

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21509-2012 (O&M)
Date of decision: 13.01.2017

Ram Chand

.....Petitioner

versus

Haryana Power Generation Corporation Ltd.

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Rajesh Arora, Advocate for the petitioner
Mr.Naveen S. Bhardwaj, Advocate for
Mr.Vinod S. Bhardwaj, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

Petitioner was initially appointed as Lower Division Clerk on regular basis in the erstwhile Haryana State Electricity Board (now succeeded by Haryana Power General Corporation Limited) on 19.3.1971. He was promoted as Divisional Accountant w.e.f. 16.7.1979 and was promoted as Section Officer only on 20.2.2004. In the meanwhile, the Haryana State Electricity Board introduced Assured Career Progression Scheme w.e.f. 1.1.1996 vide office order No.706/ Finance dated 27.2.1998. Under the said Scheme, if a particular employee having regular satisfactory service of minimum period of 10 years has not got any financial upgradation in terms of grant of pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, he is eligible to be placed in first ACP scale. Similar condition was there for second ACP on completion of 20 years of service. The petitioner retired from service on 30.6.2009. His claim in the

present petition is that he was not granted that first ACP and second ACP on completion of 10 and 20 years of service. It further comes out that during the pendency of the writ petition, the respondents have passed an order dated 26.11.2014 (Annexure R3), vide which he has been granted first ACP scale of Rs.6500-9900 w.e.f. 1.1.1996 after completion of 15 years of regular satisfactory service as Divisional Accountant, required for promotion to the post of Section Officer under the unqualified quota as per recruitment and promotion policy of the Accounts and Audit staff. Therefore, the claim of the petitioner survives only for the grant of second ACP on completion of 20 years satisfactory service.

Learned counsel for the petitioner further informs that order Annexure R3 has not been implemented so far and request is also for ordering implementation of the said order.

In the reply the respondents have not disputed the service of the petitioner. It has been stated that first ACP has been granted from 1.1.1996 on completion of 15 years of regular satisfactory service vide order dated 26.11.2014 (Annexure R3) and for the purpose of second ACP scale, the petitioner should have been fit for being promoted to next higher post of Accounts Officer but he did not qualify the prescribed test for promotion to the post of Accounts Officer. Therefore, he is not eligible for second ACP scale.

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

As per hierarchy, the Divisional Accountant is first promoted as Section Officer and then Section Officer is promoted as Accounts Officer.

Admittedly, the petitioner belongs to 20% quota fixed for Divisional

Accountant for promotion to the post of Section Officer. As per notification dated 6.2.1992, in case they have not passed the SAS Accounts examination, they must have 15 years experience as such. Factual position is not disputed. Admittedly, the petitioner was promoted as Divisional Accountant on 16.7.1979. Therefore, he completed 15 years of service on 16.7.1994. Since ACP scale was implemented from 1.1.1996 and the petitioner having qualified service of 15 years as on 16.7.1994, therefore, he was eligible for first ACP w.e.f. 1.1.1996, since he was not promoted as Section Officer. Petitioner continued to work as Divisional Accountant and was not promoted till the year 2004. He completed 20 years of service on 16.7.1999, when he was still working as a Divisional Accountant. The plea of the respondents is that he should have been eligible for promotion to the next higher post i.e. Accounts Officer.

I am of the view that the interpretation of the respondents is wholly illegal. The relevant Rule 5 of ACP Rules of notification dated 27.2.1998 (Annexure R1) is reproduced as under:-

“5. Eligible for Grant of ACP Scales: (1) Every Board employee who, after a regular satisfactory service for a minimum period of 10 years, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as direct recruited fresh entrant:-

- (a) either as a consequence of his functional promotion in the hierarchy, or*
- (b) as a consequence of the revision of pay scale for the same post, or*
- (c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawal of pay, be eligible*

for placement into the First ACP scale with reference to him.

(2) Every Board employee who, after a regular satisfactory service for a minimum period of 20 years, has not got more than one financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995 on which he was recruited as a direct recruited fresh entrant:-

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawal of pay, be eligible for placement into the Second ACP scale with reference to the functional pay scale applicable to him.

Provided that grant of ACP scale shall also be considered financial upgradation for the purpose of this para.”

Further sub-rule (3) of Rule 5 of aforesaid Rule is also reproduced as under:-

“(3) For determining the eligibility of grant of ACP scale, following conditions must also be fulfilled by the Board employee:-

(a) After completing the respective prescribed period for eligibility for the grant of ACP scales the Board employee should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;

(b) If such promotion involves test of any departmental post or other test etc. such condition should also be fulfilled by such Board employee.”

The reliance is placed by the respondents on clause 3 of said

Rule 5. Rule 5 makes it clear that the employee should be fit for promotion to the next higher post. The Rule does not say that he should be fit for next second promotion/ higher post, even though he is not promoted after grant of first ACP. Since the petitioner remained stagnant as Divisional Accountant and completed 20 years of service, therefore, the condition of promotion as Accounts Officer is wholly illegal, since, the petitioner was never promoted as Section Officer and could not be promoted to the next higher post even after completion of 20 years of service. As such, the petition is allowed. Respondents are directed to implement the order dated 26.11.2014 (Annexure R3) granting first ACP w.e.f. 1.1.1996. They are further directed to grant second ACP to the petitioner on completion of 20 years of service as Divisional Accountant on 16.7.1999. The petitioner shall also be granted consequential benefits, if any. The petitioner shall also be entitled to interest @ 9% per anum on the arrears from the date first ACP and second ACP became due. The respondents are directed to implement the judgment within two months from the date of receipt of a certified copy of this order.

13.01.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
Yes