

The petitioner joined the Department of Industries on 26.11.1973 as Inspector (Weight and Measures). The post of Inspector (Weight and Measure) was re-designated as Inspector (Legal Metrology) in the year 1985. The said department was later on transferred to Food and Supplies Department in the year 2005. The petitioner was granted Assured Career Progression (in short 'the ACP') Scheme benefits on completion of 8/16/24/32 years of service. On 20.1.2006, ACP benefit of 32 years service was granted to the petitioner and he was allowed next higher scale of Rs.

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6400-10640 with effect from 26.11.2005. The petitioner was promoted as Assistant Controller (Legal Metrology), vide order dated 19.1.2007 in the pay scale of Rs. 6400-10640. The petitioner claims that the post of Assistant Controller (Legal Metrology) is a higher post, carrying higher responsibilities at the division level. The petitioner claims that on account of acceptance of the report of 5th Punjab Pay Commission, the Government issued notification dated 27.5.2009, whereby the pre-revised pay scale of Rs. 6400-10640 was revised to Rs. 10300-34800 with grade pay of Rs. 4200, which was accordingly granted to the petitioner with effect from 19.1.2007. However, the grade pay of his juniors, namely, Anirudh Ojha and Jagshir Singh, who are working as Inspectors, was fixed in the pay scale of Rs. 10300-34800 with grade pay of Rs. 4400 with initial pay of Rs. 17420/- on the basis of their pre revised pay scale of Rs. 7000-10980. After the revision of pay scale with effect from 1.1.2006, the petitioner made representations for stepping up his pay. The matter was recommended to the Finance Department to fix the pay of the petitioner one step higher grade pay than the feeder cadre posts. However, the same was declined, vide the impugned order dated 8.8.2013 (Annexure-P-18). The petitioner has furnished the following table of his pay scale and the pay scale of his juniors to press his claim :-

<u>Sr. No.</u>	<u>Name of the petitioner/junior</u>	<u>Designation</u>	<u>Date of Joining</u>	<u>Date of Promotion</u>	<u>Pay Scale Given</u>	<u>Revised Scale from 1.1.2006</u>
1.	Hardev Singh (Petitioner)	Assistant Controller	26.11.73	31.1.07	6400-10640	10300-34800+4200GP
2.	Anirudh Ojha (Junior)	Inspector	2.7.90	-	7010-10980	10300-34800+4400GP
3.	Jagshir Singh (Junior)	Inspector	24.8.90	-	7010-10980	10300-34800+4400GP

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The State, in the reply, has taken the stand that the petitioner was granted ACPs on completion of 8, 16, 24 and 32 years of service. On his promotion to the post of Assistant Controller Legal Metrology (Weight and Measures) in the year 2007. He was granted pay scale of Rs. 6400-10640, which he was already availing on completion of 32 years of service under ACP Scheme. The State has further taken the stand that the Government, vide notification dated 3.11.2006, amended the ACP Scheme, whereas the benefit of higher pay scale on completion of 4, 9 and 14 years of service was to be given. The employees, who had already availed the benefit under the old ACP Scheme i.e. 8, 16, 24 and 32 years, has the option to switch the benefits under the new amended scheme. It is stated that the petitioner did not opt for the new ACP scheme. The pay scale, as claimed by the petitioner, was not denied.

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

It is not a denying fact that the post of Assistant Controller Legal Metrology (Weight and Measures) is a promotional post from the post of Inspector (Legal Metrology). Admittedly, as per the chart furnished by the petitioner, the petitioner is getting the lesser pay than his juniors of Inspector rank. The anomaly has arisen since his juniors, namely, Anirudh Ojha as well as Jagshir Singh, who were working as Inspectors, opted for the new scheme of ACP under 4, 9 and 14 years of service, whereas the petitioner admittedly did not opt for the new scheme of ACP on the plea that he had already availed the benefit under the old ACP Scheme. The Finance Department has rejected the case of the petitioner, vide letter dated 8.8.2013 (Annexure-P-18). The extracts of the said letter are reproduced as under :-

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“Department of Finance is not in agreement to the proposal of Administrative Department received vide No. 984 dated 11.7.2013 in view of the provisions contained in Para 2 of this Department's instructions issued vide letter No. 1/63/2012-5FPI/284 dated 23.5.2012.

A.D. is further asked to proceed against the Assistant who has not kept 23.5.2012 instructions in view while dealing with the case.”

The perusal of letter dated 23.5.2012 (Annexure-P-19), relied upon by the Finance Department, shows that only those cases were to be sent to the Finance Department, which are related to anomaly created due to becoming less scale of promotional post than the lower post in implementation of recommendations of Cabinet Sub Committee. The extracts of the said letter are reproduced as under :-

“Keeping in view the above, it is directed that only those proposal of the Government employees for increase in their pay scales be sent to the Finance Department which are relating to the anomaly created due to becoming less scale of promotional post than the lower post in implementation of recommendations of Cabinet Sub Committee. The remaining demands of the Govt. employees can now be considered in the next pay commission.”

Now, the admitted position is that the petitioner did not opt for new ACP Scheme of 4, 9 and 14 years and rather, he decided to stick to the old ACP Scheme of 8, 16, 24 and 32 years.

Still the question would arise whether a person holding the higher post can get the pay lesser than his juniors ? I find the reply in negative. Whatever may be the reason, a person holding promotional post than feeder cadre cannot be given lower salary than his juniors, whatever

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may be the reason. It being so, the impugned order dated 8.8.2013 (Annexure-P-18) is liable to be quashed. Even though the petitioner has not opted for new ACP Scheme, the petitioner is to be granted the minimum pay and the grade pay equal to his juniors with effect from the date of his promotion i.e. 31.1.2007. Since the petitioner has retired from service, he shall also be entitled to consequential benefits. The writ petition is accordingly allowed. The writ of mandamus is also issued, directing the respondents to fix the pay of the petitioner equal to his junior inspectors with the same grade pay from the date of his promotion i.e. 31.1.2007. The other benefits shall be calculated accordingly and released accordingly. The needful be done within three months from the date of receipt of copy of this order. Since the petitioner has filed first representation 14.9.2009, therefore, the petitioner shall be entitled to interest on the arrears with effect from 15.12.2009 till payment.

(KULDIP SINGH)
JUDGE

14.9.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes