

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

(1) CWP No.10112 of 2016
Date of Decision: 15.01.2020

Bed Singh

.....Petitioner

Versus

Managing Director, UHBVNL and another

.....Respondents

(2) CWP No.9850 of 2016

Shiv Kumar

.....Petitioner

Versus

Managing Director, DHBVNL and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Divay Sarup, Advocate
for the petitioner in both cases.

Mr. Sidhant Bhonsle, Advocate for
Mr. Abhilaksh Grover, Advocate
for the respondents in CWP-10112-2016.

Ms. Tanika Goyal, Advocate for
Mr. Vipul Sharma, Advocate
for the respondents in CWP-9850-2016.

NIRMALJIT KAUR, J. (ORAL)

Both the aforementioned petitions shall stand decided by this common order as the issue is identical.

The facts are being taken from CWP-10112-2016 for convenience of the Court. The prayer in the said writ petition is for quashing of order dated 28.01.2016, passed by the respondents, vide which, the prayer for step up the pay of the petitioner at par with their junior counter part of reserved category Sh. Bidhu Singh, was rejected.

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While praying for the relief claimed, reliance is placed on the instructions dated 05.03.2009, which were further clarified vide instructions dated 23.11.2009. The operative part of the said instructions reads as under:-

“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 the implementation of 85th amendment to the Constitution of India by the Government of Haryana on 16.3.2006.”

It is contended that the petitioner belongs to general category and was appointed as Shift Attendant on 03.06.1974. Whereas, Bidhu Singh with whom the parity is being claimed was junior to the petitioner and was appointed as Shift Attendant on 06.06.1979 in the reserved category. The petitioner caught up with Bidhu Singh and was promoted as Junior Engineer on 20.01.2012, whereas, Bidhu Singh was promoted as Junior Engineer on 10.08.1990. Therefore, the petitioner having caught up with his juniors was entitled to the step up of his pay at par with Bidhu Singh notionally from the date Bidhu Singh was promoted and is also entitled for actual benefits of stepping up of pay.

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Reply has been filed. The facts are not disputed but the relief has been denied vide order dated 28.01.2016 as stated in the writ petition. This fact is also not denied in the reply except that Bidhu Singh was not an employee of HVPN and the petitioner was working in the different company. The said argument of learned counsel for the respondents has no merit. It is the own case of the respondents in their written statement that the petitioner joined Nigam i.e. HSEB, which was got bifurcated in different companies i.e. UHBVN and HVPN etc. and Bidhu Singh became an employee of HVPN and the petitioner became an employee of UHBVN. There is nothing on record that the employees of one company were entitled to the relief but the same could not be granted to the employees of the other company even though their parent company is the same. There is no such distinction provided in the instructions. The action of the respondents in denying the relief is both arbitrary and discriminatory.

It is evident from the order that the petitioner was senior and caught up with Bidhu Singh at every stage of promotion who was promoted earlier on account of reservations. As per the instructions dated 05.03.2009 (Annexure P-1) issued by the Finance Department Government of Haryana, the benefit of stepping up of pay was extended to General category employees at par with that of their junior counterparts of reserved category at level-2 counter parts. It was provided that the officials/officers concerned will be entitled to the benefit of pay and allowances notionally from the date their juniors belonging to reserved categories were promoted and actual benefit of stepping up of pay will be admissible to them from the actual date of promotion in their respective cadres. Vide notification dated 23.11.2009

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(Annexure P-2), it was clarified by the State Government that there cannot be the lower cut-off date in terms of the seniority as envisaged in the judgment rendered by the Hon'ble Apex Court in the case of R.K.Sabharwal and others vs. State of Punjab and others, (1995) 2 SCC 745.

Thus, the petitioner under no circumstances cannot be treated differently viz.-a-viz. other similarly situated employees, as has been held by the Hon'ble Apex Court in the case of Union of India and others Vs. Satya Brata Chowdhury and others, 2009 (2) SCT 365.

In view of the above, both the writ petitions are allowed. The order, if any, denying the relief is set aside. The petitioner(s) is held entitled to step up of pay at par by granting notional step up of pay at par with that of their junior Bidhu Singh from the date of the promotion of the petitioner to the post of Junior Engineer. After the pay fixation, the consequential benefits as above shall be released to the petitioner forthwith.

15.01.2020
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No