

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 24305 of 2014

Date of decision: 14.02.2018

Balwant Singh and others

...Petitioners

versus

Haryana Power Generation Corporation Limited and another

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. R.K.Malik, Senior Advocate with
Mr. Samrat Malik, Advocate
for the petitioners.

Mr. Rishab Lohan, Advocate for
Mr. R.N. Lohan, Advocate
for the petitioner in CWP No. 1574 of 2015.

Mr. Ashok S. Chaudhry, Advocate
for the respondents.

Mr. D.S. Nalwa, Advocate
for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

This order will decide both the cases. The decision in CWP No. 24305 of 2015 would apply to this case as well *mutatis mutandis*. In the above case, the promotion was from Divisional Accountant to Section Officer and in accompanying CWP No. 1574 of 2015 the promotion in issue is from the post of Accounts Clerk to Divisional Accountant.

The post of Section Officer in the Haryana Power Generation Corporation Limited is governed by Recruitment and

Promotion Policy for Accounts Cadre prevailing in HPGCL dated 29.09.2013. Clause 3.0 provides 50 % posts to be filled by direct recruitment from persons possessing degree of M.Com from any University recognized by Government of Haryana with minimum 60% marks in General Category and 55% marks for SC Category candidates of Haryana domicile. Clause 3.3 provides for promotion quota of 50% of which 40% (i.e. 80% of the promotional quota posts) from the Divisional Accountant having passed Departmental Accounts Examination (SAS) as prescribed by the Corporation and having completed 5 years service.

The petitioners claimed from promotion quota i.e. from 40%. They were promoted in the years 2007-08. Clause 6.3B made provision for conducting periodic Departmental SAS Examinations as aspirants to promotions were required to pass departmental SAS-II exam within the 3 chances or 2 years whichever is later in case of those Divisional Accountants who have already qualified the Department SAS-I exam. This was provided in Clause 6.3 B (II) (a). The next sub-clause (b) provided clearance of Departmental SAS-I & II within the 6 chances or 4 years whichever is later in case of those Divisional Accountants who have not even qualified the SAS-I exam. However, in case such an employee fails to qualify the exams even in such special chances, they will be reverted back and considered in the unqualified quota or in case they qualify later on their seniority for promotion under

qualified quota shall be determined from the date of passing the relevant exam. The decision was taken in the promotion policy reflected in Clause 6.3(d) that when there has been failure to hold examinations, HPGCL officers/officials could obviously not avail the opportunity to appear in the examination because of ambiguity created due to an amendment in the policy 2009. Accordingly it was decided as a one-time measure to promote Divisional Accountants provisionally to the post of Section Officer under the new policy as per seniority and availability of promotional post with the stipulation that they shall qualify the examination.

The petitioners were promoted as Section Officers on various dates ranging from 2012-13 and lastly on November 2014. These account for the 18 petitioners. They were granted pay-scales, full salary and allowances of the promotional post of Section Officers.

To the surprise of the petitioners, an Office Order No. 570/CE/Admn. dated 21.11.2014 was issued by the respondent-HPGCL, Panchkula stating that the matter regarding admissibility of financial benefits on provisional promotion has been considered by the Board of Directors of the Corporation in the meeting held on 21.10.2013 and it was decided that no financial benefit shall be admissible on provisional promotion. This order was carried forward to Office Order dated 05.05.2013. In this communication, it was informed that amendment in Part-B of the Recruitment and Promotion Policy for

Accounts Cadre has been notified on 29.10.2013 providing that no financial benefits shall be admissible on provisional promotion (inserted by clause VI) with retrospective application from the date of the policy. This office order has been issued with approval of the Additional Chief Secretary-cum-Chairman of the Corporation. Against these two orders, the petitioners have approached this Court through the present petition.

While issuing notice of motion, this Court stayed the operation of the impugned order and the stay continues. The petitioners relied on the Full Bench decision of this Court in Subhash Chander Vs. State of Haryana and another; 2012 (1) SCT 603, to contend *inter alia* that once the petitioners are admittedly working on the post of Section Officer, financial benefits of the post cannot be denied to them.

I have heard learned counsel for the parties.

Mr. Nalwa argues in defence and in support of the proposition that Corporation was within its jurisdiction to deny the difference of pay and allowances of the promotional post since the benefit of promotion was given as an exception by way of one-time measure and no right was settled on the petitioners. I do not view this as a correct position in law for several reasons. Firstly, the petitioners have been promoted in terms of the Recruitment and Promotion Policy without any Court intervention and by operation of the regulations. Secondly, admittedly the Corporation has failed to conduct SAS-I & II exams and therefore the petitioners are not at fault. It is admitted that

non-passing of the departmental examination may cause reversion but that is not an accomplished fact since the test has not been held. The department cannot take advantage of its own wrong.

The provisional promotion to higher post to discharge the full duties and responsibilities will bring with it the right to full salary and allowances on the principle of 'equal pay for equal work' and on the doctrine of quantum *meruit*. There is law aplenty starting from the decision of the Supreme Court in Mrs. P. Grover Vs. State of Haryana and another, 1983 SCR (3) 654 , a ruling which brings equality of pay on the higher post if the duties are discharged in full measure. The so-called amendment is through an office order and is not a decision by the Board of Directors as the Additional Chief Secretary-cum-Chairman of the Corporation could not single-handedly take a decision to grant his approval that no financial benefits shall be admissible on the provisional promotion. The petitioners on promotion have rights dependant on passing of the SAS-I & II if the petitioners and cannot be reverted. Then it is hard to believe that they can be denied pay-scale and allowances of the post of Section Officer. If the Corporation is running into losses as Mr. Nalwa says, then it does not provide legitimacy to denial of higher pay.

The impugned decisions are declared illegal, arbitrary and unconstitutional and in negation of the rule of 'equal pay for equal work' which is facet of Article 39 (d) of the Constitution of India.

Accordingly and as a result, the petitions are allowed. The writ of certiorari is issued quashing the impugned decisions dated 21.11.2014 (Annex. P-4) and 05.05.2016 (Annex. P-5). The stay is made absolute.

(RAJIV NARAIN RAINA)
JUDGE

14.02.2018

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Whether speaking/reasoned : Yes
Whether reportable : No