

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.19230 of 2013
Date of Decision: 06.10.2015**

Gian Chand

...Petitioner

Versus

Uttar Haryana Bijli Nigam Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Pritam Singh Saini, Advocate
for the petitioner.

Mr.P.S.Poonia, Advocate for
respondents – Nigam.

--

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the action of the respondents in withdrawing the 1st ACP given to the petitioner in the year 2007 w.e.f. 1.1.1996 and making illegal recovery of Rs.2,66,202/- from his retiral benefits. Directions are also sought to the respondents to restore the 1st ACP granted to the petitioner w.e.f. 1.1.1996 and to grant him the pay and the pay scale equivalent to his junior Jagdish Kumar and grant him the pension on the basis of last pay drawn by him.

The brief facts of the case are that the petitioner was appointed as Chowkidar on 31.05.1978 and worked as such till 01.06.1978. He was appointed as a Bill Distributor on 02.06.1978 and worked as such till 06.08.1981. He was promoted as a Meter Reader on 07.08.1981 and worked as such

till 11.01.2011 when he was promoted as UDC from which position he retired on 31.07.2011 on attaining the age of superannuation.

One Jagdish Kumar son of Manohar Lal was directly recruited and appointed as Meter Reader on 09.09.1985. He was granted the benefit of 1st ACP w.e.f. 1.1.1996. The petitioner, who was senior to Jagdish Kumar as Meter Reader represented to the respondents to step up his salary at par with him.

Acting on the representation, in the year 2007, the petitioner was granted the benefit of 1st ACP w.e.f. 01.01.1996 . Thereafter, he was granted the 2nd ACP w.e.f. 01.01.2006.

At the time of his superannuation as U.D.C. on 31.07.2011, the petitioner was drawing Rs.14550 as basic pay and Rs.3200 as grade pay plus other allowances. Based on the total of his basic pay and grade pay as Rs.17550, the petitioner was issued a Provisional Pension Order dated 12.09.2011 sanctioning 100% provisional pension at Rs.8875/- per month. However, when the petitioner received the Final Pension Order, the pension of the petitioner was reduced to Rs.8100/-. This was on account of the withdrawal of the ACP benefit granted to the petitioner. The petitioner was also given the amount of commutation of pension as well as gratuity as per reduced pension. An amount of Rs.2,62,062 was deducted from the gratuity payable to the petitioner.

Aggrieved, the petitioner has filed the present writ petition.

In the written statement filed on behalf of the respondents, it has been stated that initially the provisional pension was released to the petitioner on 17.09.2012 with basic pension Rs.8675/- per month till final fixation of his pay in the service book. CAO Pay Fixation observed that the petitioner was initially appointed as Class IV, whereas, Shri Jagdish Kumar Meter Reader was directly recruited and hence, the petitioner was not entitled for ACP benefits at par with him. Accordingly, the pay of the petitioner was re-fixed and revised and final PPO issued with basic pension Rs.8100/- per month.

Learned counsel for the petitioner states that the case of the petitioner is covered by the decision of this Court in the case of CWP No.4563 of 2007 **Prem Chand Manchanda and others Vs. State of Haryana and another** decided on 09.01.2009. In that case, the benefit of retaining the stepped up pay by giving effect to Assured Career Progression Scales in the department of PWD and its subsequent withdrawal by the department was in issue. The Hon'ble Court disposed of all such petitions with the direction that in case the higher scale of pay had been re-fixed by stepping up of the pay only on the ground that some juniors have been granted higher pay, the same shall be withdrawn, though no recovery for the excess payment would be made. In the context of ACP Scales, it was

specifically observed that if the higher pay has resulted from the application of the ACP Scales then there is no question of withdrawal of the benefit and consequently no question of recovery is to be made.

The Hon'ble Supreme Court of India in the case of **Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others** (Special Leave to Appeal (Civil) No. 20264 of 2004 decided on 02.08.2006) also considered a similar issue and observed as under:-

“In the result, all the appeals are partly allowed. The appellants shall receive the pay scales of the respondents. In case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. Revised order shall be passed within a period of two months of the receipt of the copy of this order by the Government. However, if upon revision of the pay scale any employee is refunded any amount, the Government shall not insist on refund of such amount. If any employee is entitled to get any amount by way of pay revision, the said amount shall be made available to him within a period of six months from the date of receipt of the copy of this order by the government.

Consequently, the appeals are partly allowed with no order as to costs.”

The applicability of the above judgments could not be disputed by the Ld. Counsel for the respondents.

Ld. Counsel for the petitioner has also relied on a decision of this Court in **CWP No.20240 of 2014** titled as **'Jokhu Ram Vs. Uttar Haryana Bijli Vitran Nigam and others,** decided on 29.06.2015, wherein, identical issue was involved. The Court directed the respondents to consider the case of the petitioner therein in the light of the decision of Hon'ble Apex Court in Ram Sarup Ganda's case (supra).

Accordingly, this petition is allowed. The action of the respondents in refixing the pension of the petitioner by withdrawing the benefit of the ACP scale granted to him is quashed. The consequential recovery made from him is also held to be illegal. The amount recovered consequent to the impugned order be refunded to the petitioner within two months.

October 06, 2015

Atul

(HARINDER SINGH SIDHU)
JUDGE