

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No. 12242 of 2013

Date of Decision:- 08.04.2016

Saroop Singh

....Petitioner

Versus

UHBVNL and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.R. Bansal, Advocate  
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate  
for the respondents.

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**RITU BAHRI, J. (Oral)**

Petitioner is seeking quashing of order dated 08.03.2011 (Annexure P-8), order dated 15.03.2013 (Annexure P-13) and grant of stepping up equal to his junior w.e.f. 01.01.1996 and interest on the recovery of ₹80,885/- from 01.12.2011 to March 2013.

The petitioner was appointed as a Truck Driver on 16.08.1979 in the Haryana State Electricity Board. The remained posted up to 05.08.1993 in Western Yamuna Canal Hydel Project Yamuna Nagar. Thereafter, he was transferred to Operation Circle Ambala, Model Town Sub-Division Ambala City. He retired from there on 30.11.2011. On 21.05.1989, he was regularized and his pay

was fixed at ₹1290/- + ₹150 Special Pay in the pay scale of 1200-30-1560-EB-40-2040 + ₹150/- special pay with next date of increment on 01.05.1990. As a result of revision of pay scales w.e.f. 01.01.1996, the pay of the petitioner was fixed at ₹4750/- + ₹30/- personal pay with the next increment date as 01.05.1996. After bifurcation of the Haryana State Electricity Board on 01.07.1999, he was allocated to Uttar Haryana Bijli Vitaran Nigam Ltd. i.e. the respondents Corporation. Vide instructions dated 08.02.1994 effective from 01.01.1994 higher standard scales scheme was introduced for granting higher standard scales on completion of 10/20 years of regular satisfactory service. These instructions/schemes were adopted by the Haryana State Electricity Board. The petitioner was not granted these benefits at that time on the ground that work charged service was not to be taken into account for the purpose of these benefits. Thereafter, the Haryana Government issued instructions dated 15.03.2002 that the work charged service shall be countered for the purpose of granting benefit of additional increments and higher standard scales. These instructions were adopted by the respondent's corporation vide office order dated 06.10.2003. The petitioner thereafter was granted the benefit of one additional increment w.e.f. 01.07.1992 and the benefit of Higher Standard Pay Scale w.e.f. 01.01.1994, Accordingly, the pay of the petitioner was fixed and necessary benefits were paid to him. One Joginder Singh, who was junior to the petitioner, was getting higher pay than the petitioner and the petitioner made representation dated 18.02.2008 (Annexure P-2) for stepping up his

pay at par with Joginder Singh. Thereafter, the petitioner filed CWP No.21750 of 2010 in this Court and the same was disposed of by giving a direction to decide the representation/legal notice within three months, vide order dated 07.12.2010 (Annexure P-7). Vide order dated 08.03.2011 (Annexure P-8), respondent No.2 rejected the case of the petitioner. The reasons given for rejection that the petitioner had joined as regular driver on 19.05.2009 and Joginder Singh joined on 13.06.2009. The petitioner thereafter filed appeal for reviewing the order dated 08.03.2011 (Annexure P-8), vide letter dated 05.08.2011 (Annexure P-9). The respondent(s) disallowed the benefit of additional increment and higher standard pay scales, re-fixed the pay and sought recovery of ₹80,885/- from his leave encashment as per order dated 18.10.2011 (Annexure P-10) and the same was recovered from his leave encashment at the time of his retirement on 30.11.2011. The petitioner was paid a sum of ₹2,08,085/- as leave encashment whereas the total leave encashment of the petitioner was ₹2,88,970/-. The respondents issued PPO/GPO and pension commutation order on 13.02.2012. For implementation of the order of PPO/GPO, the petitioner filed CWP No.12235 of 2002, claiming the recovered amount of ₹80,885/- with interest. The same was withdrew, vide order dated 16.07.2012, by the petitioner with liberty to file a representation,. On account of any action of the respondents, the petitioner filed COCP No.351 of 2013 and during the pendency of the contempt petition, the respondents passed a speaking order dated 15.03.2013 (Annexure P-13). The respondent(s) refunded

the recovered amount of ₹80,885/- in March 2013 without interest. The petitioner is now seeking directions to set aside the orders dated 08.03.2011 (Annexure P-8) and dated 15.03.2013 (Annexure P-13) and directions to step up the pay equal to his junior w.e.f. 01.01.1996, to pay interest on recovered amount of ₹80,885/- from 01.12.2011 to March 2013 and interest on the enhanced pension, gratuity and commutation from 01.12.2011 to March 2013.

