

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

**C.W.P No. 20415 of 2013
Date of decision : 17.03.2016**

Som Nath

...Petitioners

versus

U.H.B.V.N.L & ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashutosh Kaushik, Advocate
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate
for the respondent

RITU BAHRI , J.

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing letter dated 22.04.2013 (P-5) vide which the respondents-department re-fixed the pay of the petitioner and further prayer is for quashing of letter dated 04.07.2013 (P-7) to the extent of recovery of Rs.3,82,763/- and reply dated 19.06.2013 (P-11).

The petitioner whose date of birth is 23.08.1954 was appointed as Peon on 14.12.1979 and joined the department on 01.02.1980 on ad-hoc basis after following the due process of law and

vide order dated 16.06.1983, he was appointed as Officiating Peon on regular basis in the Board in the pay scale of Rs.300-500 w.e.f 01.04.1982. Further he was promoted to the post of Offg. LDC, BBMB, Dhulkote, vide office order dated 29.06.1985. Thereafter, petitioner gave his option and elected the revised pay scale w.e.f 01.01.2006 and respondent-department granted him 1st and 2nd ACP Scale on the basis of pay at the post of LDC, vide Annexure P-4 colly. Subsequently, he retired on 31.08.2012 as LDC. Subsequently, petitioner was given notice by the respondent for recovery of money from the retiral benefit of the petitioner, vide order dated 22.04.2013. Petitioner gave his legal notice dated 24.05.2013 (P-10), which was replied by the respondent vide letter dated 19.6.2013. The recovery of Rs.3,82,763/- was made from the retiral benefits of the petitioner and the net payable amount was calculated at Rs.90144/- (P-7).

Learned counsel for the petitioner contends that once the petitioner had been promoted to the post of LDC on 3.07.1985 and retired on 31.08.2012 as LDC, then his ACP will be calculated from 03.07.1985 (i.e date of promotion as LDC) after completion of 10 years and 20 years of service as LDC and not from the year 1983. The recovery of Rs.3,82,763/- cannot be effected from the petitioner, as the petitioner has not made any misrepresentation or concealed any fact

from the department.

Learned counsel for the respondents on the other hand contends that the petitioner retired on 31.08.2012 and was refunded withheld amount of Rs.3,82,763/- vide cheque dated 04.09.2014 (R-3/2) but it has been stated that refixation can be made in view of judgment of the Hon'ble Apex Court in a case of **Chandi Prasad Uniyal and ors. vs. State of Uttarakhand and others, 2012 (8) SCC 417** wherein it has been held that any amount paid/received without authority of law can always be recovered barring a few exceptions of extreme hardships but not as a matter of right. In such situations, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

Heard learned counsel for the parties.

The question now remained in the present writ petition is that whether ACP should be calculated w.e.f 16.06.1983 i.e date on which the petitioner was promoted as Offg. Peon on regular basis or by the date by which the petitioner was promoted as LDC i.e 3.07.1985.

This aspect has been considered by this Court in **Ramesh Dahiya v. U.H.B.V.N.L through its Managing Director 2008(3) SLR 59** wherein it was observed that the plaintiff, who was working on the post of Draftsman since April 1983, had completed 20 years of

service on April, 2003 and he did not get any financial up-gradation in the functional pay scale prescribed for the post as on 31.12.1995 during this period of 20 years either as a consequence of his functional promotion in the hierarchy or as a consequence of revision of pay scale for the same post. Therefore, he was entitled to the benefit of the ACP. In para No.6 of the aforesaid judgment, this Court observed as under:-

"The petitioner had been promoted as Draftsman with effect from April 13, 1983. So, under the A.C.P. Rules of 1998, his pay should have been fixed in the 1st A.C.P. Scale on account of ten years of regular satisfactory service on the post of Draftsman with effect from January 01, 1996 and in the 2nd A.C.P. Scale on account of twenty years of regular satisfactory service on this post with effect from April 01, 2003. Vide the impugned order dated October 20, 2004 (Annexure P-2), the petitioner has been erroneously granted the 2nd A.C.P. Scale of the post of junior Draftsman on which post he was initially appointed on November 07, 1980 on completion of 20 years of regular service. The purpose of providing 1st and 2nd A.C.P. pay scale is to remove stagnation of the employees on one post for more than 10/20 years. The petitioner joined the Nigam as Junior Draftsman on November 07, 1980. He was promoted as Draftsman on April 13, 1983. Had he remained on the post of Junior Draftsman for all this period, he would have been granted 1st and 2nd A.C.P. pay scale on the post of Junior Draftsman. Since after his promotion as Draftsman, he remained on the

same post for more than ten years on the date of coming into force of the A.C.P. Rules of 1998 i.e. January 01, 1996, he was entitled to be given the 1st and 2nd A.C.P. Pay scale by counting his service as Draftsman. To make it more clear, if the petitioner was promoted as Head Draftsman, which is the next promotional post after Draftsman and had remained on this post for ten years as on January 01, 1996, he would have been given the 1st A.C.P. Scale of the post of head Draftsman on January 01, 1996."

Subsequently, this judgment has been followed by this Court in a case of ***Mohinder Kumar vs. The Chairman, HVPNL, Panchkula and others passed in CWP No. 18757 of 2003, decided on 27.03.2012.*** In para 5 of the judgment, it has been observed as under:-

"5. This issue of entitlement to the ACP scales with reference to the very same rule has also been considered by a Division Bench of this Court in Ramesh Dahiya v. UHBVN in its decision dated 04.04.2008. The Division Bench was holding that if a person had not earned promotion within the period specified in the notification then, ACP scales will have to be applied. As an illustration, the Division Bench had also observed that even a person had earned a promotion as a Chief Draftsman and stagnated in that post for 10 or 20 years, would be entitled to

the ACP scales. The issue relating to the applicability of the ACP scales cannot be only by a reference to whether the petitioner had during his service obtained any promotion. The very fact that a person had obtained a promotion, cannot disentitle him with reference to the fact that such promotion had come in his way before or after the 10 years or 20 years period. If within the said period of 10 or 20 years, a person had not earned a promotion, the denial of ACP scales to him shall be unjustified. The contention of the respondents, therefore, that the petitioner had earned promotion after his initial entry of service as disentitling him to ACP scales is not correct and is rejected.

Petitioner retired on 31.08.2012 and his withheld amount of Rs.3,82,763/- were refunded to him, vide cheque dated 04.09.2014 (R-3/2).

After going through the above mentioned judgments, the ACP scales had been rightly given to the petitioner by taking in to consideration his appointment to the post of Peon. After being appointed as LDC on 03.07.1985, he has not earned any promotion for 10 years when he was granted 1st ACP and thereafter 2nd ACP on completion of 10 and 20 years of service.

Applying the ratio of ***Ramesh Dahiya's case (supra)***, the

petition is partly allowed and the respondents are directed to give 9% interest on delayed payment given to the petitioner mentioned above w.e.f 01.12.2012 to 04.09.2014 i.e the date when the payment is made, in view of judgment of Hon'ble the Supreme Court in cases of ***D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2014 AIR (SC) 2861 and Megh Varan Sharma vs. State of U.P and others, 2015 (1) S.C.T (12)*** wherein payment of retiral benefit was delayed by the respondent-department and it has been held that the petitioner was entitled to interest @ 9% per annum from the date of entitlement till the date of actual payment.

17.03.2016

G Arora

**(RITU BAHRI)
JUDGE**