

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

CWP No.20240 of 2014

Date of Decision: 29.06.2015

Jokhu Ram

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. J.K. Goel, Advocate
for the petitioner.

Mr. P.S. Poonia, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondent authorities to release the amount of pension and other benefits including gratuity by fixing the same on the basis of last pay drawn salary from the date of entitlement along with interest.

The petitioner was initially appointed as Bill Distributer on *ad hoc* basis on 10.04.1973 and thereafter, he was appointed on the post of Peon on temporary basis and worked there till 06.07.1976. He was made regular on the post of Bill Distributer on 07.07.1976. He was promoted to the post of Meter Reader on 26.06.1985 and ultimately got retired on 29.02.2012 from the post of Meter Reader on attaining the age of superannuation.

Learned counsel for the petitioner submits that in spite of submission of pension papers by the petitioner, only the provisional pension along with leave encashment and General Provident Fund amount was released but the benefit of gratuity and commutation of pension was not released to him. He further submits that the petitioner made various representations but no heed was paid to the request of the petitioner. Learned counsel also submits that *ad hoc* service period of the petitioner has not been counted by the respondent authorities while releasing the pensionary benefits.

The petitioner earlier filed **CWP No.20270 of 2012** which was disposed of with a direction to the respondent authorities to take final decision on the representation dated 17.09.2012 filed by the petitioner by passing a speaking order. Learned counsel also submits that an amount of ₹ 2,67,143/- was deducted vide letter dated 02.05.2013 but an amount of ₹ 1,79,891/- was released to him on account of pensionary benefits. A legal notice was also served upon the respondents but still, no action was taken thereupon. Ultimately, as per directions issued by this Court, a speaking order was passed on 21.11.2013 stating therein that the pay of the petitioner has been re-fixed at par with one Jagdish Kumar, who is junior to him and the anomaly has been removed. Thereafter, the petitioner made a representation also but still, no action was taken thereupon. Learned counsel also submits that the petitioner is entitled for release of an amount of ₹ 2,67,143/- along with interest on the delayed payment of pensionary benefits. The case of the petitioner cannot be considered at par with Jagdish Kumar as the petitioner was initially appointed as Class IV employee, whereas, Jagdish Kumar was appointed directly as Meter Reader and his pay has been fixed after sanction of the second A.C.P. An amount of ₹ 2,87,211/- has been recovered from gratuity amount of the

petitioner due to differences of pay and after getting advice from the Office of L.R, the recovered amount has been released. At the end, learned counsel for the petitioner submits that the petitioner is entitled for re-fixation of his pensionary benefits by removing anomaly with his junior. He also submits that the case of present petitioner is squarely covered by the judgment of Hon'ble the Apex Court in case **Commissioner and Secretary to Government of Haryana and others vs Ram Sarup Ganda and others** decided on **02.08.2006** as the judgment of this Court passed in **CWP No.14401 of 1999** was challenged before Hon'ble the Apex Court by way of filing **Civil Appeal No.20264 of 2004**.

Written statement filed on behalf of the respondents is already on record.

Learned counsel appearing on behalf of the respondents submits that the petitioner has been granted step up in pay at par with his junior namely Jagdish Kumar-Meter Reader, who was a direct recruit. The petitioner was drawing basic pay of ₹ 18,730/- and accordingly, his pension was fixed provisionally. Learned counsel also submits that the petitioner is a promotee and is not entitled for step up in pay at par with Jagdish Kumar, Meter Reader. The benefit of step up granted to the petitioner was recalled and after grant of ACP scale, his pay was re-fixed vide order dated 06.11.2012. An amount of ₹ 2,67,143/- was returned to the petitioner after re-fixation of his pension. Thereafter, the pension of the petitioner has been re-fixed at ₹ 8,210/- per month as his pay was re-fixed at ₹ 16,420/-. Learned counsel for the respondents submits that the case of present petitioner is covered by judgment of this Court in case **Prem Chand Manchanda and others vs State of Haryana and another** passed in **CWP No.4563 of 2007**, decided on **09.01.2009**.

Heard the arguments of learned counsel for the parties and

have also gone through all the documents available on the file including the judgments cited by both the parties.

Learned counsel for the respondents has relied upon the judgment passed in **Prem Chand Manchanda's** case (supra), wherein, 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 challenged by way of filing bunch of writ petitions.

It has fairly been admitted by learned counsel for the respondents that the controversy in the present writ petition is the same as in **Prem Chand Manchanda's** case (supra). The relevant portion of the said judgment is reproduced as under :-

“ All the writ petitions, therefore, are disposed of with the direction that higher scale of pay, if they have been refixed by stepping up their pay only on the ground that some juniors have been granted higher pay, shall be withdrawn. No recoveries shall be made for excess payments made already. The retiral benefits shall be refixed/recomputed on a notional refixation of the pay drawn on the last day of retirement of the respective employees. If the higher pay to the petitioners has resulted from the application of ACP scales, then there is no question of withdrawal of benefits and there will also be no question of recoveries to be made. The decision and reasoning in C.W.P. No.4563 of 2007 will govern also the findings in C.W.P Nos.9780 and 12144 of 2008. The petitioners in the respective writ petitions will also be not entitled to the higher scale of pay if they had been stepped up on a wrong basis, apart from the fact that they not also be liable for any recovery. The retiral benefits whenever arise, they shall be recomputed on notional refixation of pay without

stepping up their pay. The impugned orders are set aside for re-examination of the issue in the light of the observations made above.

All the writ petitions are disposed of in terms of the above directions.”

In the judgment relied upon by learned counsel for the petitioner, it has been mentioned that a series of writ petitions were filed before this Court by various government employees, which were allowed on 21.09.2000. Thereafter, Special Leave Petitions were filed by the State of Haryana and others, out of which, some were dismissed on the ground of delay but some of the petitions were disposed of with direction to the respondent and the Special Leave Petition filed in case of **Ram Sarup Ganda's** case (supra) was partly allowed on 02.08.2006. The relevant portion of the said decision is reproduced 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.”

On perusal of aforesaid order, it is apparent that in case, any anomaly is there on fixation of ACP scales, revised order shall be passed

within a period of two months. It is also mentioned that if upon revision of the pay scale, any employee is refunded any amount, the Government shall not insist on refund of such amount and in case, 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 the order passed by the government.

The controversy in the present case is squarely covered by decision of Hon'ble the Apex Court in **Ram Sarup Ganda's** case (supra).

Accordingly, the present petition is disposed of with a direction to the respondents to consider the case of the petitioner in view of decision in **Ram Sarup Ganda's** case (supra) and in case, the petitioner is found to be entitled for the benefit, the same be released to him within a period of three months from the date of receipt of certified copy of this order.

However, in case, the petitioner is still aggrieved in any manner, he is at liberty to redress his grievance before the appropriate Forum.

29.06.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE