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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-214-2020

DECIDED ON: 06.09.2023

SHAM SUNDER

.....PETITIONER

VERSUS

UHBVNL AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.C. Dhurivala, Advocate,
Ms. Alisha Sharda and Ms. Neetu Khurana, Advocates
for the petitioner.

Mr. Parveen Chauhan, advocate for
Mr. Gagandeep Singh Wasu, Advocate
for respondents No.1 to 5.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 08.10.2018 (Annexure P-12) passed by respondent No.3, whereby the petitioner has been declined the grant of 1st ACP.

2. The factual matrix of the present case folds as under:-

“The Petitioner was initially appointed as bill distributed on adhoc basis on 9.05.1979 and was regularised subsequently on 11.10.1979 and gained promotion as meter reader on 10.01.1983 and retired on attaining the age of superannuation on 31.01.2017. That government revised pay scales of its employees in view of Revised pay scales, Rules 1998 w.e.f 01.01.1996. and petitioner was granted the 2nd ACP w.e.f. 01.11.1999 vide order dated 30.06.2010 and subsequently 3rd

ACP was granted w.e.f. 01.11.2009 w.e.f. 12.03.2015 and 1st ACP till date has not been released to him.”

3. Learned counsel for the petitioner contends that petitioner was never granted the 1st ACP though 2nd and 3rd were granted to the petitioner upto the date of retirement i.e., 31.01.2017 and due to non release of his 1st ACP the leave encashment, pay scales, and pension that the petitioner would have otherwise earned has suffered.

4. He further submits that petitioner was not allowed the first ACP though 10 years period of service and conduct was found satisfactory and in view of the of State Government revised pay scales of its employees applicable w.e.f 01.01.1996 under the Revised pay scales Rules,1998. The petitioner was granted the second ACP w.e.f from 11.11.1999 vide order dated 30.06.2010 (Annexure P-2) and accordingly third ACP was granted w.e.f. 1.11.2009 vide order dated 12.03.2015 (Annexure P-3).

5. The main bone of contention of counsel appearing for the petitioner is that, various departments have allowed ACP to the direct recruitees of the same cadre but have denied the ACP to the petitioner being the promotee and this very issue stands settled by the Supreme Court in **Civil Appeal No. 3250 of 2006** dated 02.08.2006 (Annexure P-4) whereby supreme Court allowed the appeal, partly with direction to revise the pay scales of the promotees i.e seniors and has further held that in case of anomaly, if the senior employees who on fixation of ACP scales are in receipt of lesser salary, than their juniors in the same cadre/post, then the pay and pay scales of the seniors is to be stepped up at par with their juniors.

6. He has also drawn attention of this Court upon an order dated

11.03.2014 (Annexure P-10) passed in ***CWP-3218-2013 titled as “Maya Devi vs. UHBVNL & Ors.***, whereby the respondents were directed to grant benefit of 1st ACP to the petitioner w.e.f., the date the juniors have been granted the same benefit. The respondents were also directed to refix the pay of the petitioner by granting her first ACP and also to refix the retiral benefits within a period of three months from the date of receipt of certified copy of this order.

7. To support his claim in view of the above order for the release of 1st ACP, learned counsel for the petitioner states that Smt. Maya Devi was appointed as Peon on 1982 and further promoted as LDC on 14.05.1985, thereafter 1st ACP scale was granted to her w.e.f. 01.01.1996 and he being senior to Maya Devi has been ignored the said ACP w.e.f. 01.01.1996 instead was granted from 01.11.1999.

8. On the other hand, learned counsel appearing for the respondents submits that petitioner was promoted before completing the ten years of service as per circular No.2 issued vide office order No.706/finance dated 27.02.1998, the employee who got promotion before completion of ten years of service are not entitled for 1st ACP, therefore, prays for dismissal of the present petition.

9. Heard, learned counsel for the respective parties.

10. This Court after going through the submissions made by the parties is of the view that mainly the petitioner is aggrieved against the order dated 08.10.2018 (Annexure P-12), whereby the respondents have passed the order contrary to the judgment of the Hon'ble Apex Court dated 02.08.2006 (Annexure P-4) and of this Court dated 11.03.2014 (Annexure P-10), as has been discussed hereinabove.

11. It is apparent from the perusal of the order dated 02.08.2006 (Annexure P-4) and 11.03.2014 (Annexure P-10) that the case of the petitioner is

squarely covered by the above-stated judgments and moreover, the junior to the petitioner i.e., Maya Devi in CWP3218-2023 already stands granted the same relief vide order dated 11.03.2014 and the petitioner being the senior cannot be denied the same, therefore, the order dated 08.10.2018 (Annexure P-12) is hereby quashed and the respondents are directed to grant the 1st ACP to the petitioner w.e.f. 1996, in view of the revised pay scale Rules, 1998 of Haryana Civil Services (Assured Career Progression) Rules, 1998 with all consequential benefits arising therefrom alongwith interest @ 6 % per annum.

12. The petition stands allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

06.09.2023

Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No