

A PUNJAB STATE ELECTRICITY BOARD & ORS.

v.

GURMAIL SINGH

(Civil Appeal No. 2898 of 2008)

APRIL 22, 2008

B

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Service Law:

C *Fundamental Rule 22(1)(a) – Principle of stepping up of*
pay – Applicability of – Conditions of service – Scheme for
time bound promotion to higher scale of pay – Circulars issued
by Appellant-Board – Employees given the option to opt for
one or the other induction post – Board did not release revised
LDC scale to Respondent because of his promotion as UDC
D *– Respondent had opted for UDC as his induction post – Writ*
petition filed by Respondent allowed by High Court – On
appeal, held: Respondent might have made a mistake in
giving a wrong option but in implementation of the policy
decision of the Board, Respondent was receiving amount far
E *less than that received by his juniors – Though order of the*
Board cannot be said wholly illegal and without jurisdiction
warranting interference at the hands of High Court, but,
Respondent directed to be put at the same scale of pay from
the same day which was being paid to the employee next below
F *him in the post of LDC – Electric Supply Act, 1948 – Punjab*
State Electricity Board Ministerial Services (Class III)
Regulations, 1985 – Constitution of India, 1950 – Art.142.

Constitution of India, 1950 – Article 14 – Constitutional
scheme of equality – Held: Cannot be applied in illegality.

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**A scheme for grant of time bound promotion to a
higher scale of pay was formulated by the Appellant-
Board wherefor a circular was issued on 23-4-1990. By
circular dated 3-10-1990, pay scales of the Lower Division**

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Clerks (LDCs) was revised w.e.f. 1.1.1986. In continuation of the circular dated 3-10-1990, the Board issued a memo dated 7-10-1992 whereby it was clarified that the LDCs who had been promoted as Upper Division Clerks (UDCs) would not be given the revised scale of LDCs. Another circular was issued by the Board on 18-7-1994 directing that the LDCs promoted as UDCs would not be given any option to decide UDC/LDC as their induction post, but some relaxation may be given while considering individual cases who had been promoted after 1-1-1986. Yet another Circular was issued on 31-10-1995 in terms whereof, it was clarified that for grant of time bound promotional scheme, an employee was entitled for benefit of one induction post only during his whole service.

Respondent who had been promoted as UDC w.e.f. 5-7-1986 made representation to the Board stating that he had not been released revised LDC scale because of the promotion, as such LDCs junior to him were getting higher scale than him. By letter dated 29-1-1996, he opted for UDC as his induction post, stating that he had completed 9 years of service as UDC on 4-7-1995 and therefore prayed that he be given 9 years time bound scale of UDC from 5-7-1995 and his salary be also settled accordingly. Appellant-Board rejected the representation of Respondent. Respondent filed writ petition questioning the legality and/or validity of the said order which was allowed by the High Court. Hence the present appeal.

Partly allowing the appeal, the Court

HELD:1.1. Representations had been received from various employees in response to the Circular dated 18-7-1994 opting for retaining the post of LDC as induction post, vis-à-vis the hardship which would be faced by them. Each such representation had been considered on its own merits. Also another circular was issued in 1992 with a view to remove the anomaly between scales of pay of LDC

A and UDC. The option granted, however, was in respect of those who had been promoted before 1.1.1986. No such option was granted for those who had been promoted after 1.1.1986. It may seem unfortunate but that was the legal position. This Court would, however, assume that despite absence of such a circular, the employees could give an option on their own. Such an option could be exercised even while making a representation for the purpose of consideration of the Board on the ground of hardship. Unfortunately, Respondent thought it fit to opt for the post of UDC as his induction post. [Paras 21, 22, 23] [884-A-E]

1.2. An employee given the option to opt for one or the other induction post or one or the other scheme is supposed to know his right or benefit. An employee cannot be permitted to opt for one or the other scheme again and again. Schemes are framed for the benefit of the employees ordinarily as a one time measure. If by reason of a wrong option, an employee suffers, he himself is to be blamed therefor and not the employer. Ordinarily, the power of judicial review should not be exercised in a case of this nature. [Paras 24, 26] [884-G; 885-A; 886-D]

Meghalaya State Electricity Board & Anr. v. Jagadindra Arjun (2001) 6 SCC 446; *Sohan Singh Sodhi v. Punjab State Electricity Board* (2007) 5 SCC 528; *PSEB & Ors. v. Surinder Kumar* RSA No.819 of 1989; *Punjab State Electricity Board & Ors. v. Supinder Kumar Modgil*, Order dated 31-3-2000 in SLP (C)___/2000 (CC No.2119/2000) and *Chanan Singh v. Punjab State Electricity Board, Patiala* RSA No.337 of 1988-referred to.

