

CM-12389-CWP-2023 ;
CM-12392-CWP-2023 in
CWP No. 20580 of 2015

2023:PHHC:113637

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CM-12389-CWP-2023 ;
CM-12392-CWP-2023 in
CWP No. 20580 of 2015
Date of Decision : 28.08.2023

Shamsher Singh through his legal heir

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Kaith, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-12389-CWP-2023

Present application has been filed for recalling the order dated 24.07.2023 by which, the writ petition was dismissed for want of prosecution with liberty to the legal heirs of the petitioner to revive the petition by filing an appropriate application.

Keeping in view the fact that the application is filed by the legal heirs for the revival of the present petition, the order dated 24.07.2023 by which the present petition was dismissed for want of prosecution, is recalled and the petition is restored to its original number and status.

CM-12392-CWP-2023

Present application has been filed for impleading legal representative of the petitioner, who unfortunately died on 12.06.2021, during the pendency of the writ petition.

Notice of the application to learned counsel for the respondents.

Mr. Harish Nain, learned Assistant Advocate General, Haryana, accepts notice on behalf of the respondent-State. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. The only legal heir i.e. Phooli Devi widow of the petitioner, is allowed to be impleaded in the present writ petition and the amended memo of parties attached with the present application is taken on record.

CM stands allowed.

CWP-20580 of 2015

1. Learned counsel for the petitioner submits that the claim of the petitioner for the grant of stepping up of his pay equivalent to the employee, who was junior to him, has been declined by the impugned order dated 02.07.2015 (Annexure P-6) by stating that the said junior employee, namely, Mastan Singh was not working in the cadre of the petitioner, whereas subsequent to the passing of the impugned order, the respondents themselves have granted the same benefit of stepping up of

pay to the various Clerks including one Sunder Singh equivalent to that of Mastan Singh and the writ petition filed by the similarly situated employee, namely, Sunder Singh, who had filed **CWP No. 25348 of 2016** has been rendered infructuous.

2. As per the averments made in the petition, the petitioner joined as a Clerk on regular basis on 09.12.1981. He, thereafter promoted as Assistant-cum-Accountant-cum-Junior Auditor w.e.f. 03.04.2007 and ultimately, retired from the said post on attaining the age of superannuation on 30.04.2014. As per the averments made in this petition, the petitioner was senior to one Mastan Singh, who was promoted to the post of Assistant-cum-Accountant-cum-Junior Auditor w.e.f. 27.10.1993 by giving him the benefit of reservation, hence, as the petitioner was able to catch said Mastan Singh in the cadre of Assistant before his retirement, he became senior to him keeping in view the judgment of Hon'ble Supreme Court of India in ***Ajit Singh Januja and others versus State of Punjab and others, 1996(2) SCC 715***, hence, the petitioner was entitled for the salary equivalent to his junior with effect from the date, the petitioner caught Sh. Mastan Singh in the higher cadre of Assistant.

3. Learned counsel for the petitioner submits that Mastan Singh had not only superseded the petitioner but had superseded various other employees and keeping in view the judgment of ***Ajit Singh's case (supra)***, all the juniors were granted the benefit. Learned counsel

submits that one such order was passed on 03.05.2013 granting benefit to various employees of stepping up of their pay equivalent to Mastan Singh.

4. Learned counsel further submits that when the petitioner raised a claim for stepping up of his pay, the same has been declined by the impugned order, though after the passing of the impugned order once again, the respondents granted the same benefit to the other similarly situated employees vide order dated 18.09.2019, a copy of which has been appended as Annexure A-1 with CM No. 15904 of 2016. Learned counsel for the petitioner submits that keeping in view the various orders passed by which the benefit of stepping up of pay has been extended to the similarly situated employees equivalent to that of Mastan Singh, hence, the petitioner is also entitled for the benefit of stepping up of his pay.

5. Learned counsel appearing on behalf of the respondents submits that in the present case, Mastan Singh and the petitioner were not working in the same cadre, hence, benefit of step up of pay cannot be granted. Learned counsel for the respondents submits that the petitioner was working in the Cadre of Clerk, whereas Mastan Singh was appointed as Steno-typist and thereafter, promoted as Assistant-cum-Accountant. As per the respondents, the petitioner cannot claim seniority over Mastan Singh as Mastan Singh was never working in the cadre of Clerk before

his promotion to the post of Assistant-cum-Accountant-cum-Junior Auditor.

