

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

CWP-13611-2018 (O&M)

Date of Decision:04.12.2023

Dharamvir Singh Malik and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sunil K. Nehra, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

HARSIMRAN SINGH SETHI J.(Oral)

1. In the present petition, the grievance of the petitioners is that the juniors of the petitioners are getting more salary than the petitioners which is not permissible hence the pay of the petitioners is entitled to be stepped up equivalent to their juniors with all consequential benefits such as arrears etc.

2. The respondents in their reply has submitted that the juniors of the petitioners are getting higher pay keeping in view the grant of benefit under the Assured Career Progression Scheme (for short ACP Scheme), which benefit cannot be extended to the petitioners and therefore, it is not a case that similarly situated two employees, one being senior and other being junior to the petitioners have been granted more salary which is discrimination. According to the respondent-State, the junior who are fully eligible for the grant of promotion to the higher post but could not get the same due to non-availability of the cadre, have been granted benefit of the ACP while fixing their pay which benefit has not

been given to the petitioners on the ground that the petitioners are ineligible to get the promotion to the higher rank.

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

4. It is conceded fact that in the cadre of Sub Divisional Engineer, in which the petitioners were working, some of their juniors are getting higher pay as compared to the petitioners. The reason which has come forward for the said anomaly that an employee who is fully eligible for the promotion on the post of Executive Engineer but is not getting the promotion due to the non-availability of a cadre post is granted the benefit of ACP Scheme for grant of a higher pay-scale. The junior employees who were fully eligible for grant of promotion but could not get the same due to non-availability of the promotional avenue of the cadre of Executive Engineer have been granted the benefit of ACP Scheme which benefits cannot be extended to the petitioners on the ground that they are ineligible for promotion as the minimum requirement eligibility for the post of Executive Engineer is degree or equivalent in Engineering whereas the petitioners are the diploma holders. It has also come on record that no diploma holder except one was granted this benefit from whom also the said benefit was withdrawn but the said issue is pending consideration before this Court.

5. It is a matter of fact that benefit under the ACP can only be granted to an employee who is fully fit for promotion but could not get the benefit of promotion to the higher rank due to the non-availability of a promotional post and is stagnating in the feeder cadre. An eligible person can be treated as stagnating whereas an employee who is not eligible for promotion, cannot be treated as stagnating in the feeder as, the said employee cannot be promoted due to the non-fulfilment of the eligible essential qualification for promotion. The

two sets of employees i.e. an employee who is not eligible for promotion and second i.e. who though is eligible for promotion and is not getting promotion due to non-availability of the cadre post in the promotional cadre, cannot be treated on equal footing for the grant of benefit of ACP. The said differentiation which has been carved out by the ACP Rules has to be taken into consideration while considering the plea of the petitioners for stepping up of their pay equivalent to their juniors.

6. The petitioners cannot get the benefit of step up otherwise, the benefit of ACP will be granted to them by step up of their pay hence as the petitioners being ineligible for promotion are rightly being granted a lesser pay as compared to their juniors who are fully fit for promotion but are stagnating in the feeder cadre due to non-availability of a post in the cadre of Executive Engineer.

7. The learned counsel for the petitioners has placed reliance upon CWP No. 20032 of 2015 decided on 22.11.2019 titled as **Balbir Singh Vs. State of Haryana and others 2020 (3) SCT 25** to contend that the petitioners are entitled for step up of their pay equivalent to the juniors. The above-said judgment is being mis-interpreted by the petitioner to claim the benefit. In **Balbir Singh's case** (Supra) the question of law was that two similarly situated were being discriminated vis-a-vis each other only on the ground that one category of employee was directly recruited on the feeder post and the other employee was promoted with regard to the grant of benefit of ACP. In the present case, it is a conceded position that the petitioners are not eligible for the grant of benefit of ACP being not eligible for promotion to the post of Executive Engineer, hence the judgment being cited by learned counsel for the petitioners in

Balbir Singh's case (supra) is entirely on different facts as compared to the facts in the present case.

8. Further the judgment of a Coordinate Bench of this Court in **CWP No. 25633 of 2015 decided on 30.11.2018** titled as **Dinesh Kumar Vs. State of Haryana 2019(1) SCT 732** is also on the similar fact as **Balbir Singh's case (supra)**. In the ***Dinesh Kumar's*** case (supra), there is no dispute qua the eligibility of the petitioners to claim promotion to the higher rank being eligible under the rules, which fact is missing qua the petitioners in the facts and circumstances of the present case, hence, the law being relied upon to claim benefit is not applicable to the facts of the present case.

9. Keeping in view the above, as the petitioners are not eligible for the grant of promotion to the post of Executive Engineer, they cannot be granted ACP which benefit has been granted to their juniors, hence the claim of the petitioners for stepping up of their pay cannot be treated as an anomaly but as exigency of service.

10. No ground is made out in the present writ petition.

11. Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

04.12.2023

Shweta

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