

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.2144 of 2019
Decided on: 11.09.2026

Dilbag Rai Setia

...Petitioner

Versus

State of Himachal Pradesh and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ Yes

For the petitioner: Mr. Karan Singh Parmar, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General with Mr. Amandeep Sharma, Additional Advocate General and Mr. Hemant Kumar Verma, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has prayed for the following substantive relief:-

“i) That respondents may kindly be directed to redraw the seniority list of the petitioner vis-a-vis incumbents belonging to reserved category and thereafter the respondents may be directed to re-fix the pay of the petitioner by giving him the benefit of stepping up with all consequential benefits.”

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Section Officer

¹ Whether reporters of Local Papers may be allowed to see the judgment?

on 07.02.1973, which designation was later on changed to Junior Engineer (Civil) and was confirmed on 26.08.1981. As per the final seniority list of Junior Engineers (Civil), as it stood on 30.09.1989 (Annexure P-1), the name of the petitioner was at serial No.465 and persons namely S/Sh. Amar Nath, Harnam Singh and Sahib Singh, who were junior to the petitioner and appointed as Junior Engineers on 01.10.1973, 04.10.1973 and 09.10.1973 respectively were at serial Nos. 491, 500 and 507. These persons, though junior to the petitioner, were promoted to the post of Assistant Engineer on 27.05.1998, since they belong to the Scheduled Caste category. The petitioner was promoted to the post of Assistant Engineer on 05.04.2006. As per the tentative seniority list of Assistant Engineers as on 31.03.2012, the petitioner was shown at serial No.655, whereas the aforesaid persons were shown at serial Nos.420, 422 and 423 respectively.

3. The grievance of the petitioner as highlighted in the present petition is that he on his promotion to the post of Assistant Engineer was fixed at Rs.11320/- per month as on 29.03.1995, as per office order dated 30.03.2005 (Annexure P-3), whereas, his junior Sh. Amar Nath Dhiman,

was drawing a salary of Rs 16440/- as on 01.01.2006 and he had made a detailed representation dated 05.10.2012 (Annexure P-5) to respondent No.1, averring therein that Sh. Amar Nath was appointed as Junior Engineer on 01.10.1973 and he was appointed on 07.02.1973. He further submitted in the representation that his seniority number in the seniority list of Junior Engineers is 465 and name of Sh. Amar Nath is at 490. As per the instructions of the Department of Personnel on the subject of reservation, the general category employees, who are promoted after the promotion of employees of reserved category in the same cadre will be assigned the same seniority as their inter-se-seniority position in the initial entry grade/cadre and thus, requested to fix his seniority with all consequential benefits including the benefit of stepping up of pay. But despite receipt of the representation, the respondents did not take any corrective steps to rectify the mistake.

4. The petitioner feeling aggrieved by the in action on the part of the respondents in not assigning him seniority and also not granting him the benefit of stepping up of his pay at par with his juniors has approached this Court *inter alia* on the grounds that the petitioner ought to have been

given the benefit of stepping up of pay at par with his juniors and not granting the said benefit on the part of the respondents is illegal, unjust and against Article 14 of the Constitution of India. It is settled law that the junior cannot draw more salary than the senior and thus the action on the part of the respondents in not giving benefit of stepping up of the pay to the petitioner at par with the juniors is not only illegal and wrong, but is also against his fundamental rights and as such the petitioner prayed for direction to the respondents to redraw the seniority list of the petitioner vis-a-vis the incumbents belonging to the reserved category and further the respondents may be directed to re-fix the pay of the petitioner by giving him the benefit of stepping up.

5. The respondents filed reply to the petition and in preliminary submissions, averred that the petitioner belongs to general category, whereas the persons namely S/Sh. Amar Nath, Harnam Singh and Sahib Singh belong to Scheduled Caste category. The petitioner had joined his services as Junior Engineer on 07.02.1973 and S/Sh. Amar Nath, Harnam Singh and Sahib Singh joined on the same post on 01.10.1973, 04.10.1973 and 09.10.1973, respectively. The aforesaid persons belong to Scheduled

