

Punjab State Power Corporation Limited vs Bal Krishan Sharma on 23 November, 2021

Author: Bela M. Trivedi

Bench: Uday Umesh Lalit, S. Ravindra Bhat, Bela M. Trivedi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6995 OF 2021
(@ SPECIAL LEAVE PETITION (C) NO. 9042 OF 2019)

PUNJAB STATE POWER CORPORATION
LIMITED & ANR.

.... APPELLANT(S)

VERSUS

BAL KRISHAN SHARMA & ORS.

.... RESPONDENT(S)

JUDGMENT

BELA M. TRIVEDI, J.

1. Leave granted.

2. The present appeal is directed against the judgment and order dated 30.08.2018 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in LPA No. 2062 of 2014 (O&M), whereby the Division Bench has dismissed the appeal filed by the appellant(s)-Punjab State Power Corporation Limited (previously Punjab State Electricity Board, hereinafter referred to as 'PSEB'), arising out of the order dated 03.07.2014 passed by the Single

3. The PSEB in order to settle the issue of stagnation in various cadres of regular employees, had passed an office order on 19.07.1989 introducing a scheme to allow a time bound benefit of the higher scale on their completion of 9 and 16 years of services. In continuation of the said order, the PSEB also issued a circular dated 20.07.1989 granting the benefit of the first and second time bound higher scales to the employees including the Junior Engineers-II, as per the Schedule-I attached

thereto, with effect from 01.05.1989. Since the PSEB had found that there was considerable stagnation in the cadre of Junior Engineers (Civil), it had referred the matter to the Pay Revision Committee. Keeping in view the recommendations of the said Pay Revision Committee, the PSEB passed an office order on 29.03.1990, upgrading 20% of the cadre posts of Junior Engineer-II (Civil) in the scale of Rs. 1640/3200 (revised) to that of Junior Engineer-I (Civil) in the scale of Rs. 1800/3500 with effect from 01.01.1986. Thereafter in continuation, consolidation and supersession of the orders dated 19.07.1989 and 29.03.1990, the PSEB vide the office order dated 23.04.1990 issued consolidated instructions to alleviate the problem of stagnation in the cadre. It was stated in the said order dated 23.04.1990 that the PSEB had decided to introduce the scheme to allow "time bound benefit of promotional scales" after completion of 9/16 years of regular service in the PSEB w.e.f 01.01.1986 subject to the conditions mentioned therein. Some of the features of the scheme as contained in the said order dated 23.04.1990 were as under:

"5. The Board shall draw up schedule (s) indicating the lowest post(s) for direct recruitment in respect of various cadres for the purpose of this cadres, separately.

6. In case, an employee has already availed of the benefit of placement to the time bound promotional/devised promotional scale(s) and is promoted to the next higher post, his pay would be fixed at the next stage in the same scale. In case he is promoted to a post which is lower than the scale in which he has already been placed on time bound promotional/devised promotional scale, he will not be entitled to any increment and continue to draw the pay of the scale in which he has already been placed.

7. In case of employees who do not fulfill the qualification/passing of examination essential for their promotion to the next higher post, they shall also be placed into the time promotional/devised promotional scale to be specified by the Board in the schedule as referred to in para 5 (above)."

4. The Schedule-1 annexed to the said order dated 23.04.1990 particularly pertaining to the time bound scales of the Junior Engineer-II (Civil) read as under:

SCHEDULE-1
Sr. No. Name of the lowest Pay Scale First time 2nd time bound
Remarks induction post bound scale to scale to be through direct be allowed allowed
after recruitment after 9 years of 16 years of service. service

1.

2.

3.

4. JE-II (Civil) 1640-2925-3200 1800-3500 2200-40-2400- These 2 time bound
60-2700-75- higher Scale will be 3000-100- allowed if JE-II 4000-125-4250

Qualifies the DAE FOR tech.

