

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.2965 of 2019

Decided on: 24th July, 2026

M.K. Sood

...Petitioner

Versus

H.P. State Electricity Board and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?¹

For the petitioner: Mr. Praveen Sharma, Advocate.

For the respondents: Mr. Ravinder Thakur, Advocate.

Jiya Lal Bhardwaj, Judge (*Oral*)

By way of present petition, the petitioner has
prayed for the following substantive reliefs:-

"(i) That a writ of certiorari may very kindly be issued thereby quashing the impugned annexure P-3 and P-9.

(ii) That a writ of mandamus may very kindly be issued thereby directing the respondents to give the benefit of stepping up of pay and fix the basic pay of petitioner at par with his junior Shri Parshotam Ram, with effect from the date when his junior was drawing more pay than the petitioner 9.9.1998 and may be ordered to calculate and pay the arrears of pay and pension alongwith interest as per revised pay fixation."

2. The facts as emerge from the pleadings are that

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

the petitioner was appointed as Oiler and Cleaner with the respondents-Board on 27.11.1969 and was promoted to the post of Sub Station Attendant (in short "SSA") on 25.08.1971. Thereafter he was promoted as Junior Engineer and joined his duties on 09.09.1983. One person namely, Parshottam Ram Badra, was appointed as SSA with the respondents-Board on 08.08.1975 and was promoted to the post of Junior Engineer, who joined his duties on 19.09.1983.

3. It has been averred that Sh. Parshottam Ram Badra, who was promoted as Junior Engineer on 19.09.1983, was junior to the petitioner in the list of Junior Engineers as per the promotion order and both of them were drawing the equal pay being similarly situated persons. After completion of 23 years of service, Sh. Parshottam Ram was fixed in the basic pay of Rs.9700/- as on 09.08.1998 and was granted the increment w.e.f. 01.01.1999, on which date he was drawing basic pay of Rs.10,350/-, whereas the petitioner was drawing pay of Rs.9700/-.

4. It has been averred that the petitioner and Sh.

Parshottam Ram Badra had been working at different stations and as such the pay anomaly did not come to the notice of the petitioner and he came to know about this for the first time in the year 2003. Thereafter he made a representation dated 14.03.2003 (Annexure P-1), claiming therein for stepping up of his basic pay as his junior Sh. Parshottam Ram Badra was drawing higher pay and as such, he is entitled to the benefit of stepping up of his basic pay. It has also been averred that as per the instructions issued by the respondents-Board, vide office memorandum dated 16.09.2004 (Annexure P-2), it was decided that the pay anomaly be removed, in case, both the junior and senior Board servants belong to the same cadre and the post in which they have been promoted are identical.

5. The claim of the petitioner raised vide representation dated 14.03.2003 was not accepted as per communication dated 25.05.2006 (Annexure P-3) for the reason that the petitioner had not exercised the option after completion of 23 years of service under FR-22(1)(a)(i) proviso

thereunder after accrual of increment on 01.01.1999 as per the option exercised by the another officer. However, he can take up the matter with the Secretary of the Board. It has been averred that the petitioner was promoted to the post of Assistant Engineer vide office order dated 19.08.2004 and assumed the charge on 03.09.2004, whereas Sh. Parshottam Ram Badra was promoted vide order dated 11.08.2005 and assumed the charge as such on 22.08.2005. As per office order dated 14.09.2007 (Annexure P-7), all the persons who were appointed as Assistant Engineers on adhoc basis were promoted on regular basis from the initial date of their appointment on adhoc basis.

6. The petitioner after promotion as Assistant Engineer on regular basis from the initial date of appointment on adhoc basis made a representation on 18.02.2008 (Annexure P-8) to the Secretary of the respondents-Board, before his superannuation on 29.02.2008. However, no action was taken before his retirement but vide communication dated 17.10.2008

(Annexure P-9), his claim was rejected on the ground that though the proposal has been examined and opined that the benefit of stepping of pay is being allowed prospectively as the officer has since retired from Board's services w.e.f. 29.02.2008, but keeping in view the fact that the pension of the retiree is not going to increase in case the proposal is processed for stepping up due to the fact that pension is calculated on the basis of average emolument drawn in the last ten months before retirement and thus decided not to process the case further.

7. The petitioner feeling aggrieved by non-grant of step up of his pay to that of his junior and the decisions of the respondents-Board not to give the benefit to him has approached this Court on the grounds *inter alia* that as per the instructions of the Government, once a senior employee is entitled for stepping up of the pay in cases of anomalies arising as a result of application of FR-22, the same should be removed and since the petitioner was getting less pay as compared to Sh. Parshottam Ram Badra referred above, the

impugned decision conveyed by the respondent-Board deserves to be quashed and set aside.

