

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

CWP No.4443 of 2015 (O&M)

Date of decision : December 09, 2016

Hari Dass

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Malik, Sr. Advocate with
Mr. Bhupinder Singh, Advocate for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

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 was appointed as Class-IV employee in the respondent-department on 28.12.1970. He was promoted as Driver on 16.07.1978. One Ranjit Singh was appointed as Driver on 06.02.1979 by way of direct recruitment. The Government of Haryana decided to grant 1st, 2nd and 3rd ACP on completion of 10, 20 and 30 years of services respectively, but such benefits were not admissible to the promotees. These benefits were admissible only to the direct recruits. Aggrieved by the same, the petitioner approached this Court by way of filing writ petition, which was allowed. Against the decision of this Hon'ble Court, the State of Haryana files SLP in the Hon'ble Supreme Court and the SLP (C) No.20264

of 2004, which was converted into Civil Appeal No.3250 of 2006 against the petitioner was dismissed with a direction that the pay of the petitioner be fixed at par with his junior direct recruitees. The copy of the judgment to this effect is attached as Annexure P-1. The matter was ultimately settled by Hon'ble the Apex Court vide judgment dated 02.08.2006 (Annexure P-1), wherein it was ordered that the pay scales of the aggrieved employees were to be revised and if the employees, who on fixation of ACP scales are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. The petitioner being the party to the said petition was granted the benefits of 1st and 2nd ACP, vide order dated 11.04.2007 (Annexure P-2).

Now, it comes out that the petitioner retired from service on 30.04.2010. The claim of the petitioner is that his pay should be equal to his junior Ranjit Singh.

The State in its reply, has taken the stand that as per Rule 12 of the ACP Rules, 2008, issued on 07.07.2009 vide Annexure R-1, the benefit of stepping up shall not be admissible to a promotee if he has already got three financial upgradation as provided under these rules in his service career.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the respondents has also relied upon the Division Bench judgment of this Court delivered in LPA No.2077 of 2012, titled as ***“State of Haryana and others vs Dev Raj”***, decided on 12.02.2013, wherein it was observed as under:

“7. We are, therefore, of the opinion that the learned Single Judge was not right in giving the benefit of third ACP to the respondent. Learned Counsel for the respondent has sought to take umbrage under Rule 12 of Rules 2008 and submits that since the junior of the respondent had started getting higher pay, because of that upgradation, the respondent also should have been stepped up. This Rule, however, makes it clear that benefit of stepping up is not to be admissible to a promotee, if he has already got three financial upgradations, as provided under these Rules in his service career. Since, in the instant case, the respondent has been given three financial upgradations, one in the form of promotion from the post of Peon to Clerk and other two as ACPs, Rule 12 also would not apply in this case.

8. As a consequence, the present appeal is allowed, order of learned Single Judge is set aside and the writ petition filed by the respondent herein is dismissed.”

I am of the view that in the present case, the petitioner was party to the previous litigation, which was ultimately settled by Hon'ble the Apex Court, vide judgment dated 02.08.2006 (Annexure P-1). This judgment is applicable to the present petitioner being party to the same, in which Hon'ble the Apex Court has specifically directed that if the pay of the employee is less to his junior, his salary shall be stepped up, accordingly.

While implementing the said judgment, the 1st and the 2nd ACP were granted to the petitioner vide order dated 11.04.2007 (Annexure P-2). In terms of the order dated 02.08.2006 (Annexure P-1), the pay of the petitioner is to be stepped up equal to the his junior Ranjit Singh, who was direct recruit, was granted the 3rd ACP w.e.f. 01.03.1999.

As such, the present petition is allowed. The arrears of the pay and pension shall be released to the petitioner within three months from the date of receipt of certified copy of this order along with interest @ 9% per annum from 07.03.2015, when the petitioner approached this Court to claim the said relief.

(KULDIP SINGH)
JUDGE

December 09, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No