Subordinates otherwise he will be placed in the second time bound scale of 2100-3700

5. The said scale of pay of Junior Engineer-II (Electrical/Civil) circulated vide the office order dated 23.04.1990 was partially modified by the PSEB (Finance Section) vide the order dated 31.08.1990. Accordingly, the PSEB granted the respondents who were working as the Junior Engineers (Civil) the pay scale of Rs. 2000-3500 after 9 years of their services and the pay scale of Rs. 2200-50-2400-60-2700-75-3000-100-4000-125-4250 after 16 years of their services. Being aggrieved by the same, the respondents (original petitioners) filed a writ petition being CWP No. 3232/1993 before the High Court seeking directions against the PSEB to grant them the pay scale of Rs. 2200-50-2400-60-2700-75-3000-100- 4000-124-4250 with effect from 01.01.1986 and further to grant the pay scale of Rs. 3000-100-4000-125-5000-150-5600 on completion of 16 years of their service and to pay the arrears thereof along with interest, in view of the orders passed by the PSEB dated 19.07.1989, dated 30.03.1990 and dated 23.04.1990 (annexed to the petition as Annexures P-1, P-2 and P-4 respectively). According to the respondents, in the PSEB, the promotion from the post of Junior Engineer (Civil) was to the post of Assistant Engineer and from the post of Assistant Engineer to the post of Executive Engineer, and therefore they were entitled to the pay scale of Assistant Engineer, i.e. Rs. 2200-4250 with an initial start of Rs. 2400 per month as per the office order dated 19.07.1989, as all of them had already completed 9 years of service, and they were entitled to the pay scale of Executive Engineer, i.e. Rs. 3000 and 5600, on the completion of 16 years of service. Their further contention in the writ petition was that the subsequent creation of posts of Junior Engineer-I (Civil) vide order dated 29.03.1990 by upgrading the 20% cadre posts of Junior Engineer-II (Civil), was the denial of the benefit of the pay scale of Rs. 2200 and 4250 which had accrued to the respondents as per the office order dated 19.07.1989.

6. The Single Bench of the High Court allowed the said petition vide the judgment and order dated 03.07.2014, holding inter alia that the office order dated 29.03.1990 upgrading 20% posts of Junior Engineer-II (Civil) was not notified in the Official Gazette as required under Section 79 of the Electricity (Supply) Act, 1948 (hereinafter referred to as the said Act), and therefore could not be enforced, and that PSEB could not deny the benefit claimed by the petitioners (the respondent herein) basing reliance on the said office order dated 29.03.1990. The aggrieved PSEB preferred an appeal being LPA No. 2062 of 2014 before the Division Bench which dismissed the same vide the impugned judgment dated 30.08.2018, by making perfunctory observations as under:

“The action of the Board, to our mind, is the one which robs the respondents of their legitimate right to promotion. It is indeed a reflection of their concern when they acknowledge the right of an employee to gain at least two promotions in the service career, but after doing so they have craftily denied the benefit by creating an intermediary pay structure of Rs. 1600-2000-3500.

Evidently such a course could not have been adopted without corresponding amendment in the regulations and as long as the regulations exists in the present form, the employees would be entitled to promotion to the next higher post and if for

some reasons such a promotion cannot fructify, they would be entitled to the pay scale admissible to such a post.

Learned counsel for the appellant contends that even if the creation of post is not permissible, the higher pay structure as prescribed to a Junior Engineer (I) would be permissible through introduction of a scheme.

We have already observed that this is a craftily devised via media to subvert the right of an employee. If a higher pay structure has to be made permissible in time bound frame, then it has to be equivalent to that of the promotional post otherwise it will lose all significance of a symbolic promotion, offered to an employee for failure of the employer to provide a venue for substantive promotion.”

7. Since the High Court has relied upon Section 79 of the said Act, for holding the office order dated 29.03.1990 as unenforceable, the same is reproduced as under for ready reference.

“79. Power to make regulations:-

The Board may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of following matters, namely:-

- (a) xx xx xx xx
- (b) xx xx xx xx
- (c) the duties of officers and other employees of the Board, and their salaries,

allowances and other conditions of service.”

8. It may be noted that the PSEB in exercise of the powers conferred by clause (c) of Section 79 of the said Act, has made the Regulations called the Punjab State Electricity Board Service of Engineers(Civil) Recruitment Regulations, 1965 (hereinafter referred to as the said Regulations). Regulation 17 of the said Regulations being relevant is reproduced as under:

“Regulation 17: Pay of Members of Service The members of the service will be entitled to such scale of pay as may be authorised by the Board from time to time.

The scales of pay at present in force in respect of specified posts are given in Appendix ‘A’.

Provided that the Board may for reasons to be recorded in writing grant to any person appointed to the service an initial start higher than the minimum pay of the scale in recognition of additional qualification and/or experience.”

