

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22578-2017
DECIDED ON: 14.07.2023

G D AGGARWAL

...PETITIONER

VERSUS

HVPNL AND ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Naveen Daryal, Advocate
for the petitioner.

Mr. Kartar Singh Malik, Advocate
for respondents No 1 to 4.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in nature of certiorari for quashing the order dated 18.05.2016 (Annexure P-8) passed by the respondents whereby the claim of the petitioner with respect to the benefit of stepping up of the pay of the petitioner was allowed from the date when his junior belonging to reserved category was promoted as Junior Engineer ('JE') on 19.02.1986, however, the actual benefits/ arrears had been restricted to a period of three years preceding the date of submission of request/ representation dated 29.04.2014.

2. The arguments of the learned counsel for the parties have been heard.

3. As per the respondent-Nigam, the actual benefits/ arrears have been restricted to a period of three years in view of the applicability of the Instructions issued vide Memo No. Ch-34/EG-155/L-IV/CS-I dated 14.03.2016 (Annexure R-1), the relevant part of which is reproduced below:

"The Principal of actual catch up in the non-gazetted cadre as followed by the HVPNL in case of CWP No. 20141 of 1010 and 13926 of 2011

titled D.D. Tayal on the advice of AG, Haryana and CS, Haryana be followed by the Nigam subject to the condition that the payment of arrears be restricted to a period of 3 years preceding the date of submission of request with the Nigam by the employee/ retiree or the actual date of promotion from which he is entitled for arrears, whichever is later.”

4. As such, the short question involved for adjudication before this Hon’ble Court is whether the Instructions dated 14.03.2016 can be made applicable to the case of the petitioner, whose representation dated 29.04.2014 was admittedly pending prior to coming in force of the said Instructions. In this regard, it would be apposite to reproduce para no. 6 of the reply wherein the respondent-Nigam had asserted as follows:

“6... The competent authority considered the case of the petitioner and he was granted the benefit of stepping up of pay at par with his junior employee of reserved category as per Haryana Government instructions adopted by the Nigam vide order dated 18.5.2016. The petitioner for the first time made the request to the Nigam for granting the benefit of stepping up of pay on 29.4.2014 and the Nigam has already been issued the instructions dated 14.3.2016 (Annexure R-1) regarding payment of arrears, therefore he was allowed arrears for the period of three years preceding the date of request 29.4.2014 as per instructions. ...”

Apart from the aforesaid admitted pendency of the representation, another facet to be taken note of is that the petitioner had earlier preferred a petition bearing CWP No. 2148 of 2016 which was disposed vide order dated 03.02.2016 whereby the respondent-Nigam was directed to take a decision on the legal notice dated 18.06.2015 by passing a speaking order, preferably within a period of four months from the date of receipt of certified copy of the said order. Thus, had the respondent-Nigam decided the representation strictly in terms of the timelines proposed by the Hon’ble Court in CWP No. 2148 of 2016, the petitioner would have been entitled to the arrears. Reference in this regard can be made to the

decision in the case of *Jagjit Kumar Batra Vs. State of Punjab [2022(3) S.C.T. 348; 2022(5) SLR 826]* wherein a Coordinate Bench of this Court observed that-
“... Where the fault of not promoting an eligible employee is upon the respondent-Corporation, there Instructions (Annexure R-2/1) cannot be put into operation so as to deny the arrears of the said promoted post of Accounts Officer with retrospective effect to the petitioner.”

5. As such, the respondent-Nigam cannot be permitted to take away the accrued legal vested rights and vested rights with retrospective effect. The respondent-Nigam cannot be permitted to take benefit on account of the its own delayed action and deprive the petitioner of the monetary benefits that he is rightfully entitled to.

6. Accordingly, the respondent-Nigam is directed to calculate the arrears/ benefits to be granted to the petitioner in the terms as aforesaid order and disburse the same in a time-bound manner, preferably within a period of two months from the date of receipt of certified copy of this order.

7. No further relief has been prayed for.

8. The present petition is allowed in the aforesaid terms.

14.07.2023
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(SANDEEP MOUDGIL)
JUDGE

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