Caste category and they have been promoted to the post of Assistant Engineer on 27.05.1998 and the petitioner was promoted as Assistant Engineer on adhoc basis on 25.03.2005, which was followed by regular promotion on 05.04.2006. The petitioner has challenged his seniority position in the seniority list circulated vide memorandum dated 06.04.2012 (Annexure P-2), which is a tentative seniority list. This seniority list has still not been finalized as review DPC for reviewing the recommendations of DPC held w.e.f. the year 1984 is under process in the HP Public Service Commission as per the directions of this Court in CWP No.1358 of 2008, titled, ***S.S. Kutlehria and others vs. State of HP and others***, CWP(T) No.2605 of 2008, titled, ***Ashok Kumar vs. State of HP and others***. On the basis of revised recommendations, the matter of seniority of Assistant Engineers shall be decided in due course of time. The petitioner has no locus standi that he has not been assigned proper place in the seniority list and the petition is not maintainable. It has also been averred that so far as the representation dated 05.10.2012 made by the petitioner for fixing his seniority above S/Sh. Amar Nath, Harnam Singh and Sahib Singh and praying therein to give the benefit of

stepping up is concerned, no doubt, the petitioner was senior to S/Sh. Amar Nath, Harnam Singh and Sahib Singh in Junior Engineer cadre, but they availed promotion in the year 1998 as Assistant Engineer, earlier to the petitioner being promoted against the posts meant for reserved category candidates as per rule of reservation. The petitioner was promoted to the post of Assistant Engineer in 2005 i.e. almost 7 years after officers who availed constitutional benefit. In similar situated cases of Sh. V.K. Gupta, Assistant Engineer (retd.) and Sh. Raj Kumar Sud, Executive Engineer (retd), the Finance Department has observed that step up is not applicable when a junior is promoted to a higher post because of applicability of the reservation roster. Therefore, the step up of the pay of the petitioner for making it equal to that of the pay of S/Sh. Amar Nath, Harnam Singh and Sahib Singh is not admissible. The petitioner has sought benefits contrary to instructions governing step up, which is not maintainable.

6. On merits, it has been averred that the benefit of pay protection as per FR 22 is given only when the anomaly arises as a result of application of FR 22 or now FR22(1)(a) (1) and not in the instant case by virtue of application of rule

of reservation as per constitutional provision. The Notification dated 21.09.1999 (Annexure R-I), of the Finance Department provides in para 6(c) that if a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay at par with the junior. Besides this, various similar situated general category candidates have also started making similar request for stepping up of their pay above their juniors, who by way of constitutional reservation have been promoted to the post of Assistant Engineer and thereafter as Executive Engineer by following reservation and as such, prayed for dismissal of the writ petition.

7. I have heard the learned counsel for the parties and also perused the record carefully.

8. The admitted facts which germane from the pleadings are that the petitioner was appointed to the post of Junior Engineer on 07.02.1973, whereas S/Sh. Amar Nath, Harnam Singh and Sahib Singh were appointed on 01.10.1973, 04.10.1973 and 09.10.1973 respectively and they were junior to the petitioner in the cadre of Junior Engineer. No doubt they have been promoted to the post of

Assistant Engineer on 27.05.1998 earlier to the petitioner, who was promoted to the said post on ad hoc basis on 25.03.2005 and later on appointed on regular basis on 05.04.2006. However, after his promotion, the petitioner was not assigned the seniority as per his position in the cadre of Junior Engineer. As per the Constitution Bench judgment in **Ajit Singh and others (II) vs. State of Punjab and others**, (1999) 7 SCC 209, it has been held that the senior general candidate at the lower level, if he reaches the promotional level later but before further promotion of the reserved candidate, he will have to be treated as senior, at the promotional level, to the reserved candidate even, if the reserved candidate was earlier promoted to that level. Relevant paragraph of the judgment reads as under:

“77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, – vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate – he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal and Ajit

Singh have been correctly decided and that Jagdish Lal is not correctly decided. Points 1 and 2 are decided accordingly."

9. It is not in dispute that the petitioner was senior to the aforementioned persons as Junior Engineer and further he was also promoted to the post of Assistant Engineer after them. It is also not in dispute that the petitioner had reached the promotional level before the further promotion of the aforementioned persons. Once the petitioner was promoted to the post of Assistant Engineer, by way of catch-up principle, he regains his seniority as assigned to him as Junior Engineer. Thus, the action on the part of the respondents in not assigning him seniority as Assistant Engineer above the aforementioned persons, is illegal, arbitrary and discriminatory. The plea taken by the respondents that the seniority of the petitioner shall be decided in due course of time is not tenable in law.

10. The next question to be determined is regarding the stepping up of the pay of the petitioner as that of his juniors. It is not in dispute that the petitioner was senior to the aforementioned persons and further his pay was less only on account of the fact that he was promoted to the post

of Assistant Engineer after his juniors mentioned above. The respondents have denied the benefit of stepping up of pay to the petitioner on the basis of the office memorandum dated 21.09.1999 (Annexure R-I), wherein condition no.6(c) mentions that if a senior joins the higher post later than the junior, for whatsoever reasons, whereby he draws less pay than his junior, in such cases senior cannot claim stepping up of pay at par with junior.

