

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 210)

(1) CWP No. 7647 of 2016
Date of Decision : 27.10.2022

Ram Kumar Bishnoi through his L.Rs.

...Petitioners

Versus

State of Haryana and another

...Respondents

(2) CWP No. 25433 of 2016

Manju Bala

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anurag Goyal, Advocate for the petitioner
in CWP No.7647 of 2016.

Mr. Gulfana, Advocate, for
Mr. Gurinder Pal Singh, Advocate, for the petitioner
in CWP No.25433 of 2016.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Harsimran Singh Sethi J. (Oral)

By this common order, the writ petitions, details of which have been given above, are being disposed of as both the writ petitions involve the same question of law on similar facts.

For the purpose of this order, the facts are being taken from CWP No. 7647 of 2016.

In the present petition, the grievance of the petitioner is that the employees, who were promoted after the petitioner (since deceased) after his direct recruitment in the cadre of Senior Lecturer in Civil Engineer, are getting a higher pay than the petitioner in the cadre of Senior Lecturer, which is not permissible. The claim of the petitioner is for the grant of benefit to the petitioner under Clause-12 of the Notification dated 30.12.2008 (Annexure P-3) so as to grant the petitioner stepping up of pay equivalent to that of his juniors with all consequential benefits. The facts leading to the filing of the present petition are as under :-

The petitioner was appointed as a Lecturer in Civil Engineering in Govt. Polytechnic through Haryana Public Service Commission on 25.02.1992. While the petitioner was working as a Lecturer, the respondent-department issued an advertisement advertising the post of Senior Lecturer in the Department of Civil Engineering and the petitioner competed for the same and was ultimately directly recruited as a Senior Lecturer vide appointment letter dated 15.12.2004.

In the year 2008, the respondents issued Haryana Civil Services (Assured Career Progression), Rules 2008 (hereinafter referred to as '2008 Rules'), which came into effect w.e.f. 01.01.2006. The said rules were framed so as to grant the benefit of higher pay scale under the Assured Career Progression Scheme to the employees, who though were eligible for promotion but were not getting the same due to the lack of promotional avenues. The said rule also took care as to how, the pay of a senior employee is to be fixed even in case, the said senior employee has not been granted the benefit under 2008 Rules for the grant of ACP and his/her junior has been granted the same.

As per the petitioner, certain employees, who were working in the cadre of Lecturer, came to be promoted to the post of Senior Lecturer after the direct recruitment of the petitioner to the said post, in December, 2004. In the year 2011, the respondents further revised the pay scale of the employees working in the Technical Education Department including that of Senior Lecturers through letter dated 18.10.2011 (Annexure P-4) and Senior Lecturers were also to be granted higher pay scale under the ACP scheme after rendering 6, 11 and 14 years of service. The said pay scale was to be given to the Senior Lecturers even by counting their services rendered at the post of Lecturers, keeping in view the note provided in the said letter dated 18.10.2011 (Annexure P-4) while implementing the said letter dated 18.10.2011. As per the said note, the Senior Lecturers, who came to be promoted after the direct appointment of the petitioner, were granted the benefit of higher pay scale admissible after six years, by counting their service rendered in the cadre of Lecturer as well and the net result was that though, petitioner was senior in the seniority list in the cadre of Senior Lecturer, but his juniors were getting higher pay scale by implementation of the letter dated 18.10.2011 (Annexure P-4), which amended 2008 Rules in preference to the petitioner. The grievance of the petitioners is that petitioner is entitled to the salary equivalent to his juniors keeping in view Clause-12 of 2008 Rules, which benefit is not being extended to the petitioner.

After notice of motion, the respondents have filed the reply, wherein, they have not denied the fact that certain Senior Lecturers, who came to be promoted in the said cadre after direct recruitment of the petitioner in December, 2004, are getting higher salary than the petitioner

but the same was only due to implementation of the notification/letter dated 18.10.2011 by which, 2008 Rules were further amended for the grant of higher pay structure/ACP. As per the respondents, Clause-12 of 2008 Rules can only be implemented where, no benefit of ACP has been extended to an employee and hence, the benefit of said Clause-12 of 2008 Rules is not admissible to the petitioner.

