

**CM-20418-CWP-2023 in/and
CWP-10168-2001**

2023:PHHC:155908

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

(102)

**CM-20418-CWP-2023 in/and
CWP-10168-2001**

Date of Decision : December 06, 2023

Sham Sunder Dhari

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tejpal Singh Dhull, Advocate, for the applicant-petitioner.

Mr. Pankaj Middha, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-20418-CWP-2023

Present application has been filed for fixing the actual date of hearing in the main writ petition.

Notice of the application to the counsel opposite.

Mr. Pankaj Middha, learned Addl. Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondents and raises no objection for the grant of prayer as made in the present application.

Keeping in view the above, the application is allowed and the main writ petition is taken up for hearing today itself.

CWP-10168-2001

1. In the present writ petition, the grievance of the petitioner is that his claim is covered for the protection of the pay as was being drawn by him before retrenchment keeping in view the instructions dated 28.02.1984

2. Learned counsel for the petitioner argues that the benefit of the instructions dated 28.02.1984 have been given to more than one similarly situated employees and the petitioner has attached the order Annexure P-5 by which, the pay of similarly situated employees has been protected, who were also ultimately given fresh appointment after being declared surplus.

3. Learned counsel for the petitioner submits that even after filing of the present writ petition, the orders have been passed by the Department of Transport giving the benefit of protection of pay to the employee namely Mr. Vidya Sagar who was declared surplus and was adjusted thereafter.

4. Learned counsel for the petitioner further submits that the petitioner is the similarly situated as the employees, whose details have been mentioned in Annexure P-5 as well as Mr. Vidya Sagar, hence, the petitioner is entitled for the benefit of protection of his pay which was being drawn by him while working in the erstwhile Department from where he was declared surplus.

5. Learned State counsel submits that the benefit of instructions dated 28.02.1984 (Annexure P-4) is only to be given in case a person is absorbed whereas the petitioner has not been absorbed in service and rather he has been given fresh appointment.

6. Learned State counsel further submits that the benefit can only be given to an absorbed employee and therefore, the petitioner has not been able to make out a case for the grant of benefit under the instructions dated 28.02.1984 (Annexure P-4).

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

8. Though from the face of it the statement made by the respondents make sense that an employee who has been absorbed, is entitled for protection of his pay as being drawn by him/her in the erstwhile Department but from the facts of this case, once the similarly situated employees have been given benefit by interpreting the instructions 28.02.1984 (Annexure P-4) in a particular manner, the interpretation of the same instructions in a different manner qua the petitioner will amount to discrimination.

9. Nothing has come on record as to whether, the employees, the details of whom have been given in Annexure P-5 or Mr. Vidya Sagar to whom the benefit was given vide order dated 25.08.2006 by the Department of Transport, were similarly situated as the petitioner or not, hence, the respondents are directed to give a fresh consideration to the claim of the petitioner with the clear direction that in case anybody who is similarly situated as the petitioner, has already been given the benefit of protection of pay, the same be extended to the petitioner so as to avoid discrimination as two different interpretations to the same instructions cannot be done by the respondents.

10. Let the fresh consideration of the claim of the petitioner be carried out and finalized within a period of eight weeks of the receipt of copy of this order.

11. The present writ petition is disposed of in above terms.

December 06, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No