2. The High Court failed to take into consideration, the legal principle that Article 14 being a positive concept, constitutional scheme of equality cannot be applied in illegality. The High Court should have considered the effect of the circulars vis-à-vis validity or legality thereof. The

matter might have been different if the said circulars were issued without jurisdiction or otherwise found to be unconstitutional or ultra vires the provisions of Electricity (Supply) Act. [Paras 26, 27] [886-D, E, F] A

State of Punjab & Anr. v. Kuldip Singh & Anr. (2002) 5 SCC 756- referred to. B

3.1. The present case is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution. Respondent is a well-qualified person. He has passed the departmental examination. He is in service for more than 32 years. He was promoted to the post of Upper Division Clerk as far back as on 5.7.1986. He might have made a mistake in giving a wrong option but it has not been denied or disputed that in the implementation of the policy decision of the Board dated 3.10.1990, respondent had been receiving an amount which is far less than the one which was being received by his juniors. This Court, having regard to its extraordinary power under Article 142 of the Constitution, may also pass some order which would meet the ends of justice, not on *ipse dixit* but on the premise that even in terms of Fundamental Rules 22(1)(a), there exists a provision for stepping up of pay. The said principle would be applicable when a junior to a senior officer belonging to the same category and the post from which they have been promoted and in the promoted cadre, the junior officer on being promoted later than the senior, gets a higher pay. [Para 28] [886-F, G; 887-A-D] C D E F

3.2. Although the order of the Appellant-Board cannot be said to be wholly illegal and without jurisdiction warranting interference at the hands of the High Court but, Respondent should be put at the same scale of pay from the same day which was being paid to the employee who was next below him in the post of LDC. However, the Respondent shall not be entitled to treat his induction post both as LDC and UDC. The amount payable to H

A Respondent in terms of these observations may be recalculated. [Para 30] [889-C, D, E]

Union of India & Ors. v. P. Jagdish & Ors. (1997) 3 SCC 177 and Union of India & Anr. v. R. Swaminathan & Ors. (1997) (7) SCC 690 – referred to.

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2898 of 2008.

C From the Judgment and Order dated 6.10.2003 of the High Court of Punjab and Haryana at Chandigarh in CWP No. 18357/2002.

WITH

Civil Appeal No. 2899 of 2008.

D Satinder S. Gulati, Kamaldeep Narang and Dr. Kailash Chand for the Appellants.

Rani Chhabra, Vipin Gogia and Jaspreet Gogia for the Respondent.

E The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted..

2. These two appeals, involving similar questions of fact of law, were taken up for hearing together and are being disposed of by this common judgment.

F 3. The factual matrix of the matter, however, would be noticed from the case of Gurmail Singh.

G Appellant Board is constituted and incorporated under the Electricity (Supply) Act, 1948. It is entitled to frame regulations incorporating terms and conditions of service of its employees in terms of Section 79 (c) of the Act. The regulations so framed are known as Punjab State Electricity Board Ministerial Services (Class III) Regulations, 1985.

H 4. Respondent herein was appointed as a Steno-Typist on or about 28.8.1976. There existed a common cadre of the

Steno-Typist and Lower Division Clerk. He was appointed on a scale of pay of Rs.110-250 which was revised to Rs.400-600 w.e.f. 1.1.1978 and Rs.950-1800 w.e.f. 1.1.1986. On the said post, he was placed on a scale of pay of Rs.1200-2200/-.

A scheme for grant of time bound promotion to a higher scale of pay was formulated by the Board wherefor a circular bearing No.17/90 was issued by its Finance Department on 23.4.1990. In terms of the said scheme, promotional scale was to be given to the employees upon completion of 9/16 years of regular service. The revision in the scale of pay of LDCs was directed by an order dated 3.10.1990 w.e.f. 1.1.1986. The said revision of scale of pay, however, was to be granted on the basis of total number of years of service as LDC in the said cadre. The same was, however, implemented in respect of three categories of employees, namely, who have not been granted any promotion despite completion of minimum 10 years of service as LDC and Senior Clerk or five years of service as LDC and remaining of the LDCs not falling in the first two categories. The ratio for grant of the said promotional scale was fixed at 40:40:20 respectively. Material part of the said circular is as under :

