

CWP No.13602 of 2018

[1]

2023:PHHC:069415

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

217

CWP No.13602 of 2018

Date of decision:09.05.2023

Sushil Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

1. By way of present petition, petitioner has approached this Court *inter alia* seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 03.04.2018 (Annexure P-9), vide which case of the petitioner for fixation of pay in the pay scale of Rs.5200-20200+3200/- G.P as first ACP w.e.f. 01.02.2006 has been rejected and his pay has been reduced.

2. Factual matrix leading to filing of this petition is that the petitioner was appointed as Electrician Helper on daily wage basis in the year 1990 and his services were regularized w.e.f. 01.02.1996. He was promoted to the post of Electrician on 20.12.2013. Instructions dated 26.07.1991 (Annexure P-1) were issued revising the pay scales of employees, who possessed the qualification of Matric with ITI. When the petitioner was not granted this benefit, he approached this Court and by order dated 08.09.2005, writ petition filed by him was accepted and the

petitioner was granted the technical pay scale of Rs.4000-6000 w.e.f. 04.06.2004. On completion of 10 years regular service, petitioner was granted the benefit of first ACP and his pay was fixed in the scale of Rs.5200-20200+GP3200 w.e.f 01.02.2006. He was served with a show cause notice dated 01.07.2015 (Annexure P-5) proposing withdrawal of the first ACP benefit. Petitioner submitted response to the show cause notice and moved this Court by filing CWP No.16822 of 2015, which was disposed of on 08.01.2018 (Annexure P-8) with a direction to the respondents to take a final decision on the show cause notice. Pursuant thereto, by impugned order (Annexure P-9), pay of the petitioner has been reduced.

3. Upon notice, writ petition has been contested by the respondents by filling a response.

4. Placing reliance upon instructions dated 27.08.2014 (Annexure P-13), counsel for the petitioner has contended that Govt. has clarified that the technical pay scale being drawn by the employees on the coming into effect of The Haryana (Abolition of Distinction of Pay Scale between Technical and Non-Technical Posts) Act, 2014 is to be treated as their functional pay scale as a personal measure and ACP benefit is to be granted on the basis of the said scale.

5. On the other hand, State counsel submits that as the petitioner has got financial upgradation during his service tenure, he was not entitled to the grant of ACP benefit. Reliance has been placed by him upon the Haryana Civil Services (Assured Career Progression) Rules, 2008.

6. I have considered the submissions made by counsel for the

parties and examined the documents placed on the record.

7. Clarificatory instructions dated 27.08.2014 deserve to be noticed and are reproduced as under:-

“No.2/22/2014-3PR(FD)

From

*Addl. Chief Secretary to Govt. Haryana,
Finance Department.*

To

- 1. All the Administrative Secretaries.*
- 2. All the Head of Departments of State of Haryana:*
- 3. All the Commissioners. Ambala, Hisar, Rohtak and Gurgaon Division.*
- 4. All the Dy. Commissioners of Haryana.*
- 5. All the SDO (C) of Haryana.*

Dated, Chandigarh the 27th August, 2014

*Subject: Clarification regarding granting of ACP Scale to the employees,
working on various Technical Posts.*

*I have been directed to invite your kind attention to the subject
noted above.*

*The HARYANA (ABOLITION OF DISTINCTION OF PAY SCALE
BETWEEN TECHNICAL AND NON-TECHNICAL POSTS) Act was issued
on 11-03-2014.*

*Consequently, the cases regarding grant of ACP to the employees
who are working on various technical posts and are drawing technical pay
scale as a measure personal to them, has been referred to Finance
Department for clarification.*

Proviso under Section 4 of the Act ibid provides that:-

“Provided that all those persons who had already been granted unconditionally the up-graded pre-revised pay scale and drawing the same before date of notification of the Haryana (Abolition of Distinction of Pay Scale between technical and Non- technical Posts) Ordinance. 2013 (Haryana Ordinance No.6 of 2013), viz. the 10th December, 2013, shall continue to draw these pay scales, as a measure personal to them.”

It is clarified that the above proviso to Section-4 of the Act ibid means that those persons who had already been drawing the technical pay scale on the date of issue of Ordinance, dated 10th December, 2013, will continue to draw those pay scales and the same will be treated as their functional pay scale, as a measure personal to them, and consequently ACP scales will also be admissible to them on the basis of the same pay scale. Further, such ACP scales will subject to other terms and conditions of the ACP Rules.

Sd/-

*Joint Secretary Finance (PR)
for Addl. Chief Secretary to Govt. Haryana,
Finance Department*

*Endst. No.2/22/2014-3PR (FD) Dated, Chandigarh the
27.08.2014.”*

8. It is evident from the perusal of the instructions that the technical pay scale granted to an employee on the date the ordinance came into force has to be treated as the functional pay scale and the ACP benefit has to be paid on the same pay scale. These instructions have neither been noticed nor considered in the impugned order (Annexure P-9) passed by respondent No.3. On this short ground alone, impugned order cannot be

sustained.

9. In view of the above, impugned order (Annexure P-9) is set aside. A direction is issued to respondent No.3 to pass a fresh order within a period of four months from the date of communication of this order after considering the clarificatory instructions (Annexure P-13) reproduced above.
10. Writ petition is disposed of with the above direction.

May 09, 2023

savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No