

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16239-2023 (O&M)
Date of decision: 01.09.2023

Moji Ram

... Petitioner

VS.

UHBVNL & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. VD Sharma, Advocate for the petitioner

Sandeep Moudgil, J.

(1). The petitioners have filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondents for fixation of pay in revised 1st ACP w.e.f. 01.01.2006 and 2nd ACP w.e.f. 01.10.2012 as admissible under UHBVNL (ACP) Rules, 2009 as the same relief has been granted to similar situated employees.

(2). The petitioner was initially recruited in respondent-Department on 01.09.1990 as regular Workmate followed by his promotion as ALM on 28.09.1992 and Lineman on 01.07.2003 and further promotion as AFM on 08.03.2010 and eventually retired on 30.09.2013.

(3). Learned counsel for the petitioner contended that as per Rule 7(4) and Rule 13 of the UHBVNL (ACP) Rules, 2009, the petitioner is eligible for grant of 1st and 2nd ACP as the promotional scale is inferior than the ACP scale. He submitted that the Grade pay of the petitioner as on 01.01.2006 is Rs.2800 but if 1st ACP is granted then the Grade Pay will be on Rs.3200 and similarly as on 01.10.2012, 2nd ACP the grade pay in promotional scale is Rs.3200 but ACP scale is Rs.3600/- and as such in both

ways, the petitioner is getting less grade which is in violation of Rule 7(4) of the above Rules. In this regard, the petitioner even raised a demand notice dated 10.02.2023 (Annexure P4) for releasing the benefit of revised 1st ACP w.e.f. 01.01.2006 and 2nd ACP w.e.f. 01.10.2012 but to no avail.

(4). This Court vide order dated 31.07.2023 granted time to counsel for the petitioner to assist this Court on the question as to whether after 9 ½ years of retirement of the petitioner benefit of ACP can still be claimed or not. Learned counsel for the petitioner relied upon a Full Bench decision of this Court in **Saroj Kumari vs. State of Punjab 1998 (3) SCT 664**, to urge that

13. After hearing learned Counsel for the parties on this point we are of the view that in case where a person invokes the jurisdiction of this Court under [Article 226](#) of the Constitution of India for fixation of his pay under relevant rules/instructions or even on the basis of a judgment of a competent Court, the question of delay and laches would not come in as it would be a case of a continuing wrong and every month the person is paid the salary which according to him is not in accordance with the relevant rules and instructions a fresh cause of action would arise every month. Such a case is not a case of one time action like the case of termination or dismissal from service. As observed by the Apex Court in [M. R. Gupta's](#) case (supra) that the Court while granting relief regarding the payment of arrears may apply law of limitation. Since a Civil Suit would be maintainable for realizing arrears of three years and two months, the writ Court would be justified in restricting the payment of arrears to three years and two months prior to the filing of the writ petition.

14. We do not agree with the submission of the learned Advocate General, Punjab, that the writ Court should decline the relief to a person who is claiming correct fixation of his pay in accordance with the relevant rules and instructions merely because he has been negligent in approaching the Court. If such a person can file a civil suit for the correct fixation of his pay where he can further claim arrears up to a period of three years and two months prior to the Filing of the civil suit, there is no reason why such relief should be denied by a writ Court. Apart from the above, it may be noticed that in such cases as the present one where only fixation of pay is sought and arrears are claimed, rights of third party do not intervene during the period the person may not have approached the Court. The correct fixation of pay and the payment of arrears do not affect third party's right. This was also so observed by the Division Bench in [Rattan Singh's](#) case which has been quoted above, on the basis of which the argument was raised by the learned Advocate General Punjab.

15. For the foregoing reasons we are of the view that in cases where only fixation of pay according the relevant rules/instructions or a judgment is prayed for, the writ petition cannot be dismissed at the threshold on the ground of delay and laches but the payment of arrears can be restricted to a reasonable period. Three years and two months would be considered a reasonable period as that is the period for which a person can ask for the payment of arrears before a Civil Court.

(5). The Full Bench decision in [Saroj Kumari's](#) case is distinguishable on facts and circumstances of the present case. In the present case, the petitioner has retired from service on 30.09.2013 and is drawing his pension and after having retired from service, he moved a demand notice on 10.02.2023 claiming 1st and 2nd ACPs i.e. after approximately 10 years of

retirement. The petitioner is bound to explain the delay in approaching this Court inasmuch as though the claim is of recurring cause but the fact that the petitioner kept sleeping in slumber and woke up after 10 years to claim ACP is also unignorable.

(6). Be that as it may, if there is anything which is due to the petitioner from the respondents' side in relation to salary or ACP etc., the respondents are duty-bound to grant such benefits which the petitioner was otherwise eligible and entitled to in a time bound manner from the due dates.

(7). With these observations and directions, this writ petition is dismissed.

01.09.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No