

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

210

CWP-1682-2017

Date of Decision: 15.12.2023

Ram Sarup and others

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Surender Dhull, Advocate for the petitioners

Mr. Rohit Arya, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *mandamus* directing the respondents to restructure the petitioners' pay at par with that of their junior, the fifth respondent.

2. Briefly, the facts on record are:

2.1. Petitioner no.1 joined the Department on 23.01.1982 as Sweeper-cum-Chowkidar. He was promoted as Lab Assistant on 07.03.1988, and working as such since then. During service as Senior Lab Assistant, he was given first Assured Career Progression Scale (for short 'ACP Scale') after completion of ten years' service on 01.04.1998, and the second one on completion of twenty years' service on 01.04.2008. As on 04.03.2014, he was working in the pay scale of ₹5200-20200+3200 grade pay.

2.2. Petitioner no.2 joined as Peon on 23.01.1995, and was promoted as Lab Assistant on 08.03.1998. He was given first ACP Scale on 01.04.1998, and the second one in 2008. As on 04.03.2014, he was working in the same pay scale and grade pay as that of petitioner no.1.

2.3. Petitioner no.3 joined as Peon on 07.01.1982, and was promoted as Lab Assistant on 21.05.1997. He filed a writ petition on being wrongly shown junior to another employee Ram Sarup; the petition was allowed and he was ordered to be promoted on the basis of date joining the service.

2.4. The fifth respondent, who is also working as Lab Assistant, is junior to the petitioners, as he joined the post as direct recruit on 17.03.1989, but was getting pay in the pay scale ₹5200-20200+3600 grade pay as on 04.03.2014.

2.5. In these circumstances, the petitioners represented to the respondents seeking removal of the anomaly and stepping-up of pay equivalent to that their junior/fifth respondent; but to no effect. In these circumstances, the instant petition was filed.

3. Learned counsel for the petitioners contends that as per settled law, in case a senior employee is getting less pay than that of his junior, he is entitled to get his pay stepped-up to the level of pay being drawn by his junior employee. Still, the respondents have refused to do that on the plea that the petitioners have already been given three financial upgradations, and their case for further stepping-up of pay cannot be considered.

4. *Per contra*, learned State counsel, by referring the written statement filed on behalf of the respondents, contends that the petitioners have

already been given three financial upgradations. As per proviso to sub-rule (4) of Rule 7 of the Haryana Civil Services (Assured Career Progression) Rules, 2016 (hereinafter referred to as 'ACP Rules'), they are not entitled to avail any further upgradation. In case their pay is upgraded at par with that of their junior, it will amount to giving them fourth financial upgradation which is specifically barred under the Rules.

5. Heard.

6. The facts are not in dispute, that the petitioners have been given three financial upgradations in the form of promotion/ACP Scales on the post of Lab Assistant, and that the fifth respondent, who is their junior, is getting more pay in grade pay of ₹3600, as compared to that of the petitioners who are in grade pay of ₹3200.

6.1. It is settled law that unless there is a specific prohibition, a senior employee is entitled to get his/her pay stepped-up at par with that of his junior, who is getting more pay. It could not be pointed out by learned State counsel that there is any specific prohibition for stepping-up the petitioners' pay, except the proviso to sub-rule (4) of Rule 7 of the ACP Rules, which is as under:

7. Eligibility for grant of ACP Level under the General ACP scheme.—

(1) to (3) xxxx xxxx xxxx

(4) In case of a Government employee who gets promoted, he shall be considered for the next ACP Level after he completes 8 (eight) years of regular satisfactory service in the promotional post without any financial upgradation after promotion and shall

be entitled to the next ACP Level with reference to the level of the promotional post he holds:

Provided that a Government employee shall not be entitled to avail ACP upgradation if, he has already availed of three financial upgradation of any kind in his career.

6.2. The reliance placed by learned State counsel on the proviso to sub-rule (4) of Rule 7 is misplaced, as it has no application to the case at hand. The petitioners are claiming stepping-up of pay at par with that of their junior, and not the ACP upgradation. Rule 12 specifically provides for stepping-up of senior employee's pay to the level of junior's pay or ACP level *de hors* three financial upgradations availed by the former. Rule 12 reads as under:

12. Admissibility of stepping up in certain cases.—

If the service rules provide for or circumstances warrant filling up of a post through direct recruitment as well as through promotion, benefit of stepping up of ACP Level and/or pay shall be admissible to the senior employee appointed by promotion on the same post on which the junior direct recruit Government employee is drawing higher ACP Level. The condition of maximum three financial upgradations shall not be a bar. However, condition of satisfactory record and qualification etc. shall be fulfilled for the purpose of this rule. ACP Level and/or Pay shall be stepped up in the following manner;

- (i) If the Level of Matrix of senior is inferior than that of junior, the Level shall be stepped up;
- (ii) if both Level of Matrix as well as pay are inferior than both Level as well as pay shall be stepped up upto the extent admissible on grant of ACP Level subject to satisfactory record and eligibility.

6.3. A reading of Rule 12 makes it apparent that if a post in service can be filled-up through direct recruitment as well as promotion, the benefit of stepping-up of pay/ACP level shall be admissible to the senior employee appointed by promotion on the same post on which the junior, appointed by direct recruitment, is drawing higher pay. It clearly stipulates that the condition of maximum three financial upgradations to the senior employee shall not be a bar to stepping-up of his pay, subject to condition of satisfactory record and qualification etc. Therefore, the petitioners' case for stepping-up of pay has been wrongly rejected by the respondents in violation of the Rules, which entitle them to the benefit claimed.

7. In view of the discussion, the writ petition is allowed, the respondents are directed to step-up the petitioners' pay at par with that of the fifth respondent with effect from the date anomaly in their pay crept in, and release arrears of salary on account of stepping-up of pay with interest at the rate of six per cent per annum from the due date till the date of actual payment. The aforesaid benefit shall be released to the petitioners within a period of four weeks from receiving a certified copy of the order.

(TRIBHUVAN DAHIYA)
JUDGE

15.12.2023
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>