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2023:PHHC:166552

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

CWP-17813-2018

DECIDED ON: 3rd AUGUST, 2023

SATBIR

.....PETITIONER

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vinay Singh Rathee, Advocate for
Mr. Balraj Singh Rathee, Advocate
for the petitioner.

Ms. Supriya Garg, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* for quashing the impugned order dated 16.03.2017 (Annexure P-5) vide which the benefit of 3rd ACP granted to the petitioner w.e.f. 01.02.2016 vide order dated 15.07.2016 (Annexure P-4) has been withdrawn with further prayer for issuance of a writ in the nature of *Mandamus* to direct the respondents to fix the pay of the petitioner w.e.f. 01.02.2016 after grant of benefit of 3rd ACP and fix his pension w.e.f. 01.03.2017 onwards and also to pay the arrears of pay and pension with

interest @18% per annum till actual payment is made.

2. The brief facts of the case are that the petitioner joined as Work Charge (T/Mate) with the respondent-Department on 01.09.1979 and his services were regularized on 20.11.1991. Thereafter, on 06.01.1992 he was promoted as Assistant Lineman and was promoted to Lineman on 17.06.2010. The Government of Haryana issued the ACP Rules, 1998 and 2007, which has been adopted by the respondent-Nigam. The petitioner was granted the benefit of 1st ACP and 2nd ACP w.e.f. 01.02.2002 and 01.02.2012 respectively. As per the ACP Rules, 1998 & 2008, the employee who has put up 10 years of regular service is entitled for grant of 1st ACP, if he did not get any financial benefit/upgradation of pay during that period and 2nd and 3rd ACP respectively after putting 20/30 years of service. The Government of Haryana has issued notification dated 04.03.2014 improving further the General ACP pay structure of Haryana Government employees and the same was adopted by the respondent-Nigam vide letter dated 22.05.2014, wherein, the conditions of 10/20/30 years have been reduced to 8/16/24 years respectively. As per the HCS (ACP) Rules, 2016, which has been adopted by the respondent-Nigam vide its letter dated 13.06.2017, the employee who has put up 08 years of regular service is entitled for grant of 1st ACP, if he did not get any financial benefit/upgradation of pay during that period and 2nd and 3rd ACP respectively after putting 16/24 years of service.

3. Learned counsel for the petitioner has vehemently contended that the relief of granting of 3rd ACP to the petitioner w.e.f. 01.02.2016 vide office order dated 15.07.2016 (Annexure P-4) has been wrongly,

illegally and arbitrarily withdrawn by the respondent-Nigam vide office order dated 16.03.2017 (Annexure P-5) holding that he was promoted ALM on 06.01.1992 from the post of T/Mate, thus, he is not entitled for the 3rd ACP w.e.f. 01.02.2016. In fact, the petitioner is entitled for the 3rd ACP w.e.f. 01.02.2016 after putting 24 years of regular satisfactory service and after the promotion of ALM. It is submitted on behalf of the petitioner that he has not been granted any financial benefit/upgradation on promotion as Lineman w.e.f. 17.06.2010.

4. It is the contention of learned counsel for the petitioner that the respondent-Nigam has wrongly interpreted the rules that he was promoted as ALM on 06.01.1992, whereas, the claim of the petitioner is for counting of his service w.e.f. 06.01.1992 onwards only and not prior to that, since he had completed 24 years of service after 01.06.1992. Reliance has been placed upon the office order dated 14.12.2017 (Annexure P-6) vide which the respondent has granted the benefit of 3rd ACP to one of the employee namely Sh. Dharambir Singh (L/M) w.e.f. 01.03.2016 who joined as Work Charge T/mate on 01.08.1979 and promoted as ALM on 22.02.1992.

5. Learned counsel for the respondents has argued that the petitioner has already availed three financial benefits and upgradation, once on being regularized and on being promoted twice and hence, not entitled for 3rd ACP. It is further argued that Sh. Dharambir Singh (L/M) has been given the benefits of 3rd ACP as he was regularized through promotion, whereas, the petitioner was first regularized w.e.f. 20.11.1991 and later on being promoted as Assistant Lineman on 06.01.1992 and was

promoted to Lineman on 17.06.2010. Thus, he has already availed three financial benefits, hence, he is not entitled for 3rd ACP.

6. No other argument has been raised by either of the parties.

7. Heard learned counsel for the parties.

8. The petitioner was granted 1st, 2nd and 3rd ACP w.e.f. 01.02.2002, 01.02.2012 and 01.02.2016 respectively, as per the ACP Rules in existence, since there was no financial upgradation on promotion to the post of Lineman w.e.f. 17.06.2010. The Government of Haryana vide its letter dated 04.03.2014 have changed the condition of 10/20/30 to 8/16/24 years respectively and on perusal thereof, it is evident that the impugned order dated 16.03.2017 (Annexure P-5), withdrawing the 3rd ACP granted to the petitioner, has been passed in violation of existing rules. Sh. Dharambir Singh, Lineman, who was promoted as ALM on 22.02.1992 and Lineman on 03.07.2010 has been granted the benefit of 3rd ACP w.e.f. 01.03.2016 and the petitioner being Senior to him is otherwise, entitled for stepping up of his pay by granting him benefit of 3rd ACP w.e.f 01.03.2016 as per policy dated 23.11.2016, 06.02.2017 and 13.04.2017.

9. In view of the discussions made hereinabove, the present petition deserves to be allowed and the impugned order dated 16.03.2017 (Annexure P-5) is liable to be set aside.

10. With the afore-said observations, the instant petition is allowed and the impugned order dated 16.03.2017 (Annexure P-5) withdrawing the 3rd ACP granted to the petitioner w.e.f. 01.02.2016 has been set aside. Respondent-Nigam is directed to release the arrear, to which the petitioner is entitled within a period of one month along-with

interest @ 6% per annum from the date of receipt of certified copy of this order and fix his pension accordingly.

(SANDEEP MOUDGIL)
JUDGE

3rd AUGUST, 2023
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No