9. The learned advocate Ms. Uttara Babbar appearing for the appellant-PSEB has broadly made following submissions:

(i) The object of issuing the office order dated 23.04.1990 was to alleviate the grievances of stagnation in the cadre of Junior Engineers and it did not provide an avenue for promotion de hors the said Regulations, and therefore Section 79(c) of the Electricity Act was not applicable to the facts of the present case.

(ii) Vide the office order dated 29.03.1990 only 20% of the posts of Junior Engineer-II (Civil) were upgraded to that of Junior Engineer-I (Civil). Such upgradation of posts could not be treated as creation of posts requiring amendment in service conditions. Even otherwise, the PSEB had full powers under Regulation 3 of the said Regulations to increase or reduce the number of posts in the cadre either temporarily or permanently from time to time.

(iii) As per the settled legal position, in absence of any Regulations, issuance of Executive orders is permissible in law.

(Sohan Singh Sodhi vs. Punjab State Electricity Board, Patiala (2007) 5 SCC 528, and Punjab State Electricity Board and Ors. vs. Gurmail Singh (2008) 7 SCC 245).

(iv) Placing reliance on the judgment of this Court in case of Bhakra Beas Management Board vs. Krishan Kumar Vij and Anr. (2010) Vol.8 SCC 701, it is submitted that this Court had an occasion to consider the office order dated 23.04.1990 issued by the PSEB in the said case, wherein it has been held that the said order was issued only with an intention to remove the stagnation, but it would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he did not fulfill prerequisite qualifications for holding the higher post. If an employee possessed the required qualification but was unable to get the higher post on account of non-availability of such post, then only he could be categorised as suffering from stagnation as per the order of 23.04.1990.

(v) Regulation 17 of the said Regulations, authorises the PSEB to fix the scales of pay of the Engineers(Civil) from time to time, and the said Regulations having been published in the Official Gazette, the office order dated 29.03.1990 was not required to be published in the Official Gazette, under Section 79 of the said Act.

10. The learned Senior Advocate Mr. Vikas Mahajan appearing for the respondents made following submissions:

(i) Prior to the issuance of the office order dated 29.03.1990, the respondents were entitled to the scale of Rs. 2200-

4250 with initial start of Rs. 2400/- per month after the completion of 9 years of service, and to the scale of Rs. 3000-5600 after the completion of 16 years of service, however in view of the office order dated 29.03.1990, the PSEB has taken away the higher scales to which the respondents were

entitled to prior to the issuance of the said office order.

(ii) By virtue of the office order dated 29.03.1990, the PSEB has created new posts of Junior Engineer-I without carrying out any amendment in the Regulations of 1965. The said order was in the disguise of upgrading the respondents' posts and had adversely affected the service conditions of the respondents.

(iii) The PSEB had not notified the office order dated 29.03.1990 as required under Section 79 of the Act, and therefore the High Court has rightly held the same to be not enforceable.

(iv) The PSEB could not have amended or superseded the statutory Regulations by issuing administrative instructions. In this regard reliance has been placed on the decisions of this Court in case of State of Haryana Etc. vs Shamsher Jang Bahadur Etc. (1972) Vol. 2 SCC 188 and in case of Mohammad Shujat Ali and Ors. vs. Union of India and Ors. (1975) Vol. 3 SCC 76.

11. At the outset, it may be noted that the respondents (original petitioners) in the writ petition had prayed for granting the pay scale of Rs. 2200-4250 with initial start of Rs. 2400/- per month with effect from 01.01.1986 and further to grant the pay scale of Rs. 3000-5600 on completion of 16 years of their services on the basis of the office orders dated 19.07.1989, 29.03.1990 and 23.04.1990 (Annexure P-1, P-2 and P-4 respectively), however there was no challenge to the officer order dated 29.03.1990 (Annexure P-3) in the petition, which has been held to be unenforceable by the High Court on the ground that it was not published in the Gazette as required under Section 79 of the said Act. The bone of contention raised by the learned Senior Advocate Mr. Mahajan for the respondents is that the said office order dated 29.03.1990 was issued in the disguise of upgrading the respondents posts, which in fact was issued for creating new posts of promotion, so as to deprive the respondents the benefit of the office order dated 23.04.1990. According to him, issuance of such order was changing the conditions of service of the respondents and therefore the same was required to be published in the gazette as required under Section 79 of the said Act. The moot question therefore, which falls for consideration before this Court is as to whether the said office order was required to be published in the Official Gazette as contemplated in Section 79 of the said Act?

