

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 7720 of 2013 (O&M)
Date of Decision: 10.08.2016.

Hari Ram Dagar

--Petitioner

Versus

State of Haryana and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Anand Bhardwaj, Advocate for the petitioner.

Mr. Ravi Pratap Singh, A.A.G., Haryana.

TEJINDER SINGH DHINDSA.J

The instant writ petition was instituted in the year 2013 i.e. at a point of time when the petitioner was serving as a Water Pump Operator-II (W.P.O.-II) under the Public Health Department, State of Haryana.

The short grievance raised by the petitioner was that he is entitled to pay parity with his junior namely Sh. Satya Prakash. Accordingly, a Writ of Mandamus was prayed for to fix the pay of the petitioner at par with Sh. Satya Prakash and to be granted the arrears of pay as well.

In support of the claim raised in the petition the seniority list of Regular Mech. Employee Group 'C' as on 1.7.2009, Public Health Engineering, Mewat Project Circle, Palwal at Annexure P-1 was adverted to and in which the name of the petitioner figures at Sr. No.17 reflecting his date of initial appointment to be 7.12.1979 on work charge basis and date of regularization to be 1.1.1987. On the other hand name of the junior Sh. Satya Prakash is reflected at Sr. No.85 reflecting his initial engagement as W.P.O-II on work charge basis on 7.3.1983 and date of regularization to be

1.4.1993.

There would be no dispute as such, as regards the petitioner being senior to Sh. Satya Prakash.

Annexure P-2 is an office order dated 4.10.2010, issued by the Executive Engineer of the respondent department showing the pay fixation of the petitioner and as per which as on 1.1.2006 the petitioner was drawing emoluments of Rs.11820+3200 G.P i.e. a total of Rs.15,020/-.

Apparently, the petitioner's claim stems from office order dated 6.1.2011 issued by the Executive Engineer (Annexure P-3) in favour of junior Sh. Satya Prakash and who on identical date i.e. 1.1.2006 was enjoying higher emoluments i.e. Rs.12,650+3300 G.P i.e. a total of Rs.15,950/-.

It is against such brief facts that the claim for pay parity has been raised.

Counsel for the parties have been heard.

A minute perusal of the office order at Annexure P-2 i.e. pay fixation in respect to the petitioner would reveal that he has been granted the benefit of 1st A.C.P scale w.e.f. 1.1.1997 and 2nd A.C.P scale w.e.f. 1.1.2007. Per contra, the junior Sh. Satya Prakash has been granted the additional increment on completion of 8 years service w.e.f. 1.7.1992 and benefit of 2nd A.C.P scale upon completion of 20 years of service w.e.f. 1.3.2003 i.e. prior in point of time.

Counsel appearing for the petitioner would clarify such anomalous position by submitting that Sh. Satya Prakash even though junior to the petitioner in the cadre of W.P.Os-II has been granted the benefit of 2nd A.C.P scale prior in point of time by counting his service on the post of

W.P.O-II even on work charge basis. It is the case of the counsel himself that such benefit was wrongfully granted to Sh. Satya Prakash and it is only regular service that is to be reckoned for grant of A.C.P benefit.

Having heard learned counsel for the parties at length, this Court is of the considered view that the prayer made in the instant petition cannot be accepted.

Sh. Satya Prakash even though junior in the cadre of W.P.Os-II had been granted the benefit of 2nd A.C.P prior in point of time as compared to the petitioner. Ostensibly this has been done by taking into account his work charge service as well. On the other hand the petitioner has been granted benefit of 1st A.C.P and 2nd A.C.P only by taking into account his regular service in the cadre of W.P.Os-II. The grant of benefit of A.C.P to the petitioner would be seen and viewed strictly in conformity with the A.C.P Rules/Instructions.

Merely because an employee be it junior to the petitioner has been granted the benefit of A.C.P by taking into account even the work charge service cannot justify the prayer for issuance of a Writ of Mandamus to grant the same benefit to the petitioner. Article 14 of the Constitution of India postulates a positive concept. This Court cannot pass directions and accept a claim with regard to pay parity by calling upon the department to perpetuate an illegality.

In view of the above, prayer of the petitioner cannot be accepted and the writ petition is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

10.08.2016

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Whether speaking/reasoned: Yes

Whether Reportable: Yes