

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101+208

CM-13095-CWP-2022 in/&
CWP-27577-2017
Date of Decision :-09.11.2023

Jai Narain Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ravi Verma, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

CM-13095-CWP-2022

As prayed for, application is allowed.

Replication to the written statement filed on the behalf of the respondents No.1 to 3 is taken on record.

Main Case

1. In the present petition, the claim which is being raised by the petitioner is that the petitioner is entitled for the grant of benefit of step up of his pay equivalent to that of his direct recruit junior namely, Manoj Kumar, who was appointed in the cadre of clerk after the petitioner but was drawing higher salary than the petitioner.

2. As per the facts mentioned in the writ petition, petitioner was initially appointed on Class-IV post of Waterman on 02.05.1975. The

petitioner was further promoted as Clerk on 24.05.1996. It has been further mentioned that one Manoj Kumar, who was directly recruited on 27.12.1996 in the cadre of clerk i.e. after the petitioner was promoted as clerk, was drawing higher salary than the petitioner, details of the salary being drawn by the petitioner as well as said Manoj Kumar have been depicted in para-13 of the present writ petition.

3. A bare perusal of para-13 of the writ petition would show that starting from 04.03.2014 onwards, the said Manoj Kumar was getting higher pay than the petitioner despite being junior in the cadre of clerk. Prayer of the petitioner is that his pay should be stepped up equivalent to the said Manoj Kumar, which benefit is not being extended to the petitioner by the respondents and the said action of the respondents is under challenge in the present petition.

4. After notice of motion, the respondents have filed reply, wherein, the facts which have been mentioned in the present petition are conceded but it has been submitted that once the petitioner had already been granted three financial upgradations in his service career, which is the only benefit available under ACP Rules hence, no further financial upgradation can be granted to the petitioner and the claim of the petitioner for stepping up of his pay equivalent to the Manoj Kumar is not admissible.

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

6. The facts which have been mentioned hereinbefore are not in dispute. It is a conceded position qua facts that petitioner has already been granted three financial upgradations during his service carrier and also that Manoj Kumar is junior to the petitioner but was drawing higher salary as

compared to the petitioner.

7. The only question which arises for determination of this Court is as to whether even after getting three financial upgradations in the service career, the petitioner is entitled for the benefit of stepping up of his pay equivalent to that of Manoj Kumar, who was directly recruited after the petitioner in the cadre of clerk as the said junior employee is concededly drawing higher salary than the petitioner since 04.03.2014 onwards i.e. much prior to the date the petitioner attained the age of superannuation and retired.

8. For adjudicating the said dispute, Haryana Civil Services (Assured Career Progression) Rules need to be adverted. The petitioner has attached Haryana Civil Services (Assured Career Progression) Rules, 2016 which rules came into operation from 01.01.2016. Rule 12 of the said rules deals with the admissibility of stepping up of pay in certain cases, which clause is reproduced 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 any/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,, conditional 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.”

9. A bare perusal of Rule 12 would show that where a junior direct recruit employee is getting higher pay than the senior promoted employee, senior employee is entitled for stepping up of pay even if, the senior employee has already got three financial upgradations.

10. That being position of law w.e.f. 01.01.2016 onwards i.e. when the 2016 Rules came into being, the petitioner became entitled for the grant of benefit of step up of his pay equivalent to the pay of Manoj Kumar, which he was drawing as on 01.01.2016.

11. From the chart, which the petitioner reproduced in para-13 of the petition, it is clear that as on 01.01.2016 pay of the petitioner was Rs.35,300/-, whereas, Manoj Kumar was drawing Rs.37,300/-, hence, the petitioner was entitled for stepping up of his pay equivalent to that of Manoj Kumar w.e.f. 01.01.2016 onwards.

12. The argument which has been raised by the learned counsel for the respondents that once there is a bar under the Haryana Civil Services (Pay) Rules (in short ‘Pay Rules’)not to grant further financial upgradation to an employee after availing three financial upgradations, grant of benefit of step up of pay will be contrary to the said Pay Rules.

13. Said argument of the learned counsel for the respondents cannot be accepted for the reason that once the appointing authority i.e Government has promulgated specific rules in 2016 qua the stepping up of pay wherein, it has been specifically mentioned that bar of three financial upgradations already received will not come in the way of an employee to get the step up of pay in case junior direct recruit employee is getting higher pay in the cadre in which the senior employee is working rather ACP Rules,

2016 will be applicable for the grant of benefit of stepping up of pay. Once, the Haryana Civil Services (Assured Career Progression) Rules, 2016 grants the benefit after noticing the bar of three financial upgradations, the said rules which are specific are to be made applicable and not the rules which creates the bar hence, the argument being raised by the learned counsel for the respondents to deny the benefit of stepping up of pay of the petitioner cannot be accepted and is accordingly rejected.

14. Keeping in view the above mentioned facts and rules, present petition is allowed. Petitioner is held entitled for stepping up of his pay equivalent to his junior Manoj Kumar w.e.f. 01.01.2016 onwards. Let pay of the petitioner be refixed. As the petitioner has already retired, his pensionary benefits be also revised. Keeping in view the revision of the pay scale of the petitioner and the last pay drawn and the arrears for which the petitioner becomes entitled on his pensionary benefits as well as for the pay which he will get, be also released within a period of two months from the date of receipt of copy of this order.

15. Further, Haryana Civil Services (Assured Career Progression) Rules, 2016 were very much available at the time when the petitioner was in service and should have been made applicable upon him but the petitioner has been denied the said benefit of step up of his pay while in service and he has been litigating with the respondents from the last 06 years for his justified benefit, hence the petitioner is held entitled for interest as well, as per the settled principle of law settled by the Coordinate Bench of this Court in of *J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*, wherein it has been held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said

amount, on a later date, the interest has to be given. The relevant paragraph of *J.S. Cheema's case (supra)* is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

16. Keeping in view the above, the, petitioner is held entitled for the interest @ 6% per annum on the payments, which will be paid to the petitioner on the arrears of pay from 01.01.2016 onwards till he retired as well as on the pensionary benefits of the petitioner.

17. Let the computation be done by the respondents within a period of two months from the date of receipt of copy of this order and the amount so calculated shall be paid to the petitioner within a period of four weeks thereafter.

18. Petition stands allowed in above terms.

November 09, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No