

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

**CWP No. 25750 of 2013 (O&M)
Date of Decision: 08.01.2015**

Rajbir Singh

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.N.Sharma, Advocate
for the petitioner.

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

RAMESHWAR SINGH MALIK J. (Oral)

Present writ petition is directed against the orders dated 14.10.2013 (Annexure P-9) and 14.11.2013 (Annexure P-10), whereby benefit of stepping up of pay of the petitioner at par with his junior Sh. Ajay Kumar, LDC, granted to the petitioner vide order dated 19.2.2008 (Annexure P-8) was withdrawn and as a result thereof, an amount of ₹1,36,762/- was ordered to be recovered from the petitioner.

Notice of motion was issued and pursuant thereto, written statement was filed on behalf of the respondents.

Learned counsel for the petitioner submits that the

impugned orders passed by the respondent authorities were in clear violation of the law laid down by the Hon'ble Supreme Court in its judgment dated 2.8.2006 passed in Civil Appeal No. 3250 of 2006 (Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others)-Annexure P-2. He further submits that the impugned orders Annexures P-9 and P-10 were also contrary to the instructions issued by the State of Haryana, which were adopted by the respondent-corporation vide Annexures P-3 to P-6. He concluded by submitting that since the impugned orders were contrary to the judgment of the Hon'ble Supreme Court in Ram Sarup Ganda's case (supra) and against the relevant policy instructions, the same were not sustainable in law. He prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for the respondents submits that the respondent authorities were well within their jurisdiction to pass the impugned orders, as the same were passed in accordance with the later instructions dated 23.6.2009, adopted by the respondent-corporation w.e.f. 13.1.2010 vide Annexure R-4/1. He further submits that instructions Annexure R-4/1 were issued in compliance of the Division Bench judgment dated 9.1.2009 passed by this Court in CWP No. 4563 of 2007 (Prem Chand Manchanda and others Vs. State of Haryana and another). He concluded by submitting that since the action of the respondent authorities was a bonafide one and in consonance with the directions issued by the Division Bench judgment of this Court, the impugned orders deserve

to be upheld. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of the operative para of the judgment in Ram Sarup Ganda's case (supra) and instructions issued in compliance thereof would show that no ambiguity of any kind, whatsoever, was left and the petitioner was rightly granted benefit of stepping up the pay scale with his junior Ajay Kumar, by passing the order dated 19.2.2008 (Annexure P-8). It seems that the respondent authorities completely misread, misunderstood and misinterpreted the ratio of the Division Bench judgment in P.C.Manchanda's case (supra), wherein a clear exception has been carved out in the following terms:-

“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.”

Another equally important aspect of the matter is that while issuing instructions Annexure R-4/1, which was duly adopted by the respondent-corporation, the authorities failed to take into notice

earlier instructions issued by the State vide Annexures P-3 to P-7. In fact, there was not even a passing reference of the instructions contained in Annexures P-3 to P-7, while issuing instructions dated 23.6.2009. This seems to be the basic reason which has resulted in passing of the impugned orders. However, it is an undisputed fact that the impugned orders are clearly against the law laid down by the Hon'ble Supreme Court in Ram Sarup Ganda's case (supra). Having said that, this Court feels no hesitation to conclude that the impugned orders cannot be sustained.

Further, if the impugned orders are allowed to stand, the benefit which was rightly granted to the petitioner in compliance of the directions issued by the Hon'ble Supreme Court in Ram Sarup Ganda's case (supra), would be set at naught and the impugned action would be in clear violation of the law laid down by the Hon'ble Supreme Court. In this view of the matter, it is unhesitatingly held that the respondent authorities acted contrary to the law laid down by the Hon'ble Supreme Court, because of which the impugned orders cannot be sustained.

While carving out the abovesaid exception in P.C.Manchanda's case (supra), the Division Bench was conscious about the fact that the Hon'ble Supreme Court has already issued the directions in this regard in Ram Sarup Ganda's case (supra). However, the respondent authorities failed to appreciate the abovesaid exception in the correct perspective, while issuing later instructions Annexure R-4/1. It is so said, because neither earlier instructions contained in Annexure P-3 to P-7 were superseded nor

any clarification was issued in that regard. Thus, the impugned orders cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders dated 14.10.2013 (Annexure P-9) and 14.11.2013 (Annexure P-10) are contrary to the true import and spirit of the judgment passed by the Hon'ble Supreme Court in Ram Sarup Ganda's case (supra), the same are hereby set aside.

Consequently, the petitioner is declared entitled for benefit of stepping up of pay scale with his junior Ajay Kumar, LDC and the order dated 19.2.2008 (Annexure P-8), whereby the said benefit was granted to him, would stand restored in favour of the petitioner.

Resultantly, with the abovesaid observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

8.1.2015
AK Sharma