11. The similar issue had arisen for consideration before a coordinate Bench of this Court in CWP(T) No.13348 of 2008, titled, ***J.K. Mohindru vs. State of H.P. and another*** and the Court had considered the same very para 6(c) of the instructions contained in memorandum dated 21st September, 1999 (Annexure R-I) and came to the conclusion that the instruction issued by Government of India, Ministry of Finance on 04.02.1966, provides that in order to remove the anomaly of a Government servant promoted or appointed to a higher post, but drawing a lower rate of pay in the post than a Government servant junior to him and promoted or appointed subsequently to another identical post, such official would be entitled to stepping up of his pay to make it equal to the pay of the junior. It was

held that the senior cannot get less pay than his junior. The relevant paras of the judgment read as under:-

"4. The stand of the State is that the case of the petitioner is not covered under FR and the instructions issued by the State Government from time to time. The instruction relied upon by the State are annexure R-1. We are concerned with instructions No. 2 and 6, which reads as follows:-

"2. The matter relating to removal of anomalies in such cases where pay of junior has become more than his senior after 1/1/1996 as a result of application of the provisions of F.R. 22, was receiving the attention of the Government and after due consideration / examination, and in partial modification of this Department's Office Memorandum No. Fin(C)A(3)-8/88. dated 7.3.1991, it has been decided that the pay of senior Government servant be stepped up equal to the pay of his junior subject to the following conditions:-

(a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.

(b) The pre-revised scale and revised scales of pay of the lower and the higher posts in which they are entitled to draw pay should be identical.

(c) The senior Government servant at the time of promotion have been drawing equal or more pay than the junior.

(d) The anomaly should be directly as a result of the application of the provisions of Fundamental Rule-22 or any other rule or order regulating pay fixation on such promotion in the revised scale. If in the lower post, the junior was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to

him, provision of these instructions shall not be invoked to step up the pay of the senior officer.

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6. Stepping up of pay shall however not be allowed in following type of cases.

(a) Where a senior proceeds on Extraordinary Leave which results in postponement of date of next increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade;

(b) If a senior forgoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the adhoc promotion in the cadre. The increased pay drawn by a junior either due to adhoc officiating/regular service rendered in the higher posts for period earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term;

(c) If a senior joins the higher post later than the junior, for whatsoever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay or par with the junior;

(d) If a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post;

(e) Where a person is promoted from lower to a higher post, his pay is fixed with reference to the pay drawn by him in the lower post under the FR 22 and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. In such cases, the senior direct recruit cannot claim pay parity with the junior promoted

*from a lower post to higher post as seniority alone is not a criteria for allowing stepping up;
(f) Where a junior gets more pay due to additional increments earned on acquiring higher qualifications, etc.”*

5. Under clause 2 of the aforesaid instructions a senior is entitled to stepping up of his pay so that it is equivalent to that of junior where both the junior and senior belong to the same cadre and the post to which they have been promoted are identical and in the same cadre. There is no dispute that this condition is fulfilled.

6. The next condition is that the pre-revised and revised scales of the lower and higher posts should be identical. There is no dispute with regard to this condition also. As per sub clause(c) of clause 2 the senior Government servants at the time of promotion have been drawing equal or more pay than the junior. This condition is not fulfilled because admittedly Shri Mohindru was getting less pay than Shri Gurunath Vashist at the time when he was promoted. Sub clause (d) of clause 2 only applies when the junior officer was drawing more pay in the pre revised scale than the senior by virtue of any advance increment granted to him. This condition is not applicable here since Shri Gurunath Vashist was not given any advance increment but was promoted earlier since he was a member of the scheduled castes.

7. Clause 6 deals with those cases where benefits of stepping up of pay under FR22 are not to be allowed. None of the conditions mentioned in clause (a) to (f) are applicable.

“FR 22(I)(a)(1) reads as follows:- (18) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior.-(a) As a result of application of FR 22-C (Now FR 22(I)(a)(1).- In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and

promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely;-

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

8. FR 22 (a)(1) deals with fixation of the salary of an employee on his promotion to a higher post. Instruction issued by the Government of India, Ministry of Finance on 4th February, 1966 provides that in order to remove the anomaly of a Government servant promoted or appointed to a higher post but drawing a lower rate of pay in the post than a Government servant junior to him and promoted or appointed subsequently to another identical post, such official would be entitled to stepping up of his pay to make it equal to the pay of the junior.

