondents as work-charged loco operators in the pay scale of Rs.1200-2200. We, therefore conclude that the Respondents were entitled to succeed in their suit. Consequently, we uphold the decision of the Appellate court affirmed by the High Court, though for slightly different reasons and dismiss this appeal.