HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CWP-14199-2012
Reserved on 20.09.2023
Decided on 19.12.2023
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SC Gupta & Ors. ... Petitioners

VS.

Addl. Chief Secretary to Govt. Haryana,
Power Department-cum-Chairman,
Haryana Power Utilities & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Ashwani Talwar, Advocate for the petitioners

Ms. Dimple Jain, DAG Haryana

Mr. Arvind Seth, Advocate for respondents No.2 to 4

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Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of order dated 17.03.2019 (Annexure P9 collectively) passed by respondent No.3 and for directing the respondents to step up their pay at par with the pay of respondent No.5 w.e.f. 02.04.1975 by allowing them the notional promotion from the deemed date in view of instructions dated 05.03.2009 (Annexure P3) as adopted by respondent No.2 vide its letter dated 20.08.2009 (Annexure P4).

(2). The petitioners joined the erstwhile Haryana State Electricity Board as Junior Scale Stenographers on different dates in the year 1967 and after earning promotions to higher posts, gradually retired as Senior Private Secretary. On 14.08.1998, the erstwhile HSEB was abolished and bifurcated into four companies, namely, Haryana Vidyut Prasaran Nigam Ltd. (HVPNL), Haryana Power Generation Corporation Ltd. (HPGCL), Uttar Haryana Bijli

Vitran Nigam Ltd. (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL) w.e.f. 14.08.1998. The petitioners were thus allocated to HPGCL without taking their consent. In view of the Supreme Court judgment in ***Ajit Singh Janjua & Ors. Vs. State of Punjab, (1996) 2 SCC 215***, the State of Haryana issued instructions dated 05.03.2009 (Annexure P3), giving the benefit of stepping up of pay to the general category employees at par with that of their junior counterparts of reserved category and the concerned employees shall be entitled to pay and allowances notionally from the date of promotion of juniors along with benefit of stepping up of pay from the actual date of promotion in their cadre. The said notification was duly adopted by the HPGCL on 20.08.2009 (Annexure P4). Some of the juniors like respondent No.5, who belongs to SC category, got accelerated promotion prior to 14.08.1998 i.e. before formation of four companies. The petitioners submitted representations (Annexure P8 collectively) to respondent No.3 to grant of benefit of pay bringing them at par with respondent No.5 in view of instructions dated 05.03.2009. The respondent No.3 rejected the representations of the petitioner vide order dated 17.03.2010 on the ground that their request was not found feasible as parity is to be maintained within the company and not outside the company.

(3). Learned counsel for the petitioner submitted that all the petitioners have caught up the respondent NO.5 in Class III level and not only b efore 15.03.2006 as mentioned in clarification dated 23.11.2009 but also before 14.08.1998 on which date the HSEB was abolished and four companies were formed. He submitted that even the appeal filed by the petitioners has not been decided by the Managing Director in spite of legal notice dated 19.05.2010 and 22.07.2010 (Annexure P11 & P12, respectively).

(4). Reliance has been placed on CWP-23454-2010 (Satya Pal Nagpal vs. HVPNL & Ors.) decided on 24.12.2010 wherein similar controversy came up for hearing which has attained finality since LPA No.1259 of 2011 preferred by HVPNL has also been dismissed by the Division Bench vide judgment dated 24.12.2010 (Annexure P13 to P15 respectively).

(5). It is pointed out that similarly situated 4 employees of UHBVNL were granted benefit of seniority w.e.f. 04.07.1974 by comparing with Sh. ID Sehgal, Assistant who was also allocated to HVPNL, by taking there original date of appointment in the erstwhile HSEB. He urged that once employees were found entitled to benefit, the same ought to be granted to them irrespective of the company to which they were allocated after formation of the above said four companies.

(6). Notice of motion was issued on 27.07.2012 and pursuant thereto, the respondents No.1 to 4 have filed their reply wherein it has been averred that case of the petitioners regarding stepping up of their pay at par with respondent No.5 has been comparatively examined and it was found that the same does not establish. It is further averred that respondent No.5 was allocated to DHVBNL after bifurcation of HSEB and who voluntarily retired on 02.12.2003.

(7). In their written statement, it has been admitted that petitioner No.1 was senior to respondent No.5 at the post of Junior Scale Stenographer and Sr.Scale Stenographer but the latter was given deemed date of promotion as Personal Assistant w.e.f. 04.12.1979 whereas the petitioner No.1 was give promotion to the post of Personal Assistant on 30.04.1981. However, on comparison of pay drawn by the petitioner No.1 vis-à-vis respondent No.5, it was found that the petitioner No.1 was already drawing more pay then respondent NO.5 on 30.04.1981.

(8). Heard learned counsel for the parties and gone through the record.

(9). The impugned order dated 17.03.2010 passed by Chief Engineer/Admn. HPGCL, Panchkula rejecting the claim of the petitioners for stepping up of pay with his junior simply on the ground that the same was found not feasible for acceptance as the parity is to be maintained within company and not outside the company.

(10). Without going into the merits of the claim raised by the petitioners, at this stage, this Court is of the considered view that the impugned order dated 17.03.2010 is totally cryptic and non-speaking. Prima facie, a perusal of the order dated 17.03.2010 suggests that the same has been passed mechanically and there is no application of mind while deciding the claim of the petitioners vis-à-vis their junior persons. In matters involving pecuniary loss to the employee, it is incumbent upon the respondent-authorities to apply its mind and pass a well reasoned speaking order.

(11). As is evident from the principles enunciated by the Allahabad High Court **State of U.P. and others Vs. Faini Singh, SAD No. 416 of 2014**, decided on 25.04.2014 while recognizing the power of the State to withhold gratuity and to fix a provisional pension during the pendency of judicial or departmental proceedings, the Division Bench further proceeded to hold that the action of withholding such benefits must be preceded by due application of mind and consideration of whether the charges levelled against the employee were serious and related to grave misconduct. It was observed that there must be a due application of mind by the respondents while invoking the provisions of Regulation 919-A, as to whether any pecuniary loss stood caused to the Government or whether the allegations against the employee were of a serious crime, grave misconduct or negligence during his service. The Division Bench, essentially, highlighted that while the power did exist, the same must be exercised with due circumspection and action not taken mechanically.

(12). Accordingly, this writ petition is allowed in part to the extent that the order dated 17.03.2010 (Annexure P9) is quashed with a direction to the respondent No.3 to decide the matter afresh and to pass a speaking order considering claim of the petitioners, in accordance with law, rules and relevant instructions as also the case laws relied upon by them, within a period of 3 months from the date of receipt of certified copy of this order.

(13). Needless to say that if the petitioners, who have retired in 2001-2007, are found entitled to the benefit to which they are craving and pursuing the same since 2010, the same shall be disbursed to them within 2 months after passing of the order, along with interest @ 6 % p.a. from the date it became due till he date of its realization.

(14). Ordered accordingly.

19.12.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No