

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22887-2021 (O&M)
Decided on 28.11.2023

Rattan Singh & Anr. ... Petitioners
VS.
UHBVNL & Ors. ... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Naveen Dayal, Advocate for the petitioners
Mr. Rajesh Gaur, Advocate for the respondents

Sandeep Moudgil, J.

The petitioners have filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of *certiorari* for quashing the order dated 25.06.2020 (Annexure P3) vide which the claim of the petitioners for removal of anomaly in 2nd ACP w.e.f. 04.03.2014, has been declined. Further direction is sought to grant ACP revised scales on completion of 10 years regular service on the post of Driver as per ACP Rules, 2008 with consequential benefits along with interest.

Learned counsel for the petitioner submitted that although earlier the petitioner No.1 was working as Assistant Lineman, petitioner No.2 was working as Cleaner/Driver, however, in the year 1999, they were appointed as Driver by way of direct recruitment as fresh entrants. Therefore, the up-gradation received by the petitioners from the previous employment, cannot be treated as a bar against entitlement of the ACP Scale in their new post on completion of requisite period of service. Hence, the respondents have wrongly denied the benefits to the petitioners.

Written statement has been filed by respondents wherein it has been averred that petitioner No.1 joined Nigam in the year 1979 as a daily wager and

after regularization w.e.f. 15.02.1993, he was promoted as ALM on 15.12.1993 and as such got his first financial upgradation and thereafter, he was selected as a Driver in the Nigam through proper channel vide appointment letter dated 22.12.1999 whereby, he got 2nd financial up-gradation also. As far as petitioner No.2 is concerned, it is submitted that he was given a promotion as Cleaner on 09.11.1990 and he got first financial up-gradation followed by his appointment as Driver in the Nigam through proper channel on 15.09.1999 and as such he too got 2nd financial up-gradation also.

Learned counsel then argued that both the petitioners have availed the benefit of 1st ACP which amounted to 3rd financial upgradation, as such since in their service tenure, the petitioners have received three financial up-gradations therefore, they are not entitled for the grant of 2nd ACP in view of the office orders dated 22.05.2014 and 15.05.2017 which provides that an employee can claim only three financial up-gradations in his career.

Heard learned counsel for the parties and gone through the record.

It has also come on record that the department has allowed 2nd ACP scale w.e.f. 1.4.2014 to Narman Singh after completing 16 years service and his pay has been fixed by the XEN Division Ambala city as per ACP pay structure of employees of UHBVN w.e.f 4.3.2014. Admittedly, as per order dated 25.06.2020 passed by the respondents, the petitioners were allowed 1st ACP as Driver and both the petitioners have completed 16 years' regular service as such from 22.12.1999 till 2019, however, still the petitioners are drawing less salary than their junior counterpart Narman Singh holding the same post who has been granted the benefit of 2nd ACP.

It is also noteworthy that the respondents have passed impugned order dated 25.06.2020 declining the benefit of 2nd ACP to the petitioners on the ground that they have got more than three financial up-gradations by counting the fresh appointment as Driver to be the 3rd financial upgradation. The respondents have erred and have wrongly considered the fresh appointment in continuity with the previous service for the purpose of financial upgradation. In fact, the financial upgradations before fresh appointment of the petitioner as Driver were distinct and ceased its applicability the moment petitioners were offered fresh appointment as Driver. Had the petitioners been promoted in normal course to the post of Driver then the respondents would have been well within their rights to assume such promotion as 3rd financial upgradation. Since the petitioners were appointed as Drivers by way of direct recruitment and were fresh entrants in service, as is evident from Annexure P1, therefore, the plea taken by the respondents that the petitioners have already 3rd financial upgradation earlier is not tenable.

Accordingly, this writ petition is allowed and the order dated 25.06.2020 (Annexure P3) is hereby quashed with a direction to the respondents to grant ACP revised scale to the petitioner from the date it became due, along with all consequential benefits including arrears and promotion etc. with interest @ 9% p.a. within a period of two months from the date of receipt of certified copy of this order.

28.11.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No