

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

**CWP-22533-2016 (O&M)
Date of Decision: 24.01.2020**

Ashok Kumar & another

... Petitioners

Versus

PSPCL

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. D.S. Rawat, Advocate for the petitioners.

Mr. Anant Kataria, Advocate

Mr. M.C. Berry, Advocate for the respondent.

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TEJINDER SINGH DHINDSA, J. (ORAL)

Challenge in the instant petition is to order dated 15.09.2016 (Annexure P-7) vide which claim of the petitioners seeking stepping up of their pay at par with their junior Scheduled Castes category employee, namely, Smt. Dharam Kaur stands rejected.

Counsel for the parties have been heard.

Brief facts and on which there is no dispute is that both the petitioners herein belong to the general category and were initially appointed as Lower Division Clerks under the respondent/Punjab State Power Corporation Limited in the year 1978. One Smt. Dharam Kaur, who belongs to the Scheduled Castes category was appointed as a Lower Division Clerk on a date subsequent i.e. on 20.01.1979. As per prevalent Rules/instructions, promotion from the post of Lower Division Clerk is to the post of Upper Division Clerk upon clearing a departmental test. Petitioners were promoted as Upper Division Clerks on 28.10.1997 and 18.06.1998 respectively. Their junior, namely, Smt. Dharam Kaur earned promotion as Upper Division Clerk on 06.10.2001. Taking advantage of reservation, Smt. Dharam Kaur

was promoted as Circle Assistant on 07.10.2005 and further as Senior Assistant on 16.07.2007. Petitioners herein belonging to the general category earned promotions as per turn. Petitioner No.1 was promoted to the post of Circle Assistant on 01.12.2011 and Senior Assistant on 12.02.2013. Likewise, petitioner No.2 was promoted to the post of Circle Assistant on 29.11.2011 and further to the post of Senior Assistant on 23.03.2013. In other words, the petitioners “caught up” with their junior Smt. Dharam Kaur who belongs to the reserved category in the cadre of Senior Assistant as per “catch up rule” propounded in **Ajit Singh Janjua & others Vs. State of Punjab & others, 1999 (4) RSJ 211.**

Counsel for the petitioners has placed heavy reliance on the judgment in **Ajit Singh Janjua's case (supra)** and contends that the dictum laid down was that even though the reserved category employee can be promoted on a higher post on the basis of reservation (roster point) but whenever a senior general category employee “catches up” with the reserved category junior employee on the higher post, the senior general category employee will be declared senior in the cadre of the promoted post and will be granted all consequential benefits.

In the reply that had been filed to the instant writ petition, the only basis put forth for passing the impugned order is that no instructions have been issued either by the State of Punjab or by the Corporation to restore pay parity in favour of a general category senior employee who may have “caught up” with a reserved category junior employee. Such stand is in terms of the reasoning adopted even in the impugned order dated 15.09.2016.

Identical issue already stands dealt with by this Court in **CWP-18307-2011** decided on 06.12.2012 (**Gurmeet Singh & another Vs. Punjab School Education Board & others**) at Annexure P-3. While holding that denial of pay parity to a general category employee promoted later in point of time than a reserved category employee even though senior to the reserved category employee in the feeder cadre only on the basis that there was no instructions issued in such regard to be bad in law, it was observed as under:

“The stand sought to be taken by respondent nos. 3 and 4 is totally misconceived merely because no instructions have been issued by the State of Punjab, in terms of judgments of Hon'ble the Supreme Court and this court benefits cannot be denied to the petitioners. It has been held by this court in Charan Dass' s case (supra), that a general category employee if promoted later than a reserved category employee, though senior to the reserved category employee in the feeder cadre, on the next higher post, his pay has to be stepped up to bring at par with his junior reserved category employee, though promoted earlier. Similar view was expressed by this court in CWP No. 17280 of 2011 Prem Kumar Verma and others vs State of Haryana and others decided on 7.8.2012. Though Punjab School Education Board has accepted the claim made by the petitioners and passed orders, Annexures P-5 and P-6, to that effect, however, objection was raised by the Examiner, Local Fund Account, which is not in conformity with the judgments, referred to above.

For the reasons mentioned above, the writ petition is allowed. It is directed that the petitioners shall be entitled to step up of their pay at par with their junior of reserved category, who was promoted earlier on the post of Senior Assistant. It is made clear that the petitioners shall be entitled to arrears on account of re-fixation of their salary for a period

of three years from the date of legal notice got served by them on 27.10.2009.”

Even counsel representing the respondent/Corporation would fairly concede that the claim raised in the instant petition seeking pay parity with a junior reserved category employee would be covered under the “catch up rule” as per judgment of the Hon'ble Supreme Court in **Ajit Singh Janjua's case (supra)** and the judgment passed by this Court in **Gurmeet Singh's case (supra)**.

For the reasons recorded above, writ petition is allowed. The impugned order dated 15.09.2016 (Annexure P-7) is quashed.

Respondent/Corporation is directed to accord in favour of the petitioners pay parity with their junior reserved category employee, Smt. Dharam Kaur at the relevant stage in the cadre of Senior Assistant.

Court has been apprised that petitioner No.2 has since superannuated on 31.05.2014. Under such circumstances, insofar as petitioner No.2 is concerned, he would be granted a notional pay fixation at par with Smt. Dharam Kaur in the cadre of Senior Assistant and thereafter granted revised pensionary benefits.

The exercise so directed be completed and financial benefits be released to the petitioners within a period of two months from the date of receipt of a certified copy of this order.

Petition is allowed.

24.01.2020

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |