

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5347 of 2014

Date of decision : November 22, 2016

Lal Chand

..... Petitioner

Versus

UHBVNL and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.L. Dhingra, Advocate
for the petitioner

Mr. Saurabh Gulia, Advocate
for the respondents

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

The petitioner retired as Lineman from the office of XEN, 'OP' Division (UHBVNL) Shahabad (M) District Kurukshetra (Haryana) on 30.04.2010. In the present case the petitioner claims second ACP and grade pay of Rs. 3600/- in place of Rs. 3200/- already allowed to him and also seeks release of the amount of Gratuity of Rs. 17782/- which has already been recovered from him through Annexure P-2 on account of wrong fixation of pay. The plea of the petitioner is that the petitioner was working as regular ALM since 08.09.1987. From 01.01.1996 Haryana Civil Services (Assured Career Progression Rules, 2008) (Annexure P-7) was introduced and the ACP was to be granted on completion of 10-20-30 years of service, in case the Govt. servant is not promoted during that period.

Learned counsel for the petitioner argues that the Service Book (Annexure P-4) shows that petitioner was getting the grade pay of Rs. 3200/-

whereas as per the ACP scheme to the grade pay of post of ALM was Rs. 3600/-.

Learned counsel relied upon Rule 13 of the Haryana Civil Services (Assured Career Progression Rules, 2008) issued vide Gazette Notification dated 30.12.2008 which is reproduced as under:-

13. Special entitlement for ACP scales :-

Where the functional pay structure of the promotional post in the hierarchy is inferior to the ACP pay structure entitlement of the Government servant, had he not been promoted, as per his eligibility and entitlement on completion of prescribed length of service for the 1st, 2nd or 3rd ACP pay structure, as the case may be, the Government servant shall be entitled to be placed in the 1st or 2nd or 3rd ACP pay structure as the case may be after completing the prescribed period of service for being placed in the 1st or 2nd or 3rd ACP pay structure.

It is contended that since the grade pay of ALM after grant of 2nd ACP was Rs. 3600/-, therefore, the functional pay of ALM and LM being the same with grade pay of Rs. 3200/-, the petitioner is entitled to benefit of Rule 13 reproduced above.

The perusal of Rule 13 of the said Rule shows that where the functional pay structure of the promotional post in the hierarchy is inferior to the ACP pay structure entitlement of the Government servant and he has not been promoted as per his eligibility and entitlement on completion of prescribed length of service for 1st, 2nd or 3rd ACP pay structure, the Government servant shall be entitled to be placed in 1st, 2nd or 3rd ACP pay structure. In the present case the petitioner was promoted as LM on 12.07.1988 and had completed his 20 years service on 12.07.2008 and was entitled for grant of 2nd ACP. Since the ACP grade of the petitioner was less than the grade pay had the petitioner been promoted and granted 2nd ACP on completion of 20 years, therefore, the petitioner is entitled to the benefit of Rule 13 and 2nd ACP with grade pay of Rs. 3600/-.

The reply of the respondent shows that respondent only talk about

wrong fixation of pay which is not an issue here. The issue is for grant of 2nd ACP grade pay. In view of the stand discussed above, I am of the view since the pay of the petitioner was inferior to the ACP pay structure which he would be entitled on completion of 20 years of service, therefore, he is entitled to 2nd ACP grade pay i.e. Rs. 3600/- on completion of 20 years service i.e. w.e.f. 08.09.2007.

So far as the recovery of amount of wrong fixation of pay is concerned, I am of the view that in view of the judgment passed by the Apex Court in *State of Punjab and others vs. Rafiq Masih, 2015(1) SCT 195* the said recovery could not be made, since there is no mis-representation on the part of the petitioner. The impugned order Annexure P-2 so as to effect the recovery from the DCRG/Gratuity is hereby quashed. Recovery, if already made is directed to be refunded to the petitioner in terms of the aforesaid judgment with interest @ 9% per annum.

In view of the above, the writ petition is allowed.

(KULDIP SINGH)
JUDGE

November 22, 2016

reena

Whether speaking / reasoned Yes / No

Whether Reportable: Yes / No