12. It cannot be gainsaid that there is a vast difference between the upgradation and the promotion. Ordinarily upgradation of a post would involve transfer of a post from lower to higher grade and placement of an incumbent of that post in the higher grade. Such placement would not involve any selection process to be followed, but would merely confer a financial benefit by raising the scale of pay of the post. However, in case of promotion, there would be an advancement to a higher position or rank along with an advancement to a higher grade. Therefore, the word "promotion" would mean advancement or preferment in honour, dignity, rank and grade. This Court, in case of Bharat Sanchar Nigam Ltd. vs. R. Santhakumari Velusamy and Ors (2021) Vol. 9 SCC 510, has laid down certain principles relating to the promotion and upgradation which read as under:

“29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(i) Promotion is an advancement in rank or grade or both and is step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both-that is, advancement to a higher position and advancement to a higher pay scale-are described by the common term “promotion”, does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay scale without change of post is as result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense, that is, advancement to a higher pay scale.”

13. In view of the afore-stated legal position, the office order dated 29.03.1990, which was issued only for upgrading 20% of the posts of Junior Engineer-II (Civil), in the higher pay scale, could neither be construed as creating new posts of promotion nor could it be construed as changing the conditions of service of the Junior Engineers (Civil). The said upgradation merely conferred a financial benefit by raising the pay scale of the Junior Engineers (Civil), without there being advancement to a higher position, and without there being change in the duties and responsibilities. There is also nothing on record to suggest that the Junior Engineers had to undergo any process of selection for getting the benefit of the said office order. Hence, it could not be said by any stretch of imagination that the PSEB had robbed the respondents of their legitimate right of promotion by issuing the said office order or that such order could not have been issued without corresponding amendment in the Regulations, as held by the High Court.

14. At this juncture, it is pertinent to note that the PSEB has already framed the Regulations 1965 in exercise of the powers conferred by clause (c) of Section 79 of the said Act, and the said Regulations have been notified in the Official Gazette. Regulation 17 of the said Regulations states that the members of the service will be entitled to such scale of pay as may be authorised by the Board from time to time. Thus, in view of Regulation 17 of the said Regulations, the PSEB was authorised to fix the scales of pay of the posts specified therein including that of the Junior Engineers, from time to time. Even otherwise it is well settled proposition of law that in absence of any Rules or Regulations

governing the service conditions of the employees, the Electricity Board has power to issue administrative orders. In case of Sohan Singh Sodhi vs. Punjab State Electricity Board, Patiala (supra), this Court has held in the context of Section 79(c) of the Electricity (Supply) Act, 1948 that when the State Electricity Board can frame Regulations under Section 79(c) of the said Act, in absence of any Regulation, issuance of executive order is permissible in law.

15. In yet another decision in case of Punjab State Electricity Board And Ors. vs. Gurmail Singh (supra), this Court held as under:

“19. The validity of the provisions of the said Regulations is not in question. The power of the Board to issue circulars from time to time in support of the matters which are not governed by the statute or statutory regulations is also not in dispute. The Board, as noticed hereinbefore, had been issuing such regulations from time to time. It is now well settled that the Board, even in absence of any express provision of statute, may issue such circular.

20. In Meghalaya SEB v. Jagadindra Arjun it was held: (SCC p. 453, para 11) “11. As per Section 79(c), Meghalaya SEB may frame regulations not inconsistent with the provisions of the Act and the Rules providing for the duties of officers and other employees of the Board and their salary, allowances and other conditions of service. It is to be stated that this is an enabling provision. Meghalaya SEB may frame regulations as provided in Section 79(c) of the Act, but in the absence of any regulations, Meghalaya SEB can lay down service conditions by administrative order/instructions. Section 15 of the Act empowers the Board to appoint its employees as may be required to enable Meghalaya SEB to carry out its functions under the Act except the Secretary who is to be appointed with previous approval of the State Government.

The power to lay down service conditions by regulations is expressly conferred upon Meghalaya SEB, so it has power to prescribe service conditions. Section 78-A also provides that except on question of policy for which the State Government has issued directions, the Board is entitled to discharge its functions prescribed under the Act which would include appointment of staff to enable it to carry out its functions and also lay down service conditions. Hence, if there are no rules or regulations pertaining to service conditions of its employees, the same could be prescribed by administrative order and such power of the employer which is a statutory corporation would be implied.”

