

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10115 of 2015
Date of decision : 01.10.2019

Dharampal Yadav

....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vivek Khatri, Advocate for the petitioner.

Ms. Anupama Sharma, Advocate for respondents No. 1 to 4.

Harsimran Singh Sethi, J. (Oral)

The claim, which is being raised by the petitioner in the present writ petition is that he is entitled for step up of his pay equivalent to his junior, who was promoted in preference to him on the basis of reservation, after the petitioner caught the said reserved category junior employee, in the cadre of Assistant on 29.03.2011.

The facts stated in the writ petition are that petitioner was appointed as Peon in the respondent-Nigam on 01.01.1984 and after his appointment, one Jai Singh was appointed as Peon on 16.12.1984. Petitioner was promoted as Lower Divisional Clerk on 20.04.1987, whereas his junior was promoted as LDC on 01.01.1988. The next promotion from the post of LDC is to the post of UDC. Sh. Jai Singh, though was junior to the petitioner in the cadre of LDC but as he belonged to reserved category, he

was given promotion on the basis of reservation as UDC on 15.05.2006.

Thereafter, said Sh. Jai Singh was further promoted as Assistant before the petitioner could be promoted as UDC on 16.11.2009. Petitioner got promotion as UDC on 18.12.2009 and was thereafter, promoted as Assistant initially on 27.12.2012, which date was antedated by the respondents 29.03.2011.

The claim of the petitioner in the present petition is that upon catching the reserved category junior employee in the cadre of Assistant on 29.03.2011, petitioner was entitled for the benefit of step-up of his pay equivalent to that of his junior. The claim which is being raised by the petitioner for stepping- up of pay is based upon the Instructions, which have been issued by the Government of Haryana on 23.11.2009. In the said Instructions, the State has allowed the benefit of stepping-up of the pay of the general category senior candidate, who were superseded by the junior category reserved employee upon the general category candidate catches his junior employee in the higher cadre and again becoming senior to him/her, keeping in view the law laid down by the Hon'ble Supreme Court of India in ***Ajit Singh Januja Vs. State of Punjab, 1996(2) SCT 278***, decided on 01.03.1996. The relevant portion of the Instructions is as under :-

*“Government of Haryana
General Administration Department
General Services-III Branch
No. 22/132/2008-3GSIII
Dated Chandigarh the, 23rd November, 2009*

To,

- 1. All the Financial Commissioners and Administrative Secretaries.*
- 2. All the Heads of Departments in the State of Haryana.*

3. *The Commissioners, Ambala, Rohtak, Gurgaon and Hisar Divisions.*
4. *All the CAs/MDs of Boards/Corporations/Public Sector Undertakings etc.*
5. *The Registrar , Punjab & Haryana High Court, Chandigarh.*
6. *All the Deputy Commissioners & Sub-Divisional Officers (Civil) in the State of Haryana*
7. *The Registrars of all the Universities in the State of Haryana.*

Subjects: Stepping up of pay of senior general category employees at par with their junior counterparts of reserved category employees.

Sir/Madam,

I am directed to invite your attention to the State Government letter No. 22/132/2008-3GSIII, dated 5.3.2009 and 29.05.2009 vide which it was decided to step up the pay of senior general category employees at par with their junior counterparts of reserved category employees. Some Departments and are approaching the General Administration Department for seeking clarifications regarding the cut-off-date for the grant of benefit of stepping up to senior general category employees and which cadres are to be considered admissible. This matter was engaging attention of the General Administration Department for quite some time and remained under consideration.

2. The matter has been carefully examined and it is clear from all the three landmark judgments, namely, R.K. Sabharwal, Ajit Singh Janjua-I and Ajit Singh Janjua-II, that all general category employees affected by R.K. Sabharwal or Ajit Singh Janjua-I judgments have a right to claim the benefit of stepping up at corresponding level vis-a-vis reserved category employees at each level. So, there cannot be the lower cut-off-date in terms of seniority as envisaged in the

judgment pronounced by the Apex Court in R.K. Sabharwal's case. However, the upper cut-off-date will remain 15.3.2006 in view of case. However, the upper cut-off-date will remain 15.3.2006 in view of implementation of 85th amendment to the Constitution of India by the Government of Haryana on 16.3.2006.

3. It is further clarified that all the three judgments referred to above are not restricted to any particular cadre and these are applicable to all candidates wherever reservation in promotion is followed. However, Administrative Departments are advised that due care must be exercised in re-fixing the seniority before 15.3.2006 by giving particular attention to R.K. Sabharwal & Ajit Singh Janjua-I judgments so that any sort of litigation/harassment is avoided.

4. It is further clarified that although general category word is used throughout this circular, this benefit is also to be given to Backward Class or any other category employees who regained seniority due to application of either in two judgments over their junior counterparts belonging to reserved category employees.

5. The above clarifications may please be brought to the notice of all concerned for compliance.”

These Instructions were again reiterated by the Government of Haryana in the year 2013 vide Instructions dated 18.12.2013. The relevant Instructions are as under:

*“Government of Haryana
General Administration Department
General Services-III Branch
No. 22/132/2008-1GSIII
Dated Chandigarh the, 18th December, 2013*

To,

- 1. All the Additional Chief Secretaries/
Administrative Secretaries to Government of
Haryana*

2. *All Heads of Departments in the State.*
3. *The Commissioners, Ambala, Hisar, Rohtak & Gurgaon Division.*
4. *All the CAs/MDs of all Boards/Corporations/ Public Sector Undertakings.*
5. *The Registrar of Punjab & Haryana High Court, Chandigarh.*
6. *All the Deputy Commissioners & Sub Divisional Officers (Civil)*
7. *The Registrars of all the Universities in the State of Haryana.*

Subjects: Stepping up of pay of senior general category employees at par with their junior counterparts of reserved categories employees.

