

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 21032 of 2016

Date of decision : 20-12-2018

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Balbir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Gourav Jain, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

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RITU BAHRI, J.

Petitioner is seeking quashing of the order dated 16.5.2016 (Annexure P-4) passed by respondent no.4-Principal, G.S.S.S. Smain, Tehsil Tohana District Fatehabad, whereby claim of the petitioner for refixation of his pay at par with similarly situated employees has been rejected.

The petitioner was initially appointed on the post of Peon in the respondent-Department on 11.9.1978 at G.M.S Kudni Head, Tohana Tehsil Tohana, Distt. Fatehabad. He was promoted to the post of Laboratory Attendant at G.S.S.S. Siwani Mandi, Tehsil and Distt. Hissar vide order dated 1.2.1996 (Annexure P-1) issued by the District Education Officer,

Hissar. Thereafter, the petitioner was promoted on the post of Clerk vide order dated 30.12.1996 (Annexure P-2) and was given posting at GHS Dhani Mohabbatpur, Tehsil Adhampur, District Hissar on 11.1.1997. He was transferred at GSSS Smain, Tehsil Tohana, Distt. Fatehabad on 3.7.1998. After completing 10 years of regular satisfactory service, the petitioner was given the benefit of 1st ACP grade pay under the general ACP Scheme mentioned in Rule 7 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 on 1.2.2007 and was given the revised pay scale i.e 5200-20200 Grade Pay 2400.

The Government of Haryana vide order dated 4.3.2014 modified the general ACP Scheme as under:

(i) “ the term of 10, 20 and 30 years of service for grant of 1st 2nd and 3rd ACP respectively has been changed to 8, 16 and 24 years. Accordingly, rule 7 and all other relevant provisions of these rules will be deemed to have been modified to this extent.”

As per the above said amendment, the petitioner became eligible for grant of second ACP after completing 16 years of service as per the modification of ACP Rules. As per the seniority list (Annexure P-3), one of the employees namely Satish Kumar, Clerk who was junior to the present petitioner was given the benefit of 2nd ACP after the completion of 16 years of regular satisfactory service on 28.10.2015 w.e.f 4.3.2014. he was given the higher pay scale i.e 5200-20,200 Grade Pay 3200. As per the

seniority list (Annexure P-3), Satish Kumar was at Sr. No.1355, whereas Balbir Singh the present petitioner was at serial no. 1349. The petitioner moved an application to respondent no.4 with a request to fix the pay scale of the present petitioner at par with the above said similarly situated junior employee. However, the claim of the petitioner was rejected by respondent no.4 vide order dated 16.5.2016 by giving a reason that because the feeder cadre of both the employees is different, this is not a fit case for step up. No comparison can be made for the employee whose initial joining is in different group of service i.e class-IV and Class-III.

On notice, the written statement has been filed on behalf of respondents no. 1 to 5, wherein a stand has been taken that the petitioner was appointed as Peon on 11.9.1978. He got his first financial upgradation on 1.1.1994 and second financial upgradation on 11.1.1997 upon being promoted to the post of Clerk. Thereafter he was given the benefit of another financial upgradation in terms of ACP on 1.2.2007 in the Grade Pay of Rs.2400/-. The petitioner has got three financial upgradations in his career so if his claim for pay fixation at par with his junior is accepted, it would amount to fourth financial upgradation, which is not permissible under the ACP Rules. It is further explained that Satish Kumar was directly appointed as a Clerk and he had a right to get the second upgradation after 16 years.

Heard counsel for the parties. At the outset, reference can be made to a judgment in the case of ***Commissioner and Secretary to Govt. of Haryana and others vs. Ram Sarup Ganda and others 2007 (2) SCT 476***,

in which Hon'ble the Supreme Court was considering a case wherein higher pay scale has been given to a junior than his senior in the cadre and this anomaly was being justified on the ground that this junior was directly appointed. It was held that if there is no specific prohibition, such anomaly has to be rectified by giving step up to the senior also to bring the senior at par with his junior. The relevant paragraph no.8 of this judgment is hereby reproduced as under:

8. Rule 9 quoted above only says that the senior Government servants, who are direct recruits are not entitled to get any stepping up in case any anomaly arises regarding the receipt of lesser pay by them. However the same is not applicable to the respondents herein who joined the service as Group "D" employees and later got promotion to Group "C" post by selection. If there is any anomaly to the effect that the senior Government servants are receiving lesser pay than their juniors, who entered the service from a different source of recruitment, certainly such senior Government servants are entitled to stepping up of their pay in order to bring them on par with the salary which is being received by their juniors. There is no clause in the scheme which prohibits such stepping up of salary which is a common practice applicable to all Government employees in case there is anomaly in the pay structure

of the employees. By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to Group "C" post, but the Rules, as such, do not provide for that. The Rules say, that if there are already two upgradations, then the concerned employees are not entitled to the benefit of ACP scales. Nevertheless, if ACP scales are higher, they are certainly entitled to the ACP scales at the starting point. The date of giving such ACP scales is the date of entry into the service and though these respondents are entitled to get ACP scales and get fixation of the ACP scales as applicable to Group "D" employees and in case there are anomalies to the effect that they receive lesser pay than their juniors working in the same cadre/post, such senior Government servants are entitled to step up of their salary to get it on par with the salary which is being received by their juniors. In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the respondents. In case of any anomaly, 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. Revised orders shall be passed within a period of two months of the receipt of the copy of this

order by the Government.”

Applying the ratio of the aforesaid judgment to the present case, even though the petitioner has got three upgradations in his pay in his career, he being senior to Satish Kumar as per seniority list has a right to refix his pay at par with his junior. This benefit cannot be denied to him on a ground that Satish Kumar was directly appointed as a Clerk. Consequently, this writ petition is allowed. The petitioner is entitled for pay fixation at par with his junior counterpart Satish Kumar. The petitioner shall be released all the consequential benefits along with 6% interest according to his eligibility within two months from the date of receipt of a certified copy of this order.

20-12-2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No