"In continuation to this officer order No.129/Fin/PRC-1988 dated 11.11.1988, No.147/ Fin/PRC-1988 dated 21.03.89, No.168/Fin/PRC-1988 dated 15.6.89, No.169/Fin/PRC-1989 dated 26.6.89, No.181/Fin/PRC-1988 dated 20.10.89, No.189 Fin/PRC-1988 dated 19.01.1990, No.190 Fin/PRC-1988 dated 23.01.1990, No.211 Fin/PRC-1988 dated 4.7.1990 and office order No.271 Fin/PRC-1988 dated 13.8.1990, the Punjab State Electricity Board is pleased to further revise the scales of pay of the following categories of employees w.e.f 01.01.1986 as under :

XXX XXX XXX

3. The Punjab State Electricity Board has also decided that (i) ... (ii) For UDCs joining PSEB, as a result of either

A through direct recruitment or by promotion from amongst LDCs after passing the Departmental Accounts Examination, the date of joining as UDC will be taken as the date of first induction in the PSEB for the purpose of grant of 9/16 years time bound scales.”

B 5. On or about 7.10.1992, the Board in continuation of Finance Circular No.58/90 dated 3.10.1990 issued a memo on or about 7.10.1992 whereby and whereunder it was clarified that in the list of LDCs circulated by the Board, the names of LDCs who had been promoted as UDCs included, then those
C UDCs would not be given the revised scale of LDCs stating :

“In accordance with the above instructions, a list of employees to whom scale of Junior Assistant (1500-2640) is payable w.e.f. 01.01.1988 has been prepared by this office and is being sent to your office for further action.
D While preparing this list, LDCs who have been promoted upto 31.12.87 their names have not been included in this list. Still if any employees has been promoted to higher post (UDC/Stenographer Divisional Accountant, Revenue Accountant) or have been appointed by direct recruitment
E by selection by the Board and have joined that post or the service or any employees have been terminated or have left the Board or has died but his name has been included in the list, this scale will not be given to those employees. Names and serial No. of all such employees be informed
F to this office.

While preparing the list due care has been taken to include names of all LDCs who were posted, still if name of any LDC has not been included in the list be informed to this office along with his serial number, date of birth and date of joining the Board. LDC/Steno-typist who have forgone promotion as UDC, are not entitled to this scale.
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Those steno-typists who have opted for cadre of stenographer, they are not entitled to this scale and names of such employees and their serial number in the list be
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informed.

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While fixing of these employees in this revised scale of 1500-2640 from 01.01.88, instructions issued by the Board from time to time be kept in view.

It is also informed that above scale granted to these LDCs can be reviewed by the Board."

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6. Another circular was issued by the Board on or about 18.7.1994 directing that those LDCs who are promoted as UDCs would not be given any option to decide UDC/LDC as their induction post, but some relaxation may be given while considering individual cases who had been promoted after 1.1.1986 in the following terms :

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"Thereafter Union of Employees submitted demands that those qualified Lower Division Clerks who have been promoted as Upper Division Clerks after 01.01.1986 be also given opportunity to exercise option as he been given to Lower Division Clerks who were promoted before 01.01.86.

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The Board has considered the entire case and has decided that they cannot be given opportunity to exercise such option because Lower Division Clerks have already accepted three pay scales structure on the pattern of Punjab Government and they were working as Lower Division Clerks on 01.01.86 and not as Upper Division Clerks. However, keeping in view the hardship to the employees, it has been decided that case of Lower Division Clerks promoted as Upper Division Clerks after 01.01.86 on passing departmental examination will not be considered on merits.

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All such cases will be considered by the competent official by giving relaxation in rules and the case will be referred with self-contained proposal to the Secretary Finance Department, Punjab State Electricity Board, Patiala along with service record of the employee and financial burden

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A involved through Head of the Department.

It is submitted that all concerned employees be informed about this decision of the Board so that employees may send their case for consideration by the competent official. Such cases be disclosed within four months by the employees so that proper decision be taken in the case.”

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C 7. Respondent made a representation to the Board. He, therein, did not state that his induction post should be treated as LDC. He, in fact, preferred UDC as his induction post by a letter dated 8.7.1995. In terms of the said letter, 1.1.1986 was fixed as the cut off date. A decision was taken in favour of the employees. However, they were required to make their representation within the timeframe fixed thereunder. On or about 15.11.1994, the respondent filed a representation stating :

D “It is respectfully submitted that the Director Personnel PSEB Patiala Vide memo No.51385/51785/ECM-161 dated 7.10.92 granted scale of 1500-2640 w.e.f. 01.01.88 to LDCs having seniority No.3121 to 3651 and my name was at serial No.270 (Seniority No.3461) in this list.
E However, I was not released this scale because of promotion as UDC from 05.07.86, as such LDCs who are junior to me and having seniority No.3462 to 3651 have been granted pay scale of Rs.1500-2640 from 01.01.88 i.e. higher scale than me and were having more basic pay than me. After that the Board has granted scale of Rs.1640-2925 to the LDCs on completion of 16 years of service and LDCs junior to me are getting this scale and more salary than me.

Because of these pay anomalies, the Board has granted opportunity to the LDCs promoted as UDC before 01.01.1986 to exercise option to keep their induction post as LDC or UDC. Now through letter under reference, the Board has decided not to grant such option to the LDC promoted as UDC after 01.01.1986 but it was decided that hardship caused to these employees will be

considered on merits.

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It is, therefore, submitted that hardship caused to me by drawing higher pay scale and my basic pay by employees junior to me be removed and I be granted pay scale of Rs.1500-2640 w.e.f. 01.01.88 and pay scale of Rs.1640-2925 on completion of 16 years service and my salary be fixed accordingly because I have been bearing this hardship for the last 6/7 years. Kindly remove this hardship at an early date."

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8. Another Finance Circular was issued on 31.10.1995 in terms whereof, it was clarified that for giving the benefit of time bound promotional scheme after 9/16/23 years of regular service, the induction post is to be treated as under :

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"After considering this case and as per scheme made by the Board vide office order No.197/Fin/PRC-988 dated 23.4.1990, it is clarified specially that one employee is entitled for getting benefits of one induction post only during his whole service. On the points raised by some officers the clarification is being given as per following :

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I. Those Divisional Accountants who are getting 8 years proficiency step up and 9 years first time bound promotional scale are covered within 25% quota as SAS Accountant and thereafter they pass SAS Part-II examination, in such case which post is to be considered as their induction post and from which date?

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Those employees who have taken benefit of one induction post for 9 years promotional benefit, the said post would be considered as his induction post.

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II. Those Divisional Accountants who after taking benefit of 9 years first time bound promotional scale and thereafter clear the four papers of SAS Part-II and SA Accountant (in qualified quota) and get promotion, whether they should again be considered as SA

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A Accountant and be given said induction post after 9/16 years first and second promotional scale or their post of Divisional Accountant be considered as induction post for grant of time bound promotional scale after 16 years?

B In such cases also the benefits of induction post of Divisional Accountant are entitled for.

C III. Those Junior Scale Stenographers who are posted/promoted to the post of Steno-typist after passing Stenography test, is their post be considered as their induction post?

D In such cases the junior scale stenographer is to be considered as induction post subject to the condition that the concerned employee has not taken benefit of 9/16 years time bound promotional scale of stenotypist."

9. Yet again, the respondent by a letter dated 29.1.1996 opted for UDC as his induction post, stating :

E "With respect it is requested that I joined as Upper Division Clerk on 5.7.1986 and in this way I completed 9 years of my service as Upper Division Clerk on 4.7.1995. Therefore, I be given 9 years time bound scale of Upper Division Clerk from 5.7.1995 and my salary be also settled according to that."

F 10. Respondent, thereafter, raised an industrial dispute. The Board was directed to consider his representation pursuant where to and in furtherance thereof by an order dated 30.10.2002, representation of the respondent was rejected, inter alia, on the premise that :

G (i) He had not completed 10 years of service as LDC and, thus, did not fall in the upper ratio of 40% of LDCs;

H (ii) He had already been promoted w.e.f. 5.7.1986;

- (iii) He had already taken 9 years time on promotional scale keeping his induction post as UDC on 8.7.1995; and A
- (iv) By reason of FC No.34/95 he was entitled to the benefit of revision of scale of pay only at one induction level. B

11. The writ petition filed by the respondent questioning the legality and/or validity of the said order has been allowed by reason of the impugned judgment.