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

7. It may be mentioned that the feeder cadre for promotion to the post of Assistant-cum-Accountant-cum-Junior Auditor is Clerk/Steno-typist and there is a joint seniority list of all the feeder cadres for promotion to the post of Assistant-cum-Accountant-cum-Junior Auditor. In the said seniority list, the petitioner, who was working in the Cadre of Clerk was senior to Mastan Singh and similarly there were other Clerks, who were also senior to Mastan Singh so as to get benefit of promotion in preference to Mastan Singh in the Cadre of Assistant-cum-Accountant-cum-Junior Auditor but Mastan Singh was granted out of turn promotion on the basis of reservation, hence, Mastan Singh had superseded various employees, who were also working in the Cadre of Clerk while getting promotion to the post of Assistant-cum-Accountant-cum-Junior Auditor, which benefit was given to Mastan Singh in the year 1993.

8. Further, learned counsel for the respondents has not been able to rebut that the employees similarly situated as the petitioner, who were working in the Cadre of Clerk and were senior to Mastan Singh for promotion to the post of Assistant-cum-Accountant-cum-Junior Auditor have already been granted the benefit of step up of their pay by the

Government vide order dated 03.05.2013. The relevant order passed in favour of the similarly situated employees is as under :-

“Consequent upon the judgment given by the Hon’ble Supreme Court of India in the case of Ajit Singh Januja and others V/s State of Punjab and R.K. Sabharwal and Govt. Instructions issued vide letter No.22/73/92-3GS-III dated 14.10.1999 & No.22/132/2008-3GS-III dated 5.3.2009 and Judgment given in CWP No.1460 of 2011 by the Hon’ble Punjab and Haryana High Court on dated 28.1.2013, the following Assistant of subordinate offices are allowed the benefit of stepping up of pay at par with that of his junior counterpart of reserved category i.e. Sh. Mastan Singh, Assistant (Now Deputy Superintendent). They will be entitled to the benefit of pay and allowances notionally from the date of his junior Sh. Mastan Singh, Assistant (Now Deputy Superintendent) belonging to reserved category joined on promotion as Assistant and they will be entitled to actual benefit of stepping up of pay from the actual date of his promotion as Assistant.

<i>Sr. No.</i>	<i>Official Name</i>	<i>Date of Actual date of joining promotion as Assistant Clerk</i>	<i>Sh. Mastan Singh, as Steno joined on dated 20.8.82 and promoted as Assistant on dated 27.10.93 against reservation over their junior</i>
1.	Sh. Baljeet Singh, Assistant (Retd.) 1	10.12.8 08.11.2006	27.10.93
2.	Sh. Jagdish Chander, (Assistant1 (Retd.)	10.12.8 30.03.2007	27.10.93
3.	Sh. Surya Dutt Sharma, Assistant1 (Retd.)	11.12.8 30.03.2007	27.10.93
4.	Sh. Suresh Chander Bhardwaj, Assistant 1	11.12.8 08.11.2006	27.10.93
5.	Sh. Subhash Chander, Assistant1	04.12.8 30.03.2007	27.10.93

CM-12389-CWP-2023 ;
CM-12392-CWP-2023 in
CWP No. 20580 of 2015

2023:PHHC:113637

7

- (Retd.)
- | | | | |
|----|------------------------------|------------|----------|
| 6. | Sh. Dharam Singh, 06.01.80 | 08.11.2006 | 27.10.93 |
| | Assistant | 2 | |
| 7. | Sh. Ranbir Singh, 17.12.80 | 30.03.2007 | 27.10.93 |
| | Assistant | 1 | |
| 8. | Sh. Hainder Sharma, 15.12.80 | 08.11.2006 | 27.10.93 |
| | Assistant | 1 | |

Dated, Panchkula
28.4.13

NARINDER ARORA
Director General Health Services, Haryana

Endst. No.76/B (63)-1 E-1-2013/1328-33

Dated 03.05.2013

A copy is forward to Civil Surgeon, Rohtak, Bhiwani, Jind, Sonapat, Jhajjar & Hisar with the request that the pay of the concerned officials may please be stepped up accordingly.

