

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1226 of 2021 (O&M)
Date of Decision: 02.02.2023

Sanjay Kumar

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present : Mr. Sunil Kumar Nehra 'Sirsa', Advocate for the appellant.

ARUN PALLI, J.

This is an *intra Court* appeal, under Clause X of the Letters Patent, against an order and judgment dated 10.11.2020, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant was dismissed.

The facts that are required to be noticed are limited.

Father of the appellant namely Chaman Lal, who was employed with the respondent-Department as Upper Division Clerk (UDC), died in service on 28.10.1998. Vide order dated 16.02.1999, the appellant applied for and was appointed, as Lower Division Clerk (LDC) on compassionate grounds, in the scale of Rs.4000-6000/-. Later, vide representation dated 08.04.2016, widow of the deceased (Lajwanti) claimed benefit of 2nd ACP w.e.f. 01.01.1996 to 28.10.1998. Accordingly, 2nd modified ACP was granted to late Sh. Chaman Lal in the scale of Rs.5450 to 8000/-. Whereafter, vide representation dated 20.02.2017, the appellant, on the basis of policy instructions dated 31.08.1995, claimed a scale of Rs.4625-7250/-. In brief, his grievance has been that he was

appointed as LDC, in terms of the policy instructions dated 31.08.1995, which envisaged that appointment of dependent of a government employee, who dies in harness, be made in one scale below the pay scale that was payable to the deceased. And, since father of the appellant was granted a pay scale of Rs.5450-8000/-, the scale immediately below the said scale was Rs.4625-7250/-, thus, the appellant was entitled to the said scale from the date of his initial appointment with interest. However, the authorities, vide order dated 30.10.2017, in reference to the subsequent instructions dated 08.06.1999, whereby the instructions dated 31.08.1995, were clarified, rejected his claim. This is how, the appellant had approached this Court, vide a writ petition, which as indicated above, has since been dismissed by the learned Single Judge.

Learned counsel for the appellant has merely reiterated the submissions that were advanced before the learned Single Judge: the appellant was appointed on 16.02.1999, pursuant to policy instructions dated 31.08.1995, and in terms thereof, the authorities were obliged to place him in one scale below that was payable to his deceased father. Thus, the subsequent instructions dated 08.06.1999, would have no relevance as regards the rights of the appellant.

We have heard learned counsel for the appellant and perused the records.

In context of the limited issue that arises for consideration, it would be expedient to refer to the subsequent instructions dated 08.06.1999 (A1), issued in the wake of the decision of the Supreme Court in **State of Haryana and others Vs. Rajiv Deshwal (SLP (C) No.778 of 1999, decided on March 22, 1999)**, and the judgment rendered in **Umesh**

Kumar Nagpal Vs. State of Haryana, 1994 SCC (4) 138:

“Sir I am directed to invite your attention to the instructions issued by the Govt. vide letter No.16/5/95-5 GS II, dated 8-5-95, 31-8-95 and 13-8-98 on the above subject and to enclose herewith a copy of the orders passed by the Hon’ble supreme Court in petition for special leave to appeal (civil) no. 778 of 1999, wherein the Clause of “One Step Below” has been clarified as under:-

“This clause means that the offer of appointment to the deceased employee’s dependent is not to be on a post equivalent to the one which was held by the deceased employee but should be on a lower post by at least one step.”

xxx xxxx xxx xxx xxx

The above clarifications may be brought to the notice of all concerned officers/officials under your control for guidance and strict compliance.”

Thus, *ex facie*, the policy instructions dated 31.08.1995, were clarified, vide subsequent instructions dated 08.06.1999. Accordingly, it was made clear that expression **“one step below”** would mean that appointment to the dependent of a deceased employee is not to be offered on a post equivalent to the one held by the deceased but on a lower post by at least one post. Thus, one step below would mean at least one post lower. Concededly, father of the appellant, at the time of death, was employed as UDC. Accordingly, the appellant, as per *ex gratia* scheme

was appointed as LDC in a scale of Rs.4000-6000/-. The fact that deceased was granted the benefit of 2nd ACP in the scale of Rs.5450-8000/-, was inconsequential, for it did not alter/change his position and status which remained as UDC. The argument, for the appellant was appointed pursuant to the policy dated 31.08.1995, his rights were to be determined only in terms thereof and the subsequent instructions dated 08.06.1999 had no application qua his rights, would not advance his case either. If the instructions dated 08.05.1995, 31.08.1995 and 08.06.1999, are juxtaposed and read in conjunction, it is apparent that subsequent instructions dated 08.06.1999 were merely clarificatory in nature, vide which, the purport, intent and application of the instructions dated 31.08.1995 was crystalized. And, it was in the wake of subsequent clarification, the authorities, vide order dated 30.10.2017, rejected the claim of the appellant: ***“that the petitioner represented for grant of scale of Rs.4625-7250/- on the basis of (policy instructions dated 31.08.1995). However, the aforesaid policy was clarified vide instruction dated 08.06.1999 to the effect that ‘One Step Below’ means that the offer of appointment to the deceased employee’s dependent is not to be on a post equivalent to the one which was held by the deceased employee but should be on a lower post by at least one post”. There position as it stands today is that one step below means at least one post lower. Grant of 2nd ACP scale to late Sh Chaman Lal does not change of status of petitioner’s father as he would remain as UDC at the time of demise.”***

In so far as the reliance placed by learned counsel upon a decision of this Court, rendered in Civil Revision No.3006 of 2010 (Sushma Devi Vs. Dakshin Haryana Bijli Nigam Ltd. and others), decided on 10.01.2012,

is concerned, as observed by the learned Single Judge, the same has no bearing on the present case. Concededly, the subsequent instructions dated 08.06.1999, clarifying the earlier policy instructions dated 31.08.1995, were never brought to the notice of the Court.

Further, we may also point out that the appellant was appointed on 16.02.1999, but it was nearly two decades later, vide representation dated 20.02.2017, he staked his claim for higher scale on the basis of policy instructions dated 31.08.1995. As indicated earlier, the said representation dated 20.02.2017 was rejected by the authorities on 30.10.2017. However, the appellant chose not to assail the said order (ibid) for three years and again raked up the issue, vide a writ petition, referred to above. Thus, in the given circumstances, the only and the inevitable conclusion that could be reached: the representation made by the appellant as also the petition filed by him were merely speculative.

In the wake of the position, as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

02.02.2023
Manoj Bhutani

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