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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.4214 of 2018 (O&M)
Date of Decision: 22.03.2023**

JALMED RAJ

.....Petitioner

Vs

**HARYANA URBAN DEVELOPMENT AUTHORITY AND ANR
.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sourabh Goel, Advocate with
Ms. Shivani Sahni, Advocate and
Mr. Tej Bahadur, Advocate
for the petitioner.

Mr. M.S. Sidhu, Advocate
for the respondents No.1 & 2.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the orders dated 27.09.2016 and 03.11.2017 collectively attached as Annexures P-4 with the writ petition. The said orders have been passed in the context of grant of benefit of stepping up at par with his junior Raghubir Singh.

[2]. The petitioner was appointed as Peon (Class IV) on 24.09.1981. He was further promoted from Peon (Class IV) to

Clerk on 30.10.1986. The petitioner was further promoted to the post of Sub-Divisional Clerk on 22.10.1998 and he ultimately retired from the post as Assistant on 31.05.2015.

[3]. During tenure of the petitioner, he came to know about wrong fixation of his pay and the benefit of ACP was not credited in his service record. On representation filed by the petitioner, the pay of the petitioner was fixed on 27.11.1998 however anomaly still persisted as junior to the petitioner was drawing more salary than the petitioner.

[4]. After retirement the petitioner also noticed the anomaly as regards the higher pay drawn by the junior than the petitioner and resultantly, the petitioner filed representation for step up of his pay at par with his immediate junior and that is how the impugned orders ultimately came to be passed.

[5]. During pendency of the present petition, the petitioner filed CM No.2324-CWP of 2021 which was allowed and the additional documents Annexures P-12 and P-13 were taken on record.

[6]. Perusal of Annexure P-12 dated 16.01.2020 would show that the pay fixation of the petitioner at par with his junior Sohan Lal was considered and during the proceedings it was noticed that as per PUC placed before the competent authority, the seniority of the petitioner was found to be at Sr.No.83

whereas Sohan Lal was shown at Sr. No.89 in the seniority list. Karam Chand was shown to be at Sr.No.90 and Raghubir Singh at Sr.No.91 in the seniority list. The ACP scale was granted to Raghubir Singh Clerk on 01.05.1997 and, therefore, the pay of Karam Chand was stepped up. Both were juniors to the petitioner and, therefore, the petitioner was held entitled for step up at par with his junior Raghubir Singh. Before re-fixation of pay of the petitioner, the record was sent to the Headquarter for step up the case at par with junior of the petitioner in view of establishment order dated 22.09.2008. In the said noting, it was observed that the present writ petition is still pending in the High Court. In earlier part of the aforesaid, Annexure P-12 number of deliberations were made including the intended effort to reduce the pay of Sohan Lal but the same was never implemented.

[7]. Perusal of memo No.EA-2-2020/91752 dated 03.12.2020 would indicate that the service book of the petitioner was sent to the Chief Controller of Finance (Audit Branch), HSVP for checking and verification of the proposal for granting step up of his pay at par with his junior. The Audit Branch verified the same and gave its advice that the office proposal regarding grant of first ACP w.e.f. 01.12.1996 to the petitioner was verified in view of F.D. instruction dated 23.11.2006 and 06.02.2007. The second ACP grade pay of Rs.3200/- w.e.f.

01.12.2006 was also verified subject to Rule 8 of the HCS (ACP) Rules, 1998.

[8]. In view of aforesaid advise, the case was prepared in respect of entitlement of the petitioner that, if agreed, the petitioner, who is eligible for grant of first ACP w.e.f. 01.12.1996 and 2nd ACP grade pay of Rs.3200/- w.e.f. 01.12.2006 as per F.D. Instruction dated 23.11.2006 and 06.02.2007 subject to Rule 8 of HCS (ACP) Rules, 1998 be processed. It was also observed that before granting the aforesaid benefit to the retiree/petitioner record of service book of the petitioner be placed before the Committee constituted by the Chief Administrator, HSVP for ascertaining the eligibility of the petitioner in respect of ACP.

[9]. Thereafter the committee also examined the case of the petitioner on 22.07.2022 and the Committee was of the view that the petitioner is eligible for grant of first ACP scale of Rs.4000-6000 w.e.f. 01.12.1996 as per Finance Department Instruction dated 23.11.2006 and 06.02.2007. Further the petitioner was also found to be entitled for second ACP grade of Rs.3200/- w.e.f. 01.12.2006, subject to Rule 8 of HCS (ACP) Rules, 1998. Since the present writ petition is pending, therefore, it was observed that before granting the aforesaid benefit of step up of pay at par with the junior of the petitioner,

the advise of Legal Cell (HQ), HSVP be also taken.

[10]. Learned counsel for the petitioner refers to the legal opinion given by the District Attorney, HSVP acknowledging the entitlement of the petitioner and ultimate opinion of LR was to await the decision of the High Court in the present petition.

[11]. The aforesaid factual position has not been denied by learned counsel for the respondents.

[12]. In view of aforesaid admitted facts, this writ petition is allowed with a direction to the respondents to do the needful in the context of conclusions drawn by the committee constituted by the Chief Administrator, HSVP. The eligibility of the petitioner for the grant of first and second ACP has been endorsed at the different hierarchy in the respondent-Department and the petitioner is held entitled for the first ACP scale of Rs.4000-6000 w.e.f. 01.12.1996 as per Finance Department Instruction dated 23.11.2006 and 06.02.2007. The petitioner is also held entitled for the second ACP grade of Rs.3200/- w.e.f. 01.12.2006, subject to Rule 8 of HCS (ACP) Rules, 1998. The pay of the petitioner is ordered to be step up at par with his junior Raghubir Singh. The petitioner is also held entitled for interest on the arrears of pay and pensionary benefits @ 6% per annum from the date of accrual till final realization of the same.

[13]. Let the needful in the aforesaid context be done within

a period of four weeks from the date of receipt of certified copy
of this order.

March 22, 2023

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No