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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2242-2019
Date of decision: 21.02.2024

MANOHAR LAL DABAS

...Petitioner

VERSUS

UHBVNL AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R. K. Chaudhary, Advocate
for the petitioner.

Mr. C. S. Bakhshi, Advocate
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 01.08.2018 (Annexure P-9), vide which the request of the petitioner for grant of ACP scale of AFM has been rejected on the ground that he has already availed the benefit of two promotion scale as Lineman and AFM by passing a non speaking order without taking into consideration the fact that the petitioner did not get any financial upgradation or promotion for more than 11 years i.e. from 26.05.1986 (AFM) to 27.10.1997 and further to direct the respondents to grant ACP scale of AFM to the petitioner as he did not get any financial upgradation or promotion for more than 11 years with consequential benefits and interest in view of the judgment

passed by a Division Bench of this Court in *Ramesh Dahiya versus Uttar Haryana Bijli Vitran Nigam Limited*, CWP-3528-2005 (Annexure P-1) and also to direct the respondents to sanction additional increments to the petitioner on completion of 8/18 years of regular satisfactory service.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was appointed to the post of ALM by the respondents on 21.08.1965 and thereafter, he was promoted as Lineman in the year 1969. Thereafter, he was promoted as AFM on 26.05.1986 and again promoted to the post of Junior Engineer on 27.10.1997 and thereafter, he retired on attaining the age of superannuation on 30.04.2004. He further submitted that the petitioner remained on the post of AFM from 26.05.1986 to 27.10.1997 for more than 11 years and in view of the ACP Rules, 1998 (effective from 01.01.1996) (Annexure P-3), the petitioner was entitled to one ACP because his total period as an AFM was more than 10 years and he was not given any kind of financial upgradation nor there was any revision of pay scale. He also submitted that it was a duty of the respondents to have granted the ACP in accordance with the aforesaid Statutory Rules of 1998, which has not been granted to him. He further submitted that he has given a legal notice to the respondents and since it was not decided, he had filed a petition bearing No.CWP-6233-2018 before this Court in the year 2018 and vide Annexure P-8, this Court disposed of the said petition with a direction to respondent-UHBVNL to look into the grievances unfolded by the petitioner in the legal notice in view of the judgment passed by a Division Bench of this Court in CWP-3528-2005, *Ramesh Dahiya versus Uttar Haryana Bijli Vitran Nigam Limited*. He further submitted that the case of the petitioner is squarely covered by the aforesaid Division Bench judgment of

this Court because the petitioner worked on the post of AFM for more than 10 years and he did not receive any kind of financial upgradation or revision of pay. He further submitted that in pursuance of aforesaid order passed by this Court vide Annexure P-8, the respondents passed the impugned order dated 01.08.2018 (Annexure P-9), by which again the claim of the petitioner for grant of one ACP was rejected. He further submitted that the reason of rejection of ACP to the petitioner was only to the extent that since the petitioner had already availed two promotions i.e. one from the post of ALM to the post of Lineman and thereafter, from the post of Lineman to the post of AFM, it cannot be said that the petitioner was not having any financial upgradation and therefore, even if the petitioner remained on the post of AFM for a period of more than 10 years, he was still not entitled for grant of one ACP. He further submitted that the stand taken by the respondents in the reply as well as in the impugned order is contrary to the judgment passed by a Division Bench of this Court in *Ramesh Dahiya versus Uttar Haryana Bijli Vitran Nigam Limited* (Annexure P-1).

3. On the other hand, Mr. C. S. Bakhshi, learned counsel for the respondents submitted that the impugned order (Annexure P-9) which has been passed is a well justified order since as per the aforesaid order the petitioner could have been given ACP only had he not been granted any benefit of financial upgradation but the petitioner already took two benefits of promotion and therefore, it cannot be said that the petitioner was stagnated. He further submitted that the provision for ACP is only to avoid any stagnation but since the petitioner already stood promoted earlier from the post of ALM to the post of Lineman and thereafter, from the post of Lineman to the post of AFM, the petitioner was not entitled for grant of one ACP, which he is claiming from

26.05.1986 to 27.10.1997 for the post of AFM on which he admittedly worked for more than 10 years.

4. I have heard the learned counsel for the parties.

5. The only issued involved in the present case is as to whether the petitioner was entitled for grant of one ACP from 26.05.1986 to 27.10.1997 when he worked on the post of AFM for more than 10 years. The claim of the petitioner is that he was not only entitled to aforesaid one ACP in pursuance of the aforesaid Rules of 1998 but also he was entitled to relief because his case is covered by a Division Bench judgment of this Court in *Ramesh Dahiya's case (supra)*. A perusal of the aforesaid judgment (Annexure P-1) would show that in that case the petitioner was appointed to the post of Junior Draftsman and thereafter, he was promoted to the post of Draftsman and thereafter, he remained on the aforesaid post for more than 20 years and therefore, a Division Bench of this Court held that since there was a stagnation and he did not get any financial upgradation during the aforesaid period of more than 20 years, he was entitled to two ACPs. The plea which has been taken by the learned counsel for the respondents is that the petitioner stood promoted earlier twice and it cannot be termed to be a stagnation and therefore, the petitioner was not entitled for grant of one ACP. However, as per the aforesaid Division Bench judgment of this Court even the petitioner of that case i.e. Ramesh Dahiya was also promoted from the post of Junior Draftsman to the post of Draftsman and still he has been granted two ACPs in pursuance of the aforesaid judgment, which according to the learned counsel for the parties has already attained finality. Therefore, the plea which has been taken by the learned counsel for the respondents that the petitioner stood promoted twice and it cannot be termed as

a stagnation is unsustainable in view of the aforesaid Division Bench judgment of this Court in *Ramesh Dahiya's case (supra)*.

6. It is not the case of the learned counsel for the respondents that the petitioner got any other financial upgradation. The only grant of some increment would not mean that there was a financial upgradation because it cannot be termed as financial upgradation not it can be termed as revision of pay. The only ground and the reason which has been taken by the learned counsel for the respondents is that since the petitioner stood promoted earlier twice and it cannot be termed as a stagnation, the petitioner was not entitled to ACP. However, such an argument is contrary to the judgment passed by a Division Bench judgment of this Court in *Ramesh Dahiya's case (supra)*.

7. In view of the aforesaid facts and circumstances, this Court is of the view that the prayer of the petitioner is squarely covered by the aforesaid judgment passed by a Division Bench judgment of this Court.

8. Consequently, the present writ petition is allowed. The impugned order dated 01.08.2018 (Annexure P-9) is hereby set aside. The respondents are directed to fix the pay of the petitioner by granting him one ACP, which accrued to him when he was working on the post of AFM after completion of 10 years and thereafter, to pay all the consequential benefits arising therefrom to the petitioner within a period of four months from today, along with interest @ 6% per annum.

21.02.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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