

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

**Regular Second Appeal No.479 of 2014 (O&M)
Date of decision: 17.03.2015**

Haryana Vidyut Prasaran Nigam Ltd. & others

.....Appellants

Versus

O.P. Manchanda

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. P.S. Sullar, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.1181-C of 2014

For the reasons mentioned in the application, same is allowed and delay in refiling the appeal is condoned.

RSA No.479 of 2014 (O&M)

Defendants-appellants have come up in regular second appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Civil Judge (Junior Division), Faridabad and the District Judge, Faridabad, whereby suit filed by the plaintiff-respondent has been decreed.

O.P. Manchanda, plaintiff-respondent had filed a suit for declaration to the effect that he was entitled to ACP of Rs.6500-9900 after completion of 10 years continuous service as Junior Engineer (JE) w.e.f. 1996 and further entitled to second ACP of Rs.6500-10500 after completion

Initially, the plaintiff joined the HSEB on 10.08.1967 and thereafter, he was promoted as JE w.e.f. 07.05.1982. His pay was fixed in the pay scale of Rs.1640-2900 w.e.f. 01.01.1986. Later on, this pay scale was modified and the pay of the plaintiff was fixed in the pay scale of Rs.1800-3105 w.e.f. 01.05.1990. After completing 13 years of regular service as JE, his pay was fixed in the scale of Rs.2100-3315. Later on, the ACP scheme was introduced vide office order No.705/FIN dated 24.02.1998, which is as under:-

GROUP No. XII

Sr. No.	Existing Functional Pay Scale
1.	Rs.1800-60-2580-EB-75-3105
2.	Rs.2100-60-2340-75-3315 (After 13 years of regular service in respective posts.)

Sr. No.	Revised Functional Pay Scale
1.	Rs.6000-175-8450 EB-175-9500
2.	Covered under ACP.

Sr. No.	Name of the Post	Existing Functional Pay Scale on 31.12.1995	Revised Functional Pay Scale w.e.f. 01.01.1996
6	J.E./Sub-Station	Rs.1800-3105 Rs.2100-3315 (After 13 years of regular service as J.E.)	(1) Rs.6000-175-8450-EB-175-9500. (2) Covered under ACP.

The claim of the plaintiff-respondent was that since he was already in the pay scale of Rs.2100-3315, therefore, he ought to have been put in the scale of Rs.6500-9900, but the defendants-appellants had wrongly put him in the pay scale of Rs.6000-9500. He had further submitted that after

completing 20 years of service on 08.05.2002, he was entitled to second

ACP of Rs.2500-10500 w.e.f. 01.06.2002. He retired on 30.04.2008 and thereafter, vide order dated 02.07.2009, pension benefits of employees were modified w.e.f. 01.01.2006.

The defendants-appellants filed their written statement, wherein they controverted the allegations of the plaintiff and stated that his pay had been fixed correctly.

The suit of the plaintiff was decreed by both the Courts below on the ground that the same was not barred by limitation as wrong fixation of pay was continuing and recurring cause of action. The Hon'ble Supreme Court in **M.R. Gupta Vs. Union of India and others**, 1995 (5) SLR 221, has held as under:-

“Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong, if on merits his claim is justified.”

On facts, the plaintiff-respondent had made an application for settlement of his pay fixation on 17.03.2008 vide Ex.P7, which was declined by the defendants-appellants vide letter dated 06.05.2008, Ex.D4 and was conveyed to the plaintiff-respondent on 12.05.2008. The said letter gave cause of action to the plaintiff-respondent to file the suit, which was filed by

him on 05.03.2010 within a period of two years. Hence, the suit filed by plaintiff-respondent was held to be within limitation.

Finally, the issue with regard to grant of ACP scales has been considered by this Court in **Krishan Lal Vs. State of Haryana and others**, 2006 (2) SLR 807, **Suraj Bhan and others Vs. State of Haryana**, 2001 (1), RSJ 205, **Jagmal Singh and others Vs. State of Haryana**, 2002 (2) RSJ 401 and **Kishan Chand Bhardwaj Vs. State of Haryana**, 2002 (1) SCT 399, wherein it has been held as under:-

“The controversy in question is squarely covered by various judgments of this Court in Suraj Bhan's case (supra), Jagmal Singh's case (supra) and Kishan Chand Bhardwaj's case (supra). It has been repeatedly held by this Court that merely because employee had been promoted at some stage of his career would not disentitle him from the ACP scale. Even otherwise, the petitioners worked on the promoted post for a period of ten years. It has also been held that the footprints of an employee would be wholly irrelevant for the purpose of grant of ACP scale in respect of direct recruit or the promotee. In view of the law laid down in the aforesaid judgment, the order Annexure-P6 cannot be sustained. The same is accordingly set aside. It is further held that the petitioners was rightly granted first ACP scale at Rs.4000-6000. Consequently, the recovery ordered against the petitioners is also quashed.”

The claim of the plaintiff is squarely covered by the aforesaid judgments.

After going through the impugned judgments, no substantial question of law arises for consideration.

Dismissed.

17.03.2015
ajp

(RITU BAHRI)
JUDGE