

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

CWP No.3267 of 2013 (O&M)

Date of Decision: **October 16, 2015**

Shadi Ram

...Petitioner

Versus

Utter Haryana Bijli Vitran Nigam
Ltd and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Jitender S.Chahal, Advocate
for the petitioner.

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

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HARINDER SINGH SIDHU, J.

By filing this petition, Shadi Ram has sought quashing of the order dated 9.3.2012 (Annexure P-5) vide which the benefit of 1st ACP granted to him w.e.f. 1.1.1996 has been withdrawn.

The case, as set up by the petitioner is that he had joined the services of the respondents in the year 1976 as Peon and his services were regularised as Chowkidar in the year 1977. He was promoted as Meter Reader on 3.9.1980 and later as Upper Division Clerk on 25.5.2010. One Jagdish Kumar was appointed as Meter Reader directly on 9.9.1985 i.e. five years after the petitioner having been promoted as such. Jagdish Kumar was granted 1st ACP scale of Rs.5000/7850 w.e.f.

1.1.1996. The Government of Haryana revised pay scale of its employees under the pay revision rule, 1996 known as Haryana Civil Services (Revised Pay) Rules, 1998 (adopted by respondents) and under these rules pay scale of all employees were revised and Meter Readers were granted 1st ACP scale of Rs.5000/7850 after 10 years regular satisfactory service and then granted 2nd pay scale after 20 years of regular satisfactory service. Only such employees, who were initially appointed on lower posts and later promoted as such, had been deprived of the benefit of ACP scales.

The petitioner requested number of times to the respondents for grant of 1st ACP scale w.e.f. 1.1.1996, but verbally denied by the respondents on the ground that ACP scales are not meant for the promotees. It is also stated that the controversy was set at rest by the Hon'ble Supreme Court in **Commissioner and Secretary, State of Haryana vs. Ram Sarup Ganda, SCT 2007(2) page 476** holding that if juniors are getting ACP scales and seniors are getting lesser pay than juniors working in the same cadre/post, then senior Government servant is entitled to step up of his salary at par with the salary received by the junior by granting ACP scale. Thereafter, State of Haryana issued letter dated 23.11.2006 (Annexure P-1) for grant of benefit of stepping up of pay of senior employees at par with their junior counterparts in case of ACP matters, which letter

was adopted by the respondents vide letter dated 5.3.2007 (Annexure P-2). Thereafter, on a representation of the petitioner, the 1st ACP scale was granted to the petitioner w.e.f. 1.1.1996 in the year 2008 and thereafter 2nd ACP scale of Rs.5200-20200+grade pay of Rs.3300/- w.e.f. 1.1.2006 in the year 2012.

The grievance of the petitioner is that the benefit of 1st ACP scale granted to the petitioner, has been withdrawn vide the impugned order dated 9.3.2012 (Annexure P-5) and his pay has been fixed accordingly. This has been done without any prior notice to him.

Upon notice, the respondents have filed written statement stating that the benefit of ACP was withdrawn in view of Memo dated 13.1.2010 (Annexure R-2). The stand of the respondents is that since the petitioner was initially appointed as Peon and then promoted as Meter Reader and later as UDC, he had already got financial upgradation in his career, therefore, he is not entitled for stepping up of pay at par with Sh.Jagdish Kumar, Meter Reader.

I have heard Learned counsel for the parties and gone through the records.

The instructions dated 13.1.2010 (Annexure R-2) relied upon by the respondents were also considered in **CWP No.6829 of 2013 titled Satya Narain Sharma vs. Uttar**

Haryana Bijli Vitran Nigam and another decided on 24.4.2015 and **CWP No.25750 of 2013** titled **Rajbir Singh vs. Uttar Haryana Bijli Vitran Nigam Limited and others** decided on 8.1.2015. In both these cases , relying upon the decision of the Hon'ble Supreme Court in **Ram Sarup Ganda's** case (supra), and the Division Bench judgment dated 9.1.2009 in **CWP No.4563 of 2007** titled **Prem Chand Manchanda and others vs. State of Haryana and another**, the action of the respondents withdrawing the benefit of ACP scale was held to be illegal. In CWP No.25750 of 2013, it was observed:-

“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.”

Consequently, the writ petition is allowed. The impugned order dated 9.3.2012 (Annexure P-5) is quashed. It is declared that the petitioner is entitled to the benefit of ACP scale for upgradation of his pay at par with his junior Sh.Jagdish Kumar.

October 16, 2015
Dinesh

(HARINDER SINGH SIDHU)
JUDGE