

CASE NO.:
Appeal (civil) 3643 of 2002

PETITIONER:
STATE OF PUNJAB AND ANR.

RESPONDENT:
KULDIP SINGH AND ANR.

DATE OF JUDGMENT: 08/07/2002

BENCH:
D.P. MOHAPATRA & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2002 Supp(1) SCR 39

The Judgment of the Court was delivered by D.P. MOHAPATRA, J. Leave is granted.

This appeal filed by the State of Punjab, through the Secretary in the P.W.D. (B & R) Mini Secretariat and the Chief Engineer, P.W.D. (B & R) Branch, is directed against the judgment/order dated 25.3.1998 of the High Court of Punjab and Haryana allowing Civil Writ Petition No. 15263 of 1997 filed by the respondents herein. The controversy raised in the case relates to the date from which the respondents are entitled to get Selection Grade Pay as Sub Divisional Engineers in the Public Works Department of the State; whether it is with effect from 1.1.1978 when Shri Devender Singh Sekhon, a Sub Divisional Engineer junior to them got the Selection Grade Pay o from the date when the respondents completed 15 years of service in the cadre.-In the judgment under challenge the High Court took the view that since Shri A.S. Mann and Shri Devender Singh Sekhon who are juniors to the respondents were granted Selection Grade Pay from 1st January, 1978 the respondents being senior to them and if they are within the 20% posts of the cadre of Sub Divisional Engineers then there was no reason why they should not be granted Selection Grade Pay with effect from that date. Accordingly, the High Court allowed the writ petition and directed the appellants that if the respondents fulfilled the aforementioned conditions then they should be given the Selection Grade Pay with effect from the date their juniors were given such grade and arrears should be released as was done in the case of Shri Devender Singh Sekhon. From the discussions in the judgment/order it appears that the High Court based its judgment on the principle that when a junior in the cadre is given a higher scale of pay a person senior to him could not draw lesser pay unless a higher scale of pay was made personal to the junior officer by order.

The factual matrix of the case, so far as relevant for the purpose of this proceedings may be stated thus: Shri Kuldip Singh, respondent no. 1 herein, and Shri Devender Singh Sekhon were directly appointed as Sub Divisional Engineers in the Public Works Department of the State of Punjab. While Shri Kuldip Singh joined the post on 11th November, 1970 and Shri Teekam Chander Bali on 17th November, 1970, Shri Devender Singh Sekhon joined the post on 18th November, 1970. Another officer Shri A.S. Mann, who had been appointed as Junior Engineer on 28th April, 1956 was promoted as Sub Divisional Engineer with effect from 22nd December, 1971. Shri A.S. Mann filed a suit claiming Selection Grade Pay with effect from 1.1.1978 on the ground that persons junior to him had already been granted such grade. The suit was decreed on 24th September, 1985. The appeal preferred by the State was dismissed. The Second Appeal preferred by the State was also dismissed on 22nd September, 1986. Thereafter the Selection Grade Pay was released in favour of Shri A.S. Mann on 21st April, 1989.

Shri Devender Singh Sekhon who was senior to Shri A.S. Mann as Sub

Divisional Engineer filed the writ petition-C.W.P. No. 14777/95 claiming the Selection Grade Pay. The writ petition was allowed by the High Court on 12th September, 1996 on the ground that Shri A.S. Mann who was junior to the writ petitioner having been given the higher scale of pay the writ petitioner was entitled to get the Selection Grade Pay. The Special Leave Petition filed by the State, SLP (C) No. 11409 of 1997 was dismissed in limini on 10th July, 1997.

Thereafter the respondents herein filed the writ petition, C.W.P.No.15263 of 1997 praying for writ of Mandamus directing the State Government to grant the Selection Grade Pay scale with effect from 1.1.1978 when officers junior to them like Shri A.S.Mann and Shri Devender Singh Sekhon were granted the higher pay. The writ petition was contested by the appellants herein mainly on the ground that the petitioners could not be given the Selection Grade Pay before they completed 15 years of service which is the prescribed eligibility condition for such benefit under the Government Circulars. The Government Circulars relied upon by the appellants were No.8/ 30/78-FR(5)1845, dated 3.3.1980 and Circular No.7/93/85-4FPI/5956 dated 18th May, 1987. Regarding the grant of benefit of Selection Grade pay to Shri A.S.Mann the case of the appellants herein was that they had completed 15 years of service in the grade of junior engineer and Sub Divisional Engineer by 1.1.1978 and therefore, there was no legal impediment in granting them the Selection Grade Pay. Regarding Shri Devender Singh Sekhon the appellants have accepted the position that grant of Selection Grade Pay to him before completion of 15 years was not in accordance with the Government Circulars and therefore, erroneous. The appellants felt bound to release the Selection Grade Pay in his favour in view of the judgment of High Court and the order passed by this Court dismissing the Special Leave Petition filed by the State.

Shri P.P. Rao, learned senior counsel appearing for the appellants contended that the judgment/order passed by the High Court is unsustainable inasmuch as it is contrary to the circulars prescribing the eligibility criteria "or the purpose of grant of selection grade pay and the judgment/order is liable to be set aside. Shri Jitendra Sharma, learned senior counsel appearing for the respondents supported the judgment/order of the High Court on the reasons stated therein.

On the facts and the case of the parties as discussed above the question formulated earlier arises for determination.

The answer to the question depends on the interpretation of two Government Circulars issued on 3.3.1980 and 18.5.1987 respectively. The said circulars deal with the criteria for grant of Selection Grade Pay in the cadre of various services and implementation of recommendations of the second Punjab Pay Commission. It is provided in the circulars that Selection Grade Pay will be provided in cases where the number of higher posts (of levels taken together) to which employees in a particular case can seek promotion, is less than half the strength of that cadre of service and further that the number of Selection Grade posts at each level should not exceed 20% of the strength of the basic scale for which the Selection Grade posts are to be sanctioned. For the purpose of calculating the number of Selection Grade posts, all posts including temporary posts, which have been in existence for three years are to be taken into account. In para (iii) of the Circular dated 3.3.1980 it is specifically stated that Selection grade will not be admissible to an officer unless he has completed 15 years service. The service should either be in the basic scale where appointment to the basic scale is from the point of fresh entry into service or as the sum total of the employee's service in the basic scale and in the one scale next below. In the circular issued on 18th May, 1987 one of the subjects dealt with was the grant of Selection Grade to a junior employee who became eligible earlier than a senior employee. It was reiterated in the said circular that the Selection Grade will not be admissible to an officer unless he has completed 15 years of service and that such service should either be in the basic scale where appointment to the basic scale is from the point of fresh

entry into service or as the sum .total of the employee's service in the basic scale and in the one scale next below. Further clarifying the position in a case where a junior employee in the event of becoming eligible for placement in the Selection Grade by following prescribed criteria earlier than a senior employee whether the junior employee can be allowed the Selection Grade before the senior employee, it was stated that a junior employee becoming eligible for placement in the Selection Grade earlier than a senior employee can be allowed the Selection Grade earlier than a senior employee by keeping a post (in the Selection Grade) reserved for the senior employee and appointing the senior employee against the post when he became eligible for selection grade pay. It was further clarified in the circular that allowing selection grade to a junior employee will not adversely affect the seniority of the senior employee. It was specifically stated in the circular that other conditions regarding placement in the selection grade will continue to be operative as hereto-fore.

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 in 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.

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 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 which was 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 already drawn any amount in pursuance of the judgment/order of the High Court, the same will not be recovered from them. No costs.