

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. : 64 of 2023

Decided on : 11.04.2023

State of H.P. and anr.

....Appellants.

Versus

Sh. Bipan Chand

...Respondent.

Coram

Hon'ble Ms. Justice Sabina, Acting Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹

For the appellants : Mr. Pranay Pratap Singh,
Additional Advocate General.

For the respondent : Mr. Sanjeev Bhushan, Sr.
Advocate with Mr. Rakesh
Chauhan, Advocate.

Satyen Vaidya, Judge

CMP(M) No. 240 of 2023

Allowed for the reasons stated therein. Delay

Condoned. Application stands disposed of.

LPA No. 64 of 2023

Appellants have assailed judgment dated
30.08.2022, passed by learned Single Judge in CWPOA

¹ Whether reporters of the local papers may be allowed to see the judgment?

No.5846 of 2019, whereby respondent has been granted relief in following terms:-

“17. In view of Government instructions, referred supra, and considering the facts of present case, narrated hereinabove, and discussion hereinbefore, I am of considered opinion that petitioner is entitled for fixing his pay at par with his junior from the date of promotion of his junior w.e.f. 9.4.2007 with all consequential benefits including pensionary benefits and, therefore, respondent department is directed to take all necessary steps accordingly and to extend benefits to petitioner as expeditiously as possible latest by 30th October, 2022, failing which respondent department shall also be liable to pay interest at the rate of 5% per annum and interest component shall be recovered by Government from the Officer Incharge responsible for delay in complying the aforesaid direction.

2. Appellants have taken exception to the impugned judgment on the grounds, firstly, that respondent had not exercised the option to fix his pay in the revised pay scale w.e.f. 01.01.2016 before granting of annual increment, whereas his junior Er. Arun Prashar had exercised such option and secondly, Er. Arun Prashar, though junior to respondent, was drawing higher pay scale in the cadre of Assistant Engineer by

application of four tier pay scales on completion of fourteen years as Assistant Engineer in contrast to respondent, who got his higher pay scale after his promotion as Executive Engineer.

3. Sh. Sanjeev Bhushan, learned Sr. Advocate alongwith Mr. Rakesh Chauhan, learned counsel, has put in appearance for respondent and has supported the impugned judgment being strictly in accordance with law.

4. After giving thoughtful consideration to the rival contentions, we are of the considered view that there is no infirmity or illegality in the impugned judgment and the same deserves to be affirmed.

5. It is not the case of the appellants that learned Single Judge has erred on facts. That being so, it stands duly proved that respondent was senior to Er. Arun Prashar throughout and was drawing higher pay scale than Er. Arun Prashar till 31.12.2005. It was only on revision of pay scales w.e.f. 01.01.2006 that Er. Arun Prashar was fixed at higher pay scale than respondent.

6. Learned Single Judge after placing reliance

upon Government of India's orders published in Swami's compilation of FRSR 20th Edition, 2010, has held Clause(b) of the instructions, so referred, to be completely applicable to the facts of the case. In addition, learned Single Judge has also held that because Er. Arun Prashar was getting higher pay scale in the cadre of Assistant Engineer on completion of fourteen years of service was not sufficient to deny the benefit of step-up in pay to the appellant. The findings so returned by learned Single Judge cannot be faulted with and are well reasoned.

7. Noticeably, the representation of respondent to step-up his pay was rejected by appellant No.2 by holding that Er. Arun Prashar had exercised the option for fixation of his pay in the revised pay scale before granting annual increment in the revised pay band and grade pay effective from 01.01.2006, but appellant had no such opportunity as his date of increment was 01.06.2006. Though, it is not clear as to under which provision of law, the option was available to Er. Arun Prashar and not to the appellant, yet appellant No. 2

had himself recorded, while rejecting the representation of respondent, that he had no such opportunity. Thus, the appellants cannot find fault with impugned judgment, as it is not a case where respondent had voluntarily omitted to exercise option, otherwise available to him.

8. Learned Additional Advocate General has placed on record a copy of Office Memorandum dated 05.07.2010 to support his contention regarding non-exercise of option by respondent, but he has not been able to justify the applicability of contents of Office Memorandum dated 05.07.2010 to the facts of the case, especially, when appellant No. 2 had specifically recorded in his office order dated 05.12.2013 that petitioner had no opportunity to exercise the option. That being so, appellant could not be denied the benefit of step-up in pay scale so as to bring it at par with the pay scale granted to his junior officer.

9. Viewed from another angle, respondent, who was promoted as Executive Engineer from the cadre of Assistant Engineer was being paid less pay than his

junior only because he got a chance to be promoted by putting lesser years of service in the grade of Assistant Engineer. Respondent cannot be blamed for such situation. It was not in his hands that he could get the promotion at his will. The promotion to the post of Executive Engineer was regulated by relevant service rules, therefore, promotion of appellant was dependent upon the availability of vacancy on the higher post of Executive Engineer. On such count also, we are in total agreement with the findings recorded by learned Single Judge in the impugned judgment.

10. In result, appeal fails and the same is accordingly dismissed.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

(Sabina)
Acting Chief Justice

(Satyen Vaidya)
Judge

11th April, 2023
(sushma)