*Administrative Officer(G)
For: Director General Health Services, Haryana*

9. A bare perusal of the above order would show that the benefit of step up of pay was given to the Clerks similarly situated as the petitioner. Once, the respondents considered the Clerks as senior to Mastan Singh and granted them the benefit of step up of pay, the same cannot be denied to the petitioner being similarly situated. Further, though the claim of the petitioner was declined by the respondents in the year 2015 but once again while passing order dated 18.09.2019, another Clerk, namely, Sunder Singh has been granted the benefit of step up of pay.

10. It may be noticed that Sunder Singh had also filed a writ petition in the Court claiming the said benefit, which benefit has been allowed in his favour and it is a conceded position that Sunder Singh was

also working in the Cadre of Clerk. The order passed in favour of Sunder Singh is as under :-

OFFICE ORDER

Consequent upon the judgment given by the Hon’ble Supreme Court of India in the case of Ajit Singh Januja and others Vs. State of Punjab and R.K. Sabharwal and Govt. Instructions issue vide letter No.22/73/92-3GS-III dated 14.10.1999 & No.22/132/2008-3GS-III dated 5.3.2009 and Judgment given in CWP No.1460 of 2011 by the Hon’ble Punjab and Haryana High Court on dated 28.1.2013, the following Assistant of subordinate offices are allowed the benefit of stepping up of pay at par with that of his junior counterpart of reserved category i.e. Mastan Singh, Assistant (now Superintendent). He will be entitled to the benefit of pay and allowance notionally from the date of his junior Sh. Mastan Singh, Assistant (Now Superintendent) belonging to reserved category joined on promotion as Assistant and he will be entitled to actual benefit of stepping up of pay from the actual date of his promotion as Assistant.

<i>Sr. No.</i>	<i>Official Name</i>	<i>Date of joining as Clerk</i>	<i>Actual date of promotion as Assistant Accountant</i>	<i>Sh. Mastan Singh as Steno joined on date 20.08.1985 and promotion as Assistant on dated 27.10.1993 against reservation over their junior</i>
1.	<i>Sh. Sunder Singh, Assistant (Retd.), CHC Kalwa (Jind)</i>	<i>28.01.1982</i>	<i>24.05.2007</i>	<i>27.10.1993</i>

*Dated, Panchkula
18.09.2019*

*SURAJ BHAN KAMBOJ
DIRECTOR GENERAL HEALTH SERVICES
HARYANA*

**CM-12389-CWP-2023 ;
CM-12392-CWP-2023 in
CWP No. 20580 of 2015**

2023:PHHC:113637

9

Endst. No.76/S (149)-1E1/2019/3472

Dated 18.09.2019

A copy is forward to Civil Surgeon Jind with the request that the pay of the concerned officials may pleased be stepped up accordingly.

*Sd/ Budget Officer
Director General Health Services
Haryana*

Endst. No.76/S(149)-1E1/2019

Dated 18.09.2019

A copy is forwarded to Sh. Sunder Singh, Accountant (Retd.) New Chander Lok Colony, Julana (Jind) for information and necessary action.

*Sd/ Medical Officer
Director General Health Services,
Haryana”*

11. A bare perusal of the above order would show that Sunder Singh was also working in the Cadre of Clerk at the time when he was superseded by Mastan Singh and when Sunder Singh got promotion as Assistant, he was granted benefit of step up of pay, which benefit is being claimed by the petitioner.

12. Once, the Clerks, who were similarly situated to the petitioner, have been granted the benefit of step up of their pay equivalent to that of Mastan Singh, the ground taken by the respondents that petitioner and Mastan Singh were working in a different Cadre so as to deny the benefit of step up of pay equivalent to Mastan Singh, is contrary to the orders passed by the respondents, which have been reproduced hereinbefore, hence, the ground given by the respondents to deny the

petitioner the benefit is contrary to their own action and orders passed, which orders have already been implemented by the respondents.

13. Keeping in view the above, the impugned orders are set-aside. The respondents are directed to grant the petitioner the same benefit as being granted to the similarly situated employees vide order dated 03.05.2013 as well as in the case of Sunder Singh vide order dated 08.09.2019 of stepping up of his pay on the same terms and conditions as granted to the other similarly situated employees. As, unfortunately, the petitioner has already died, the benefits be released in favour of the legal heirs of the petitioner, who have been brought on record. Let the present order be complied with within a period of two months from the date of receipt of certified copy of this order.

14. Petition is allowed in above terms.

15. Any application, if pending, is disposed of.

August 28, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No