8. It has been averred that no doubt the petitioner was superannuated from service on 29.02.2008, but such benefit of stepping up of pay had to be given to him since the delay was only part of the respondents-Board, who did not rectify the mistake and finally the claim raised by the petitioner came to be rejected. It has also been averred that earlier the respondents-Board had taken a stand that since the petitioner did not exercise the option at the time of completion of 23 years of service, he was not entitled for step up and now vide impugned order dated 17.10.2008, his claim has been rejected on the ground that it is not going to affect the pension of the petitioner, which is totally illegal. It has further been averred that the advice of the Finance Department as well as the rejection of the claim of the petitioner for stepping up of his pay on the ground of retirement is not only discriminatory but also against the principles of natural justice. The action on the part of the

respondents-Board in not granting the benefit of stepping up is affecting the pension of the petitioner and in case he was granted the benefit of step up, he could have drawn more pension, keeping in view the emoluments to be drawn by him in preceding ten months prior to the date of his superannuation and, therefore, prayed that the impugned orders may be quashed and set aside.

9. The respondents-Board filed reply to the petition and averred that the petitioner on his initial appointment as Oiler & Cleaner was in the pay scale of Rs.45-2-75, who joined his duties on 27.11.1969. The petitioner was drawing the basic pay of Rs.9400/- per month w.e.f. 01.01.1998 in the revised pay scale of Rs.6750-250-8000-275-9100-300-10000-350-11050 with next date of increment on 01.01.1999 and so on. The future pay of the petitioner by grant of annual increments was regulated. So far as Sh. Parshottam Ram Badra is concerned, he was initially appointed as SSA who joined his duties on 08.08.1975 in the pay scale of Rs.110-5-130-200-11-300. He was drawing the basic pay @9400/- per

month on 01.01.1998. The benefit of promotional increments on completion of 23 years regular service was granted in his favour w.e.f. 09.08.1998 and his pay under FR-22(1)(a)(i) was fixed at Rs.9700/- on 09.08.1998. Therefore, on account of routine increment due on 01.01.1999, the said official was fixed under FR-22(1) at Rs.10,350/- per month and so on. The future pay of Sh. Parshottam Ram Badra by grant of annual increments was regulated and due to these facts the petitioner started drawing less pay than his junior. It has further been averred that the petitioner and Sh. Parshottam Ram Badra joined as Oiler and Cleaner & SSA on 27.11.1969 and 08.08.1975, respectively and drawing pay in different pay scales and thus the senior and junior officials were not in an identical post. Therefore, the claim of the petitioner for stepping up of his pay equal to the pay of his junior is not covered under the ibid provision and hence the petitioner is not entitled to any relief.

10. The petitioner has placed on record the information received under the Right to Information Act,

2005 (in short "RTI"), supplied by the respondents-Board (Annexure P-14, page 77). A perusal of the same clearly reveals that the petitioner was initially appointed as Oiler and Cleaner on 27.11.1969, but he was promoted to the post of SSA on 25.08.1971 and Sh. Parshottam Ram Badra was appointed as SSA on 08.08.1975.

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

12. It is not in dispute that the petitioner was senior to Sh. Parshottam Ram Badra even in the grade of SSA. The stand taken by the respondents-Board that the petitioner and Sh. Parshottam Ram Badra were appointed on different posts and the pay scale was different which resulted in anomaly in the pay scale cannot be countenanced in view of the fact that though the petitioner was initially appointed as Oiler and Cleaner, but he was promoted as SSA on 25.08.1971 and Sh. Parshottam Ram Badra was appointed on 08.08.1975, which fact is clear from a perusal of Annexure P-14 (page 77) supplied by the respondents-Board. Since the petitioner was

senior to Sh. Parshottam Ram Badra, he could not have been paid less pay scale or salary. Not only this, the petitioner was earlier promoted to the post of Junior Engineer than Sh. Parshottam Ram Badra and thereafter to the post of Assistant Engineer. These facts have not been disputed. It is also admitted fact that the petitioner and Sh. Parshottam Ram Badra were drawing the equal pay before 01.01.1999 and the petitioner is senior to Sh. Parshottam Ram Badra. While rejecting the claim of the petitioner, as conveyed, vide communication dated 17.10.2008, though the decision was taken by the Finance Department to step up the pay of the petitioner to be allowed prospectively, but since he had already retired from service w.e.f. 29.02.2008, the decision was taken not to process the case only for the reason that no benefit shall accrue to him, is totally wrong for the reason that once the pay of the petitioner was stepped up then while calculating the pension and other benefits, the petitioner would have drawn more pension than what he was in receipt of.

13. Learned counsel representing the respondents-Board has vehemently argued that since the petitioner has approached the Court after the date of his retirement, he is not entitled to any benefit. The said plea cannot be countenanced for the simple reason that non-grant of step up of pay of the petitioner is affecting his pension and the said claim cannot be construed to be stale and further the same cannot be rejected on the ground of delay and laches. The Hon'ble Supreme Court has time and again held that the issue relating to payment or re-fixation of pay and pension is recurring cause of action. However, the Court while granting the arrears can restrict the same for 3 years prior to the date of filing the present petition. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in **Union of India versus Tarsem Singh**, (2008) 8 SCC 648 and the relevant para reads as under.

