

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 4423 of 2016

Date of decision : 11.05.2016

Fateh Chand

...Petitioner

versus

Managing Director U.H.B.V.N.L Karnal & ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Aman Pal, Advocate
for the petitioner.

Mr. Sumit Jain, Advocate
for the respondents.

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 mandamus for directing the respondents to grant 2nd modified ACP and the release the arrear of same to the petitioner and get revised the petitioner's revised PP/CPO along with its benefits.

The grievance of the petitioner that he joined as MI reader on 29.07.1966 and was not granted any promotion up to 01.01.1996 and thereafter, he retired on 30.04.2002 and he was granted 2nd ACP of Rs.4625/7250 as per ACP rules of Nigam/HSEB. However, the petitioner

is also entitled to get 2nd modified ACP w.e.f 01.01.1996 in scale of 5450/8000 as the petitioner had served the department as M.R for more than 20 years in regular service.

On notice, a reply has been filed by the respondents stating there in that the benefit cannot be granted notionally and no arrears on account of notional fixation of pay on ACP scales from 01.01.1996 to 31.03.2004 will be given to the petitioner, as the petitioner had already retired from the service prior to 01.04.2004.

This issue has come up for consideration before a Division Bench of this Court in a case of Prem Paul and others vs. **Managing Director U.H.B.V.N.L Karnal & ors., passed in CWP No. 14580 of 2006, decided on 07.05.2008** wherein also the employees were retired on attaining the age of superannuation between the year 1996-2004 and were seeking grant of 2nd ACP scale as per modified notification dated 20.02.2004. This Court allowed the writ petition and the operative part of order reads as under:-

*This Court in **CWP No. 6439 of 2006- T.C. Gupta v.***

The State of Haryana and others, decided on 7.2.2008,

has examined the identical questions raised and held that

even if the petitioner is not to be granted arrears on account

of grant of 2nd ACP Scales, but retiral benefits are to be fixed

after grant of benefit of notional pay scale with effect from

1.1.1996. Even if the petitioners are not to be granted any arrears on account of the notional fixation of pay, but on account of deemed notional fixation of pay as on the date of retirement, the petitioners are entitled to the revised pensionary benefits.

In view thereof, we dispose of the present writ petition with the direction to the respondents to recalculate the retiral benefits payable to the petitioners after giving benefits of notional fixation of pay, by granting benefit of 2 nd ACP scales with effect from 1.1.1996. The necessary pensionary benefits shall be calculated and paid to the petitioner within a period of three months from the date of receipt of the certified copy of the order by the respondent.”

No appeal has been filed by the department against the above said judgment. However, in the written statement filed by the respondents, it has been simply stated that the above said judgment is not applicable to the facts of the present case.

The petitioner who retired on 30.04.2002 has to be extended the benefit of the above said judgment as he has not got any promotion during his service from 29.07.1966 to 01.01.1996.

Applying the ratio of the above said judgment, the petition is allowed in terms of **Prem Paul's case (supra)** and direction is given

to the respondents to recalculate the retiral benefits payable to the petitioner after giving benefits of notional fixation of pay, by granting benefit of 2nd ACP scales with effect from 1.1.1996. The necessary pensionary benefits shall be calculated and paid to the petitioner within a period of three months from the date of receipt of the certified copy of the order by the respondents.

(RITU BAHRI)
JUDGE

11.05.2016

G Arora