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

The only question, which needs to be answered in the present petitions is whether, a senior employee can get lower pay than his junior by the implementation of ACP Rules and in case, any such situation arises whether, the senior can claim step up of his/her pay.

It is a conceded position that 2008 Rules came into existence w.e.f. 01.01.2006. The provisions of 2008 Rules are admissible/applicable upon the petitioners as well. Further, 2008 Rules were further amended by the respondents vide Notification/letter dated 18.10.2011 by which, pay scale of the technical post were revised. Though, for the higher pay under the ACP Rules, 2008, Senior Lecturers were eligible only after six years of regular service in the cadre of Senior Lecturers but keeping in view the note mentioned in the Notification/letter dated 18.10.2011 provided for granting the benefit of higher pay scale in the cadre of Senior Lecturers after counting of three years regular satisfactory service in the cadre of regular lecturer as well, juniors to the petitioner were granted the benefit of higher pay ignoring the petitioner. By implementing the said note of the Notification/letter dated 18.10.2011, the juniors of the petitioners, who did not had six years service as a Senior Lecturer, were granted higher pay scale

in preference to the petitioners which resulted in anomaly. The benefit of the service of a Lecturer were not extended to the petitioners on the ground that petitioners were directly recruited as Senior Lecturers and not promoted. The net result is that the petitioners are getting lesser pay as compared to their juniors. The respondent-State apprehended such kind of anomalies and that is why, as per Clause-12 of 2008 Rules, the solution was also provided. The relevant Clause-12 of 2008 Rules is as under :-

“12. Admissibility of stepping up in certain cases :-

If the service rules provides for or circumstances warrant filling up of a post through direct recruitment as well as through promotion, benefit of stepping up of pay band and grade pay shall be admissible to the directly recruited senior Government servant if the junior promoted government servant junior to him is drawing salary in higher pay band and grade pay on the basis of the benefit of ACP upgradation. However, the benefit of stepping up shall not be admissible to a promotee if he has already got three financial upgradation as provided under these rules in his service career.”

A bare perusal of the above said rule would show that where a post can be filled up by way of direct recruitment as well as promotion and in case, higher pay is given to a promotee, who is junior to a direct recruit, the pay of the direct recruit needs to be stepped up. The said rule is applicable upon the petitioner as the petitioner is direct recruit in the cadre of Senior Lecturers appointed in December, 2004 whereas, the promotees to the said cadre of Senior Lecturers promoted after December, 2004, were getting higher pay than the petitioners, hence, petitioner is entitled to step up of his pay under Rule 12 of 2008 Rules.

The argument of the learned State counsel that Clause-12 of 2008 Rules is only applicable in the cases, where no benefit of ACP is to be

granted and the same is a special rule, which is not applicable upon the petitioners, is not correct. Rule 12 is prescribed to solve the anomalies and the present case is a clear case of anomaly, where senior is getting lower pay than his juniors, which is not permissible under the law. There is no such condition that Clause-12 will only be applicable in case, the employee is not covered under 2008 Rules for the grant of higher pay scale.

Keeping in view the above, as the petitioners are senior in the cadre of Senior Lecturers, having been appointed directly before their juniors were promoted to the same and upon the juniors receiving higher pay scale than the petitioners, the petitioners in these petitions are held entitled for the step up of their pay equivalent to that of their juniors with effect from the date, the juniors were granted the higher pay scale and the consequential benefits of re-fixation of the pensionary benefits admissible to the petitioners.

With regard to the grant of arrears upon re-fixation of the salary of the petitioners, the petitioners had approached this Court in the year 2016 though, the grievance started in the year 2011. It has been stated that the petitioner in CWP No. 7647 of 2016 has already died awaiting the benefit as being claimed in the present petition.

Keeping in view the facts and circumstances of this case, the petitioners are held entitled for the arrears upon re-fixation for a period of three years and two months prior to the filing of the present petitions, which were filed in the year 2016. Let the order be complied with within a period of two months from the receipt of copy of this order.

It is made clear that the arrears upon re-fixation will be paid to the legal heirs of the petitioner in CWP No. 7647 of 2016.

Petitions are allowed in above terms.

A photocopy of this order be placed on the file of another connected case.

October 27, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes