



CM-5579-CWP-2024 in/&
CWP-1390-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-5579-CWP-2024 in/&
CWP-1390-2020 (O&M)
Date of Decision :16.09.2024

Jai Krishan Kapil and another

..Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Narinder Pal Sharma, Advocate for the petitioners.

Mr. Arun Gupta, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

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Present application has been filed for bringing on record the legal representatives of petitioner No.1 Jai Krishan Kapil, who unfortunately died during the pendency of the present petition.

Notice of the application to the counsel opposite.

Mr. Arun Gupta, DAG, Punjab accepts notice and raises no objection for the grant of prayer as made in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Legal representatives of petitioner No.1 Jai Krishan Kapil, details of whom have been given in para-3 of the application are ordered to be brought on record



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subject to all just exceptions.

Amended memo of parties is also taken on record.

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In the present petition, grievance being raised by the petitioners is that the petitioner No.1 is senior to one Harbilas, who was granted promotion ahead of the petitioner No.1 on the basis of the reservation but when the petitioner had caught him in the cadre of Superintendent Grade-II on 27.08.1998, the petitioner was entitled for step up of his salary, which benefit has been declined to the petitioners vide impugned order dated 17.09.2019 (Annexure P/5) and 14.11.2016 (Annexure P/6)

Learned counsel for the petitioners submits that in the impugned order, the pay scale shown to have been given to said Harbilas is wrongly mentioned by ignoring the pay fixation of the said Harbilas by the respondents vide order dated 29.01.1998 (Annexure P/7) and once, the order is factually incorrect, the same is liable to be set aside.

Learned counsel for the petitioners further submits that similar is the case of petitioner No.2, who is claiming the benefit of step up of his pay equivalent to that of one Natha Singh.

Learned counsel for the respondents submits that the details of the pay scale given to said Harbilas have been explained in the impugned order while considering the claim of the petitioner No.1 for step up of his pay and, the benefit for which the petitioners were entitled for, have been given to them.

I have heard learned counsel for the parties and have gone



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through the record with their able assistance.

While passing the impugned order, the pay of said Harbilas has been calculated as Rs.8650/- + Rs.50 as personal pay as on 27.08.1998 whereas, the respondents themselves vide order dated 29.01.1998 (Annexure P/7) have treated the pay of Harbilas as Rs.8650/- on 01.09.1996 and Rs.8925/- on 01.09.1997 whereas, the benefit of the same has not been given to the petitioner No.1 when the petitioner No.1 caught the said Harbilas in the cadre of Superintendent Grade-II on 27.08.1998.

As per the settled principle of law, the pay being received by a reserved category junior, who has superseded the general category senior cannot be more than the general category senior candidate, who catches up the said reserved category candidate.

Prima facie, the orders impugned in the present petition are factually incorrect as it do not notice the correct pay of the reserved category employee while adjudicating claim of the petitioners, who are senior in the cadre.

Learned counsel for the respondents has also not been able to rebut that pay scale depicted to be drawn by junior employee namely, Harbilas is not in consonance with his actual pay as fixed by the respondents vide order dated 29.01.1998 (Annexure P/7). Once, there is a factual error while adjudicating the claim of the petitioners with regard to the fixation of their pay equivalent to their junior reserved category candidate, who superseded them, the impugned orders cannot sustain in the eyes of law. The impugned orders dated 17.09.2019 (Annexure P/5) as well



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as dated 14.11.2019 (Annexure P/6) declining the benefit to the petitioners are set aside. The respondents are directed to reconsider the claim of the petitioners in the light of actual salary being drawn by the reserved category candidates on the date when the petitioners, who are the general category candidates catch them in the cadre of Superintendent Grade-II.

Let the fresh orders be passed within a period of 03 months from the date of receipt of copy of this order.

Present petition is allowed in above terms.

Civil miscellaneous application pending, if any, is also disposed of.

September 16, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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