Sir/Madam,

I am directed to invite your attention towards Government instructions issued vide letter No. 22/132/2008-3GS III, dated 5.3.2009 vide which it was decided to give the benefit of stepping up of pay to the general category employees at par with that of their junior counterparts. However, this benefit was to be given notionally from the date his junior belonging to reserved category was promoted and actual benefit was to be admissible from the date of his actual date of promotion in the respective cadre. Thereafter, vide letter No. 22/132/2008-3GS-III, dated 23.11.2009, it was clarified, that there cannot be the lower cut-off date in terms of seniority envisaged in the judgment pronounced by the Apex Court in R.K. Sabharwal case. However, the upper cut-off date was fixed as 15.3.2006 in view of the implementation of 85th amendment to the Constitution of India by the Government of Haryana on 16.3.2006.

Now, the instructions dated 16.3.2006, the base on which upper cut-off date for grant of benefit of stepping up of

pay was fixed as 15.3.2006, has been quashed by the Hon'ble Punjab & Haryana High Court in CWP No. 17280 of 2011- Prem Kumar Verma & others Vs. State of Haryana.

Keeping in view the above decision, the matter has been reconsidered in consultation with legal Remembrancer, Haryana and it has been decided that since the instructions dated 16.3.2006 providing accelerated seniority to the reserved category candidates have been quashed by Hon'ble Punjab & Haryana High Court, the candidates of general category will be entitled for benefit of stepping up of their pay irrespective of any cut off date as set forth earlier.

These instructions may kindly be brought to the notice of all concerned for strict compliance.”

The respondent-Nigam vide their letter dated 7.2.2014 adopted the Instructions dated 18.12.2013 for the grant of the benefit of step-up of pay of the senior general category employee at par with their junior counterpart belonging to the reserved category, who had superseded him/her in the feeder cadre upon the senior general category employee caught by the said junior reserved category employee in the promoted cadre. The relevant Instructions are as under: -

*“Dakshin Haryana Bijli Vitran Nigam
Office order No. 343/CGM/F&B/Fin-505*

Dated : 07.02.2014

Dakshin Haryana Bijli Vitran Nigam, Hisar is pleased to adopt the Govt. of Haryana, General Administration Department letter No. 22/132/2008-1GSIII dated 18.12.2013 (copy enclosed) regarding stepping up of pay of senior general category employees at par with their junior counterparts of reserved category employees.

*This issues with the approval of Whole Time Directors,
DHBVN, Hisar
DA/As above.”*

The grievance of the petitioner is that he is entitled for the grant of benefit of step-up of his pay equivalent to that of junior Sh. Jai Singh which has been rejected by the respondents vide order dated 12.05.2015 (Annexure P-9), which order is under challenge.

Upon notice of motion, respondents have filed the reply and have admitted the facts which have been stated herein before. The only reason taken for not granting the benefit of step-up of his pay is that Sh. Jai Singh, Assistant was promoted as UDC as well as to the post of Assistant in the quota of unqualified employees, whereas petitioner was promoted as UDC as well as Assistant in a qualified category and, therefore, as the promotions were effected in two different categories, therefore, petitioner is not entitled for the step-up of his pay.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only argument raised on behalf of the respondents is that the petitioner as well as his junior Jai Singh were promoted in the different categories of qualified/unqualified and hence, the Instructions dated 18.12.2013, which have been adopted by the respondent-Nigam, will not be applicable. The objection, which has been taken by the respondents, is not correct. It is a matter of fact that the petitioner was senior to Jai Singh in the cadre of Peon as well as in the cadre of LDC. Whether a person is qualified or not will not make any difference as it is an admitted fact by the respondents that Jai Singh was promoted on the basis of reservation. In the

category of unqualified, petitioner had a right to be promoted in preference to his junior Jai Singh. It is not the case of the respondents that petitioner was ineligible in the category, in which Jai Singh was promoted. Hence, even if a junior employee is being treated as unqualified, he superseded the qualified employee i.e. petitioner by the grant of reservation extended in favour of the junior employee, benefit of step-up of pay cannot be declined to a senior general category employee.

The benefit of step-up of pay is granted on the ground that the senior employee has caught his junior reserved category employee in the promoted cadre and therefore, after regaining the seniority over his junior reserved category employee, he cannot get lesser pay than his junior employee. In the present case, the petitioner though caught Sh. Jai Singh in the cadre of Assistant on 29.03.2011 but he was being paid lesser salary than his junior Sh. Jai Singh, which is not permissible under any law.

Once, the employees, who were senior in the feeder cadre, have been granted step-up of pay equivalent to their junior, who had superseded them, on the basis of reservation, the reason for denial of the benefit, which is being applied by the respondents in the present case, is totally irrelevant. Once the petitioner has caught his junior Jai Singh in the higher cadre of Assistant, petitioner becomes entitled for the benefit of Instructions dated 18.12.2013, which have been duly adopted by the respondent-Nigam.

In view of the above, order dated 12.05.2015 (Annexure P-9) rejecting the claim of the petitioner is contrary to the law and is hereby set-aside. The respondents are directed to grant the petitioner the benefit of step-up of pay under the Instructions dated 18.12.2013 duly adopted by the

Singh in the cadre of assistant.

Upon the re-fixation, the petitioner shall also be entitled for the arrears of pay from the date his pay is stepped up. Let the order be complied with by the respondents within a period of 3 months from the date of receipt of certified copy of this order.

Writ petition is allowed in above terms.

October 01, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*