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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1326-2021
Date Of Decision-21.09.2023

SMT. SUMITRA DEVI

.....PETITIONER

VERSUS

UHBVN AND ANOTHER

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

PRESENT: Ms. Mehak Sawhney, Advocate
for the petitioner.

Mr. Ateevraj Sandhu, Advocate for
Mr. Dhruv Walia, Advocate
for the respondents.

SANDEEP MOUDGIL, J. (Oral)

1. The jurisdiction of this court has been invoked under article 226/227 of the Constitution of India for issuance of writ in the nature of Mandamus directing Respondents to re-compute the Family pension of the petitioner as well as the pension of her late husband in accordance with the Grade Pay of JE instead of FM with a further prayer for reasonable consequential arrears as her husband was not promoted to JE from AFM, merely due to some clerical mistake in the Tentative seniority list.

2. Counsel for the petitioner contends that the petitioner's husband joined the respondent no.1 on 31.01.1973 and was promoted as AFM in

16.04.2007 and superannuated from the same post on 30.06.2009. Thereafter, her husband after many years of his retirement noticed that he has been denied promotion to the post of JE due to clerical mistake in the tentative seniority list of AFM.(Annexure P-1). To reassure himself, her husband filed applications under RTI Act before Respondent No.1 seeking copy of his service book, seniority list of AFM as well as promotion orders of Lineman to AFM and after reviewing all the documents, he came to know that his qualification in the Tentative Seniority List has been show as under-matric whereas his service book specifically mentions his qualification as Matric.

3. He further contends that one Nand Kishore, who was his junior has been promoted to the post of JE on 15.05.2009 which compelled the petitioner's husband to repeatedly make applications/representations to respondent no.1 explaining that he has been denied the promotion to the post of JE wrongfully and requesting to re-compute his pension benefits on the basis of JE, however no heed was paid to these representations and ultimately her husband died on 13.05.2020.

4. Counsel for the petitioner vehemently contends that the petitioner recovered the documents of her husband after his death and further her family pension as per Haryana Civil Services (Pension) Rules,2016 was also determined on the basis of Grade pay of AFM instead of JE.

5. On the other hand, Counsel for the respondents contends that husband of the petitioner did not agitate to the promotion of his junior rather claimed the benefit of grant of 3rd ACP in lieu of promotion vide representation dated 24.10.2011.(Annexure R-1) and was very well aware of the rules and promotion policy relevant at that point of time(Annexure P-5)

possess minimum qualification of Matriculation with ITI(Electrician or Wireman Course) which is reproduced herein below:

“1.4.2 An AFM, shall be eligible for promotion to the post of JE provided he possesses/acquires minimum qualification of matriculation with ITI(Electrician or Wireman Course)”

6. He further contends that, it is the admitted fact by the husband of the petitioner that he was only Matric qualified and did not possess ITI(Electrician or Wireman Course) meaning thereby, he is bound by *law of estoppel* and cannot seek a relief contrary to the statutory provision.

7. He vehemently contends that the petitioner's claim is highly belated since the promotion of Nand Lal was made back in 15.05.2009 therefore claim of the petitioner is hit by delay and laches. In addition, it is argued that the respondent-nigam has never received any representation w.r.t to claiming promotion as JE, rather only one representation dated 26.02.2021 has been received and is pending consideration.

8. To counter the above made averments by the respondent counsel, the counsel for the petitioner has filed a replication dated 03.09.2023 stating that the representation(Annexure P-6) was referred by the concerned official recommending approval for the re-computation of the pensionary benefits of the husband of the petitioner. Further, from the perusal of the of the promotion policy(Annexure P-5) it is amply clear that the qualification of ITI(Electrician or Wireman course) was not required for promotion JE at the relevant time. Also, nowhere in the representation it is ever mentioned that the husband of the petitioner be granted 3rd ACP *in lieu* of the promotion. In fact, the

petitioner's husband was not aware of the promotion of his junior, otherwise, he being qualified would have raised the claim then only.

9. Heard learned counsel for the respective parties and gone through the record meticulously.

10. The present petition pertains to the re-computation of the pension of the petitioner's husband and family pension on the grade scale of JE instead of AFM wherein, the husband of the petitioner has been denied promotion to the post of JE despite being fully qualified for the same. On the other hand, the same promotion has been granted to one Nand Lal, who being junior to the husband of the petitioner has been granted the benefit of promotion. Whereas, the respondent-Nigam has claimed that the husband of the petitioner never possessed the qualification required for the promotion and rather in lieu of the promotion, claimed the benefit of 3rd ACP and had been in slumber for the past many years which marred his claim by delay and laches.

11. This Court is of the considered opinion after that having perused Annexure P-6, it is crystal clear that the case of the husband of the petitioner was referred to the concerned official recommending approval of re-computation of the pension of the husband of the petitioner with a note stating *Matter Most Urgent*, but the same seems to be pending for consideration. Also, a glance at the policy rules (Annexure P-5) makes it abundantly clear that the ITI (Electrician or Wireman) was not required for promotion as JE at the relevant time.

12. Moreso, it is not a case wherein the husband of the petitioner has been sleeping in slumber being ignorant of his rights, rather it is a settled principle of law as has also been discussed in "*Lajja Ram vs Rati Chand*,

2009 SCC Online P&H 7757” wherein the Supreme Court held that the question of delay and laches arises only when one knows the error and pertaining to the case in hand, it is quite evident that the petitioner’s husband was vigilant about his rights.

13. In the view of above discussions, this writ petition is allowed and the respondent-authorities are directed to re-compute the family pension of the petitioner from the date of death of husband of the petitioner as well as the pension of her late husband w.e.f. 15.05.2009 in accordance with the Grade pay of JE and release the family pension and other consequential benefits and arrears along with interest @ 9% p.a. within the period of two months from the date of receiving the certified copy of this order. The petitioner shall also be entitled to interest @ 6% p.a. on the delayed payment of family pension/consequential benefits upon re-fixation of pay of husband of the petitioner on account of his promotion from the due date.

14. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

21.09.2023
V.Vishal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>