Upon notice, the stand taken by respondent Nos.1 and 2 in the written statement is that the pay of the petitioner cannot be stepped with of Joginder Singh driver, as Joginder Singh was an employee of another power utility i.e. HVPNL whereas the petitioner was an employee of UHBVNL. While passing the order dated 08.03.2011 (Annexure P-8), there is a typographical mistake the date of joining of the petitioner and respondent has been written as 19.05.2009 and 13.06.2009 respectively instead of 19.05.1989 and 13.06.1996. After the bifurcation of HSEB, four companies were framed. Company was allocated to each employee as is where basis and the seniority of each employee made by each company independently. Since both the employees are working in different companies, there can be no parity with two employees of different companies. The claim of the petitioner suffers from delay and laches as no benefit is being claimed for stepping up w.e.f. 01.01.1996. While passing the order dated 15.03.2013 (Annexure P-13), the benefit of one additional increment and thereafter benefit of higher standard scale was restored to the petitioner and amount of ₹80,885/-

has been refunded to him, vide cheque No.680158 dated 15.03.2013. However, the claim of the petitioner for stepping up of pay with Joginder Singh has not been considered in view of the detailed order passed on 08.03.2011 (Annexure P-8).

The short question for consideration in the present writ petition would be that whether the petitioner is entitled for stepping up his pay at par with Joginder Singh. In the order 08.03.2011 (Annexure P-8), the particulars of the both the officials, which are reproduced as under: -

| Particulars                       | Sh. Sarup Singh Driver | Sh. Joginder Singh Driver                         |
|-----------------------------------|------------------------|---------------------------------------------------|
| Date of Joining                   | 16.08.79 as W/C Driver | 01.03.80 as W/C Cleaner<br>13.10.80 as W/C Driver |
| Appointed W/C Cleaner Operator    | ---                    | 26.08.86                                          |
| Date of Joining as regular driver | 19.05.09               | 13.06.09                                          |
| Basic pay as on 01.06.09          | 5000/-                 | 5375/-                                            |

From the table above it is abundantly clears that the petitioner Saroop Singh had joined on regular basis on 19.05.2009 whereas Joginder Singh had joined on 13.06.2009. The above dates have been wrongly given and the same should have been 19.05.1989 and 13.06.1996. This mistake has been clarified by the respondents in the written statement and Joginder Singh was getting higher pay than the petitioner. As per the advised of the LR, at the time of bifurcation of HSEB four company were framed. Company was allocated to each employee as is where basis. The seniority of each employee is made by each company independently. The petitioner was employee in

UHBVN whereas Joginder Singh driver was employee of HVPNL. Hence, no parity was to be maintained between the two employees and the claim was rejected.

The bifurcation of HSEB took place on 01.07.1999. Before this date the petitioner and Joginder Singh were employees of the Haryana State Electricity Board and taking the date of joining as regular driver, the petitioner for all intents and purposes is senior to the Joginder Singh. After bifurcation into four companies, they were allocated two different corporations, however, keeping in view there is no initial date of appointment and regularization orders, the petitioner was senior to Joginder Singh from the date of his joining i.e. 16.08.1979 and that of Joginder Singh is 01.03.1980. He has been senior to Joginder Singh till bifurcation i.e. 01.07.1999. After bifurcation 1999, the petitioner made his representation dated 18.02.2008 (Annexure P-2). Since the benefit of grant of increment and pay is a recurring loss, the claim cannot be rejected on the ground of delay.

The Supreme Court in the case **M.R. Gupta Vs. Union of India and others (1995) 5 Supreme Court Cases 628**, held that the application for fixation of pay was made after a gap of 11 years. The Tribunal has dismissed the claim on this ground alone without going into merits. The Supreme Court set aside the order of the Tribunal and held that 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 and merits, he would be entitled to be paid according to the properly fixed pay scale in the future. The prayer for proper fixation of pay cannot be treated as time barred since it was based on recurring cause of action.

Applying the ratio of the above said judgment to the facts of the present case, the present writ petition cannot be dismissed on the ground of delay alone, as after bifurcation, the petitioner had made a representation in the year 2008 itself. The respondents in the written statement are not disputing the fact that the date of regularization of petitioner was 19.05.1989 and that of Joginder Singh was 16.06.1996. Hence, for all intents and purposes, right from the date of appointment petitioner Saroop Singh was senior to Joginder Singh Driver.

Accordingly, the present writ petition is allowed. The orders dated 08.03.2011 (Annexure P-8) and dated 15.03.2013 are set aside and direction is given to the respondent(s) to re-fix the pay of the petitioner at par with Joginder Singh with all consequential benefits. Further direction is being given to the respondent(s) to make the payment of interest @ 9% per annum on a sum of ₹80,885/- w.e.f. 01.12.2011 to March 2013 and to make payment of interest on the pensionary benefits @ 9% per annum from 01.12.2011 to March 2013.

April 08, 2016  
naresh.k

( **RITU BAHRI** )  
JUDGE