This instruction clearly envisages that when two persons are in the same grade and doing identical work then the senior cannot get pay less than that of the junior except in the circumstances specifically mentioned in the order, such as, having higher qualifications, etc.”

12. In the present case, the respondents have denied the claim of stepping up of the pay to the petitioner at par with his juniors, only on the basis of the instructions, which have been considered by the coordinate Bench of this Court in **J.K. Mohindru's** case (supra) and thus, the petitioner, who admittedly had joined the post of Junior Engineer earlier to the persons mentioned above, who are juniors to him and have been paid more salary, the petitioner is entitled to the benefit of stepping of his pay at par with his juniors.

13. Learned counsel for the petitioner has also placed reliance upon the decision passed by the Division Bench of this Court in LPA No.142 of 2014, titled, **State of H.P. & another vs. V.K. Gupta**, wherein the similar issue had cropped up and the judgment passed by the learned Single Judge of this Court was affirmed and even the judgment referred to above passed by the coordinate Bench of this Court in **J.K. Mohindru's** case (supra) was referred. The judgment passed in **J.K. Mohindru's** case (supra) has

attained finality.

14. Learned Advocate General for the respondents has vehemently argued that as per the opinion of the Finance Department, in similar situated cases of Sh. V.K. Gupta, Assistant Engineer (retd) and Sh. Raj Kumar Sud, Executive Engineer (retd), it was observed that stepping up is not applicable when a junior is promoted to a higher post because of applicability of the reservation rules. The judgment in **V.K. Gupta's** case (supra) passed by a coordinate Bench of this Court has been affirmed, when the appeal preferred by the respondents has been dismissed, which was registered as LPA No.142 of 2014 and thus, the argument raised by the learned Advocate General that the petitioner is not entitled to the said benefit cannot be accepted.

15. Learned Advocate General has further vehemently argued that since the persons, who were juniors to him, were promoted to the post of Assistant Engineer earlier to the petitioner and the petitioner came to be promoted after 7 years, he is not entitled to the benefit of stepping up, in view of the constitutional protection provided to the persons, who were junior, being under reserved

category. However, the said contention cannot be accepted in view of the fact that in the case of **J.K. Mohindru's** case (supra) also, the person namely Gurunath Vashist who was promoted earlier was from the Scheduled Caste category and the petitioner J.K. Mohindru was from general category and the Court came to the conclusion that when two persons are in the same grade and doing identical work then the senior cannot get less pay than that of the junior except in the circumstances specifically mentioned in the order, such as, having higher qualifications etc. In the present case, the petitioner and his juniors mentioned above were in the same grade, but he was drawing less pay than that of his juniors and his juniors were not being paid more pay on account of their additional qualifications etc. Therefore, once a coordinate Bench of this Court has already given the judgment considering the instructions on which the respondents have placed reliance, which judgment has also attained finality, the petitioner who admittedly being senior to the aforementioned persons is entitled to the benefit of stepping up and the action on the part of the respondents to deny him the same pay as being given to his juniors is illegal, arbitrary and discriminatory.

16. Even as per the judgments of the Hon'ble Supreme Court in **Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others**, (2009) 3 SCC 94 and **Union of India and others vs. C.R. Madhava Murthy and another**, (2022) 6 SCC 183, it has been held that the senior cannot get less pay than his junior. Hence, the petitioner is entitled to the relief of stepping of his pay at par with his juniors. However, since the petitioner has approached this Court in the year 2013, he is entitled to the arrears three years prior to filing the present petition in view of the judgment in **Union of India vs. Tarsem Singh**, (2008) 8 SCC 648.

17. Consequently, the present petition is allowed and the respondents are directed to re-draw the seniority list of the petitioner vis-à-vis incumbents from reserved category on the basis of the seniority position of the petitioner on the post of Junior Engineer and thereafter step up the pay of the petitioner to make it equal to his juniors namely S/Sh. Amar Nath, Harnam Singh and Sahib Singh with all consequential benefits, but the petitioner shall be paid arrears only from three years prior to filing the present petition. The respondents are directed to pay the consequential benefits

to the petitioner within a period of six months from today and in case the consequential benefits are not released and paid to him within the aforesaid period, he shall be entitled to interest @ 6% per annum on the arrears from today till actual payment to him. No order as to costs. Pending applications, if any, also stand disposed of.

11.09.2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**