

In the High Court of Punjab and Haryana at Chandigarh

203

CWP-6765-2021 (O & M)

Date of Decision: October 12, 2022

VED PAL SINGH

.....PETITIONER

VERSUS

**UTTAR HARYANA BIJLI VITRAN
NIGAM LTD. AND OTHERS**

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr.V.D.Sharma, Advocate for the petitioner.

Mr. Padamkant Dwivedi, Advocate for the respondents.

ANUPINDER SINGH GREWAL, J (ORAL)

The petitioner has impugned the order dated 29.05.2019 whereby the date of joining the service of the petitioner has been changed and the recovery of Rs.1,29,866/- has been ordered on account of erroneous grant of 1st and 2nd ACPs.

Learned counsel for the petitioner submits that the petitioner had been appointed as LDC on compassionate ground as his father had expired while in service. The petitioner was below 18 years at the time of joining service but the regulations of the respondents prescribed 17 years as the minimum age on which a person holding Class III post could join service. He also submits that the petitioner had been drawing the benefit of 1st and 2nd ACP scales for over three years before the impugned order had been passed. He has relied upon the judgment of the Supreme Court in the case of *State of Punjab and others versus Rafiq Masih (White Washer) etc., 2015(4) SCC 334*.

Learned counsel for the respondents while referring to the written statement submits that although the petitioner could join service at the age of 17 years but the service before attaining the age of 18 years cannot be counted towards pension and other benefits in terms of the Haryana Civil Services Pension Rules, 2016 and, therefore, the petitioner had been erroneously granted the ACP scales by taking into account his service from the date of his initial appointment although he was below 18 years of age. He also submits that the petitioner had also given an undertaking that any excess amount paid to him as salary could be recovered from him. He has relied upon the judgment of the Supreme Court in the case of **High Court of Punjab and Haryana and others versus Jagdev Singh**, 2016 (4) SCT 286.

Learned counsel for the petitioner submits that the respondents had got an undertaking from the petitioner on 24.08.2020 that he will refund the excess amount.

Heard.

The petitioner had been appointed on compassionate ground on 22.12.1993, although he was only 17 years and 03 months. The minimum age of employment is 17 years but in terms of the Pension Rules, the service which has to be counted for pension is only the service rendered after attaining 18 years of age. I find merit in the contention of the counsel for the respondents that only service which is rendered after attaining 18 years of age would be countable for the benefit of ACP scales as well. The petitioner was appointed as a Class III employee. The benefit of ACP scale had been granted in the year 2016 and he had been drawing salary in that scale for over four years. There is no misrepresentation on the part of the petitioner. No undertaking was given by

the petitioner at the time of the grant of the ACP scales in the year 2016 and it is only after the period of 04 years that he had furnished the undertaking. I am of the considered view that his case would be covered under the exceptions carved out by the Supreme Court in ***Rafiq Masih's*** case (supra) wherein the recovery would be unjust and inequitable. The judgment relied upon by the counsel for the respondents in the case of **High Court of Punjab and Haryana and others versus Jagdev Singh** (supra) is distinguishable on facts as that case pertains to a recovery from a Judicial Officer and that officer had given an undertaking at the time of opting for the pay scale that any excess amount would be refunded. The petitioner herein is a class III employee and had not given an undertaking at the time of the grant of the pay scale but only undertaking had been obtained by the respondents after four years. It is noteworthy that Coordinate Bench of this Court by order dated 23.03.2021 had stayed the recovery from the petitioner in terms of the impugned order.

Consequently, the petition is partly allowed and the impugned order to the extent of effecting recovery from the petitioner is set aside.

(ANUPINDER SINGH GREWAL)
JUDGE

October 12, 2022
A.Kaundal

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No