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing

wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

14. Therefore, in view of the law laid down by the Hon'ble Court, the petition is maintainable.

15. The issue raised in the present petition is no more res-integra in view of the various judgments of the Hon'ble Supreme Court, wherein it has been held time and again that if the junior is getting higher emoluments than senior, the senior has to be given the same pay scale. In the present case, the petitioner even at the time of his retirement was senior to Sh. Parshottam Ram Badra and, therefore, the benefit of step up has wrongly been denied to him. A

reference in this regard is made to the judgment of the Hon'ble Supreme Court in **Gurcharan Singh Grewal and others vs. Punjab State Electricity Board & others**, (2009) 3 SCC 94, wherein the Hon'ble Supreme Court has held as under:-

"15. Mr. Chhabra also attempted to justify the disparity in the pay of Shri Shori and the appellant No.1 by urging that the appellant No. 1 had been granted the promotional scale with effect from 1st January, 1996, where the benefits of increment in the scale were lower. On the other hand, Shri Shori who joined the services of the Board in 1974, was granted the promotional scale on 17th May, 2006, with effect from 1st September, 2001, when the increments and the pay-scales were higher. Mr. Chhabra submitted that it is the disparity in the incremental benefits that led to the anomaly of the appellant No.1 getting a lower salary in the promotional scale.

16. Having regard to the submissions made on behalf of the respective parties, we have little hesitation in accepting Mr. Gupta's submissions that since the writ petition had been jointly filed on behalf of the appellants, whose interest was common, the prayer therein should not have been confined to the appellant No.2 alone and that the High Court should have granted relief to the appellant No.1 also by directing that his pay also be stepped up to that of his junior, Shri R.P. Shori. Although, this question does not appear to have been gone into by the High Court for the simple reason that the writ petition was disposed of only on the averments contained in paragraph 7 of the written statement filed on behalf of respondents that the grievance of the appellant No.2 duly addressed, there ought to have been at least some discussion in the judgment of the High Court regarding the claim of the appellant No.1. Unfortunately, the case of the

appellant No.1 was not considered at all by the High Court.

17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No.1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No.1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No.1 was also stepped up to that of Shri Shori, as appears to have been done in the case of the appellant No.2."

16. The Hon'ble Supreme Court had again the occasion to deal with the similar proposition in ***Union of India and others vs. C.R. Madhava Murthy and another***, (2022) 6 SCC 183, wherein the senior employees were denied step-up on the ground that their junior employees had started drawing higher pay after being granted financial upgradation under the ACP scheme. The Hon'ble Supreme Court after considering the import of FR 22, which provides stepping up of pay and removal of anomaly by stepping up the pay of the senior, on promotion drawing less pay than his junior, held that the senior cannot be granted less pay. The relevant paras of the judgment read as under:-

"9. Having heard Ms. Madhvi Divan, learned ASG and considering the facts and circumstances of the case, which has emerged from the impugned judgment and order passed by the High Court, it cannot be said that the original writ petitioners were as such claiming the stepping up of the pay under the ACP Scheme. Their grievance was with respect to the anomaly in the pay scale and their grievance was that while granting upgradation under the ACP Scheme, their juniors were getting higher salaries than what they receive. Therefore, it was a case of removal of anomaly by stepping up of pay of seniors on promotion drawing a less pay than their juniors.

10. The High Court has therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay, which reads as under:

"(22) 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 FR-22-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 FR-27. 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.

[G.I., M.F., O.M. No.F.2 [78)E.III (A)/66, dated the 4th February, 1966)".

11. Therefore, it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the appellants herein to step up the pay of the original writ petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for."

17. In the present case, as per the discussions made above as well as the law propounded by the Hon'ble Supreme Court, once the petitioner was senior in the feeder category of SSA and thereafter promoted to the post of Junior Engineer earlier to Sh. Parshottam Ram Badra and thereafter to the post of Assistant Engineer, he could not have been granted

less pay and once he had raised the issue before the respondents-Board, to grant him the benefit of step up, the denial of the same on the ground that his junior was given the benefit, who had exercised the option after 23 years' service, cannot be countenanced for the reason that the petitioner being senior to Sh. Parshottam Ram Badra was to be granted the same pay scale. Further, the reason assigned not to process the case of the petitioner that he has retired and the same is not going to affect his pension, is also wrong, because if the pay of the petitioner is stepped up, his pension would be revised and thus, the decision cannot sustain in the eyes of law and the same is quashed and set aside.

18. Consequently, the present petition is allowed and the impugned orders dated 25.05.2006 (Annexure P-3) and 17.10.2008 (Annexure P-9) are quashed and set aside. The respondents-Board is directed to pay the same pay scale to the petitioner as was granted to Sh. Parshottam Ram Badra, from the same date, while stepping up his pay on notional basis and on actual basis from three years prior to the date of

filing of the present petition and the pension of the petitioner be re-fixed and the arrears on account of step up be released in his favour within a period of three months from today. In case, the arrears are not paid, the respondents-Board shall pay interest @6% per annum from today till actual payment to him.

19. In view of the above, the present petition is disposed of. No order as to costs. Pending application(s), if any, shall also stand disposed of.

24th July, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**