12. Mr. Gulati, learned counsel appearing on behalf of the respondent, in support of the appeal, inter alia, would submit : C

- (i) The High Court committed a serious error insofar as it failed to take into consideration that the Board, in exercise of its regulation making power, was entitled not only to make regulations but also to issue circulars from time to time. As the validity of the circular letters issued by the Board had not been questioned, the impugned judgment is wholly unsustainable. D
- (ii) The High Court failed to consider the purport of the circulars and in any event having not quashed any of them was not correct in granting the reliefs in favour of the respondents herein. E

13. Ms. Rani Chhabra, learned counsel for the respondent, on the other hand, would submit that F

- i) Other employees having been granted the benefit of requisite option, there was absolutely no reason why the respondent should be discriminated against;
 - ii) As the Punjab High Court, in a similar set of facts had granted relief to the employees which having been upheld by this Court, there is no reason as to why the respondent should have been treated differently; G
- H

- A iii) As despite the aforementioned judgment of the High Court, a further option was denied to the respondent, the High Court with a view to avoid anomaly was right in passing the impugned judgment;
- B (iv) In any event, the benefit of circular letter dated 48/92 having been granted to a large number of employees and, in fact, in the case of Gurjant Singh, he having been allowed to opt both LCD as also UDC as induction posts, there is no reason as to why the similar benefit should not be granted to the respondent.
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D 14. Mr. Gogia, learned counsel for the respondent in the connected matter, would submit that the case of the respondent stands on identical footing with that of Gurjant Singh who was junior to him and, thus, it would lead to an anomalous situation that he shall draw a higher salary than the respondent.

E 15. Indisputably, the Board being a statutory authority was entitled to frame its own regulations. Section 15 of the Electricity (Supply) Act, 1948 empowers the Board to appoint Secretary as also such other officers and employees as may be required to enable it to carryout its functions under the Act. Section 79 of the Act provides for a regulation making power. Clause (c) of Section 79 thereof empowers the Board to make regulation with regard to the duties of officers and other employees as also their salaries, allowances and other conditions of service. It is not in dispute that, in exercise of the said power, the Board has made 1985 Regulations, Regulations 13 whereof reads as under:

F

G “PAY OF MEMBERS OF SERVICE

13. Members of the service shall be entitled to such scales to pay as may be sanctioned 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’.”

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16. We may also notice the relevant portion of Appendix A

to have a broad idea as regards the different scales of pay payable to the UDCs and LDCs :

“6. Upper Division Clerk Rs.1200-30-1560-40-2000-50-2200
(With initial start of Rs.1350/-)

7. Lower Division Clerk i) Rs.950-25-1200-30-1560-40-1800
(With initial start of Rs.1000/-)

ii) Rs.1500-2600 (To 40% after 10 years of service)

iii) Rs.1640-2925 (Second time bound scale after 16 years of service)”

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.

17. In *Meghalaya State Electricity Board & Anr. v. Jagadindra Arjun* [(2001) 6 SCC 446, it was held :

“11. As per Section 79(c), MSEB 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. MSEB may frame regulations as provided in Section 79(c) of the Act, but in the absence of any regulations, MSEB 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 MSEB to carry out its functions under the Act except the Secretary

A 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 MSEB, so it has
power to prescribe service conditions. Section 78-A also
B 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
C 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.”

D 18. Yet again in *Sohan Singh Sodhi v. Punjab State
Electricity Board* [(2007) 5 SCC 528), M.P. Electricity Board
(Supra) was noticed. It was stated :

E “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
F 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
G Arjun.*”

G Power of the Board to issue circulars, therefore, was not
in dispute. The validity of the said circular letters was not in
question.

H 19. It is true that some anomaly stares on the face of the
records. It furthermore appears that a learned Single Judge of

the Punjab and Haryana High Court in *PSEB & Ors. v. Surinder Kumar* [RSA No.819 of 1989 judgment dated 19th March, 1999] opined that the employees concerned were entitled to the benefit of the three scales proportionately 20:40:40 with effect from 1.1.1986. A

However, in that case, the employee joined the service on 26.8.1975. He on 7.7.1983 was working as UDC but the Board was treating him as LDC. The benefit of 16 years' service from the date of joining as LDC was granted to him. It was in the aforementioned situation, the employee therein was being treated as a Lower Division Clerk. B C

The special leave petition thereagainst has been dismissed by a Bench of this Court by an order dated 31.3.2000 in *Punjab State Electricity Board & Ors. v. Supinder Kumar Modgil* [SLP (C)___/2000 (CC No.2119/2000)]. D

20. Our attention has further been drawn to a decision of another learned Single Judge of the High Court in *Chanan Singh v. Punjab State Electricity Board, Patiala* RSA No.337 of 1988 wherein, inter alia, it was held :

"A senior person who has proved his merit vis-à-vis the others in the same cadre would be placed in the lower scale of pay while the juniors who were either not qualified or had been found unsuitable for promotion would be placed in higher scale of pay. Such a course of action would be arbitrary, unfair and would even amount to denial of equality of opportunity in promotion. I am reluctant to accept any interpretation of the order of revision of pay scales which would deny the benefit of higher scale to a senior and result in grant of a higher scale to a junior. Mr. Goyal points out that the grant of a higher scale to the extent of 50% of the posts of Head Office Assistants is not promotion. Even if it is assumed to be so, the getting of higher scale carries with it the pecuniary benefits. A senior person is entitled to all those benefits which a junior in the cadre is getting. The pay of a senior, in this case, cannot H

A be less than that of his junior.”

21. It is, however, not denied or disputed that representations had been received from various employees in response to the Finance Circular dated 18.7.1994 opting for retaining the post of LDC as induction post, vis-à-vis the hardship which would be faced by them. Each such representation had been considered on its own merits.

22. We have also noticed hereinbefore that another Finance circular was issued in 1992 with a view to remove the anomaly between scales of pay of LDC and UDC. The option granted, however, was in respect of those who had been promoted before 1.1.1986.

23. No such option was granted for those who had been promoted after 1.1.1986. It may seem unfortunate but that was the legal position. We would, however, assume that despite absence of such a circular, the employees could give an option on their own. Such an option could be exercised even while making a representation for the purpose of consideration of the Board on the ground of hardship. Unfortunately, the respondent herein thought it fit to opt for the post of UDC as his induction post. Our attention although has been drawn to the case of Gurjant Singh, it is evident, that in terms of Finance Circular No.34/95 dated 31.10.1995, an employee was entitled to get the benefit of one induction post only during his entire service. In this behalf, Regulation 13 is also significant in the sense that it was for the Board to fix scales of pay to which we have adverted to hereinbefore.

24. Respondent, however, it will bear repetition to state, by his letter dated 29.1.1996 opted for 9 years' time bound scale of Upper Division Clerk from 9.7.1995 to which we have adverted to heretobefore.

An employee given the option to opt for one or the other induction post or one or the other scheme is supposed to know his right or benefit. An employee cannot be permitted to opt for

one or the other scheme again and again. Schemes are framed for the benefit of the employees ordinarily as a one time measure. If by reason of a wrong option, an employee suffers, he himself is to be blamed therefor and not the employer.

25. In *State of Punjab & Anr. v. Kuldip Singh & Anr.* [(2002) 5 SCC 756], the power of the Board to issue circulars was reiterated, stating :

"9. From the contents of the two circulars, it is manifest that an employee in order to be eligible to get the selection grade pay has to complete 15 years' of service and he is not to be given such scale of pay before he fulfils the said eligibility criteria. It follows as a consequence that no employee can claim selection grade pay before completing 15 years of service on any ground including the ground that an employee junior to him has already been given such grade of pay. The position is further clarified in the circular issued in May 1987 wherein it is provided that in the event of a junior employee getting the selection grade pay earlier, the post in the said grade may be kept vacant for the senior employee who may be given the benefit of the pay prescribed for the selection grade pay only after he completes 15 years of service. The interest of the senior employee in such cases is safeguarded by making the provision that the *inter se* seniority between the two employees will remain undisturbed despite the junior employee getting the selection grade pay earlier than the senior employee.

10. In view of the position communicated in the circulars the claim of an employee for a selection grade post was to be dealt with only in accordance with the provisions in the circular. The reasons stated in the judgment/order of the High Court that the respondents were entitled to the higher grade pay with effect from 1-1-1978 as employees junior to them were granted such pay by that date is extraneous and irrelevant for the purpose. The High Court

A overlooked the provisions in the circulars while directing
the appellants herein to grant selection grade pay to the
respondents before they completed 15 years of service.
The High Court was clearly in error in issuing a writ of
mandamus apparently against the government circulars
B which were binding on the parties. The judgment/order
passed by the High Court is, therefore, unsustainable.
Accordingly, the appeal is allowed, the judgment/order is
set aside and the writ petition filed by the respondents is
dismissed. It is made clear that if the respondents have
C already drawn any amount in pursuance of the judgment/
order of the High Court, the same will not be recovered
from them.”