21. Yet again in Sohan Singh Sodhi v. Punjab SEB, Meghalaya Electricity Board was noticed. It was stated: (SCC p. 532, para 10) “10. The power of the State Electricity Board to issue circulars in exercise of its powers under Section 79(c) of the Electricity (Supply) Act, 1948 is not in dispute. It has the power to frame regulations. If it can frame regulations, in absence of any regulations, issuance of executive orders is permissible in law. The power of framing regulations prescribing conditions of service of its employees appointed by the Board in terms of Section 15 of the Act cannot be disputed. Thus, in absence of any rules or regulations governing the service conditions of

its employees, issuance of administrative order is permissible in law vide *Meghalaya SEB v. Jagadindra Arjun* [(2001) 6 SCC 446 : 2001 SCC (L&S) 976].” Power of the Board to issue circulars, therefore, was not in dispute. The validity of the said circular letters was not in question.”

16. In the instant case, apart from the fact that the respondents had not challenged the validity of the said office order dated 29.03.1990 in the writ petition on the ground that it was not notified as per Section 79 of the said Act, the PSEB having already framed the Regulations of 1965 in exercise of powers conferred under Section 79(c) of the said Act, and the said Regulations having also been published in the Official Gazette, there was no need for the PSEB to notify the office order dated 29.03.1990 which pertained to the upgradation of 20% of the posts of Junior Engineer- II (Civil), as was permissible under Regulation 17 of the said Regulations.

17. It may be further be noted that after the issuance of the said office order dated 29.03.1990, the PSEB had issued another office order dated 23.04.1990, to overcome the problem of stagnation prevailing amongst the various cadres of regular employees of the Board. The said office order dated 23.04.1990 which has been heavily relied upon by the respondents in the instant case, had come up for consideration before this Court in case of *Bhakra Beas Management Board vs. Krishan Kumar Vij and Anr.* (supra). In the said case, this Court was required to consider whether in the light of the order/circular issued by the Bhakra Beas Management Board, pursuant to the office order dated 23.04.1990 issued by the PSEB, the concerned Assistant Engineer (Civil) was entitled to the benefit of the higher scale of pay/upgradation/stepping up of salary sans prerequisite qualification for the grant of the same. This Court after considering the aims and objects of the office order dated 23.04.1990 issued by the PSEB, and also the entire scheme of time bound benefit of promotional/devised promotional scale as envisaged in the said office order, observed as under:

“25. The critical examination of the impugned judgment passed by the Division Bench of the High Court completely defeats primary purpose of the 1990 Order and provisions applicable to the employees of the Board. No doubt, it is true that the 1990 Order 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 prerequisite 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 to 30.....

31. If the interpretation of the High Court to the 1990 Order 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 1990 Order, 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.”

18. In view of the above, it was made clear by this court that an employee could be said to be suffering from stagnation as per the office order dated 23.04.1990 only if he possessed the requisite qualification for the next higher post and was unable to get the higher post on account of non availability of such post.

19. In case of Union of India and Ors. vs. M.V. Mohanan Nair (2020) 5 SCC 421, while considering the object behind the MACP Scheme which provided relief against the stagnation, this Court observed as under:

“31. The object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee. As submitted on behalf of Union of India, if the employees are entitled to enjoy grade pay in the next promotional hierarchy, without the commensurate responsibilities as a matter of routine, it would have an adverse impact on the efficiency of administration.”

20. Thus, the claim of the respondents based on the office order dated 23.04.1990, for getting the pay scale of the next higher post of Assistant Engineer i.e. Rs. 2200-4250 on the completion of 9 years of their service and the pay scale of another next higher post of the Executive Engineer i.e. Rs. 3000-5600 on the completion of 16 years of their service, without assuming the responsibilities of the said promotional posts, was thoroughly misconceived. What they were entitled to, as per the scheme to alleviate the stagnation as contained in the office order dated 23.04.1990, was the time bound promotional/devised promotional scale as indicated in the Schedule drawn up by the Board. The said Schedule had specified the first time bound scale to be allowed after 9 years of service as Rs. 1800-3500, and the second time bound scale to be allowed after 16 years of service as 2200-4250 for the post of Junior Engineer Grade-II (Civil), subject to the pre-conditions mentioned therein. The same having already been granted to the respondents, the pay scales as claimed by the respondents in the writ petition could not have been granted by the High Court.

21. In that view of the matter, the impugned judgments and orders passed by the High Court are set aside. The Appeal stands allowed accordingly.

.....J. [UDAY UMESH LALIT]J. [BELA M. TRIVEDI] NEW
DELHI 23.11.2021