26. Here also the High Court had failed to take note of the
effect and purport of the said circular.

D Ordinarily, the power of judicial review should not be
exercised in a case of this nature.

Furthermore, the High Court failed to take into
consideration, the legal principle that Article 14 being a positive
E concept, constitutional scheme of equality cannot be applied in
illegality.

27. The High Court, therefore, should have considered the
effect of the circulars vis-à-vis validity or legality thereof. The
matter might have been different if the said circulars were issued
F without jurisdiction or otherwise found to be unconstitutional or
ultra vires the provisions of Electricity (Supply) Act.

28. Having, however, held so, the question which arises is
whether it is a fit case where we should exercise our discretionary
jurisdiction under Article 136 of the Constitution of India. We
G think we should not. Respondent is a well-qualified person. He
has passed the departmental examination. He is in service for
more than 32 years. He was promoted to the post of Upper
Division Clerk as far back as on 5.7.1986. He might have made
H a mistake in giving a wrong option but it has not been denied or

disputed that in the implementation of the policy decision of the Board dated 3.10.1990, respondent had been receiving an amount which is far less than the one which was being received by his juniors. A

In the case of Gurdeep Singh, we have seen that whereas the representation of his juniors had been allowed, his representation had been rejected. This may meet the requirements of law but we, having regard to our extra-ordinary power under Article 142 of the Constitution of India, may also pass some order which would meet the ends of justice. We say so not on ipse dixit but on the premise that even in terms of Fundamental Rules 22(1)(a), there exists a provision for stepping up of pay. The said principle would be applicable when a junior to a senior officer belonging to the same category and the post from which they have been promoted and in the promoted cadre, the junior officer on being promoted later than the senior, gets a higher pay. B C D

Technically the same may or may not be permissible but we may notice that this Court in *Union of India & Ors. v. P. Jagdish & Ors.* [(1997) 3 SCC 177] applied the same principle, stating : E

"This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being senior to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal F G H

A to the pay as fixed for their junior officer in the higher post
of Head Clerk. In fact the Tribunal by the impugned order
has directed to apply the principle of stepping up and we
see no infirmity with the same direction subject to the
aforesaid clarifications. This principle of stepping up which
B we have upheld would prevent violation of equal pay for
equal work but grant of consequential benefit of the
difference of salary would not be correct for the reason
that the respondents had not worked in the post to which
35% [*sic* Rs.35 as] special pay was attached in the lower
C cadre. But by reason of promotion the promotee-juniors
who worked on the said posts, in fact, performed the hard
duties and earned special pay. Directions to pay arrears
would be deleterious to inculcation of efficiency in service.
D All persons who were indolent to share higher
responsibilities in lower posts, on promotion would get
accelerated arrears that would be deleterious to efficiency
of service.”

29. It is not a case where the junior has been getting a
higher pay because of his earlier officiation in the higher post
E by way of officiating promotion. We may notice that in such an
event, this Court in *Union of India & Anr. v. R. Swaminathan &*
Ors. [(1997) (7) SCC 690], opined :

F “2. The aggrieved employees have contended with some
justification that local officiating promotions within a Circle
have resulted in their being deprived of a chance to
officiate in the higher post, if such chance of officiation
arises in a different Circle. They have submitted that since
there is all-India seniority for regular promotions, this all-
India seniority must prevail even while making local
G officiating appointments within any Circle. The question is
basically of administrative exigency and the difficulty that
the administration may face if even short-term vacancies
have to be filled on the basis of all-India seniority by calling
a person who may be stationed in a different Circle in a
H region remote from the region where the vacancy arises,

and that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all-India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating promotions. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to Fundamental Rule 22."

30. Although the order of the Board cannot be said to be wholly illegal and without jurisdiction warranting interference at the hands of the High Court but, we are of the opinion that the respondents should be put at the same scale of pay from the same day which was being paid to the employees who was next below him in the post of LDC. We would, however, clarify that the respondent shall not be entitled to treat his induction post both as LDC and UDC. The amount payable to the respondent in terms of these observations may be recalculated within a period six weeks.

31. To the aforementioned extent, the appeals are allowed. In the facts and circumstances of the case, there shall be no order as to costs.

B.B.B.

Appeal partly allowed.