



CWP-3230-2021

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

(224)

CWP-3230-2021

Date of Decision : May 22, 2024

Gajraj Singh**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. R.N. Lohan, Advocate, for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Mr. A.P.S. Sekhon, Advocate, for respondent No.2.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is qua the order dated 03.12.2019 (Annexure P-6) by which, the pay of the petitioner has been refixed by grant of 1st ACP from 01.11.1997 instead of 01.03.1997.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner was initially appointed through employment exchange on 24.04.1985 (Annexure P-1). The petitioner continued working as such when on 24.06.1986 (Annexure P-2), his services were terminated. Thereafter on 11.02.1987, again a fresh appointment was given to the petitioner on adhoc basis, copy of which has been appended with this petition as Annexure P-3. The said appointment given on adhoc basis in the



year 1987, was regularized on 09.10.1987. The petitioner continued working with the respondents and on completion of 10 years of service, the petitioner was given the 1st ACP. While computing the period of 10 years, the date of appointment was taken as 11.02.1987 i.e. on the date when he was appointed on adhoc basis. The petitioner continued getting the said benefit and ultimately, in the year 2019, it was realized by the respondents that the benefit of 1st ACP has been granted to the petitioner wrongly from 01.03.1997 as the services of the petitioner have been regularized on 09.10.1987 and 10 years is to be taken from the said date and his date of the grant of 1st ACP was changed from 01.03.1997 to 01.11.1997 and his pay was accordingly re-fixed vide impugned order dated 03.12.2019 (Annexure P-6). The petitioner did not raise any grievance qua the same and ultimately retired from service on attaining the age of superannuation on 31.03.2020. After the retirement, the petitioner has challenged the order of refixation on the ground that the same causes prejudice to him and therefore, his pay could not have been re-fixed without giving any opportunity of hearing.

4. Learned counsel for the petitioner submits that even otherwise, once the petitioner was appointed in February, 1987, he was rightly granted the ACP on completion of 10 years from March 1997 and the change of the date by the respondents is totally arbitrary and illegal.

5. Further argument of the learned counsel for the petitioner is that two employees namely Naresh Kumar and Satpal are junior to the petitioner and they were getting higher pay and therefore, even on this account, the petitioner's pay is liable to be steeped up.



6. Upon the notice of motion, the respondents have filed the reply. In the reply, the respondents have mentioned that as per Annexure P-3, the petitioner was given fresh appointment in February 1987 and that too on temporary basis which appointment was only regularized in October, 1987 hence, the benefit of ACP can only be granted by counting the regular service and not the adhoc service hence, as earlier adhoc service was also taken into account for the grant of ACP w.e.f. 01.03.1997, which was contrary to the law, the pay of the petitioner has been refixed by counting 10 years of service from the date the services of the petitioner were regularized in October 1987.

7. Learned counsel for the respondents concedes the factum that prior to the passing of the impugned order, no hearing was given.

8. Learned counsel for the respondents submits that as per the reply filed, the petitioner is not senior to the two candidates with whom, the step of the pay is being claimed.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. From the facts narrated hereinbefore, it is clear that the petitioner was appointed on adhoc basis in February 1987. There is no challenge to the said appointment order. The said adhoc service was regularized in October 1987 which is also a conceded fact. Once the petitioner joined on regular basis in October 1987, the benefit of ACP can only be granted qua the service rendered from the said date. It is a settled principle of law that the adhoc service cannot be taken into account for the grant of ACP and the reliance can be placed upon the judgment of the



Hon'ble Supreme Court of India in ***Civil Appeal No.13423 of 1996 titled as State of Haryana vs. Haryana Veterinary and A.H.T.S. Association and another, decided on 19.09.2000.*** Hence, the petitioner was only entitled for the grant of ACP on completion of 10 years by counting the service from October 1987 and it has already come on record that the said benefit was extended to the petitioner from the date of adhoc appointment, which has been rectified by the impugned order dated 03.12.2019 (Annexure P-6).

11. The next argument which has been raised by the learned counsel for the petitioner is that the petitioner was not given any show cause notice before passing the impugned order though the said argument is valid but the same has to be seen keeping in view the facts and circumstances as to whether, on merits, the petitioner has a valid case or not. It has to be seen that in case any show cause notice would have been served, what would have been reply of the petitioner so that the same could have been considered by the respondents. The rules of natural justice cannot be taken to such an extent that even if there is no valid objection to the impugned order, though the same causes prejudice, the same has to be set aside without appreciating the actual facts of the case. Hence, once the order dated 03.12.2019 (Annexure P-6) is within the four corners of law and even if the show cause notice would have been issued, the impugned order would have been the same which order was only challenged after the retirement by the petitioner, no ground is made out to set aside the said order on technicalities so as to pass fresh order, which order will also be on the same term keeping in view the settled principle of law hence, in the facts and

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circumstances of the present case, the prayer of the petitioner that the impugned order dated 03.12.2019 (Annexure P-6) was passed without giving opportunity of hearing and the said order should be set aside, cannot be accepted.

12. The last argument which has been raised by the learned counsel for the petitioner is that the petitioner is seeking step up of his pay equivalent to Naresh Kumar and Satpal by placing reliance upon Annexures P-7 and P-8.

13. As per the reply filed, the respondents have submitted that two employees are senior to the petitioner.

14. Learned counsel for the petitioner concedes that there is no replication to the written statement filed on behalf of the respondents. In the absence of any rebuttal of the ground taken by the respondents that the employees whose cases have been dealt with vide Annexures P-7 and P-8 are senior, the contention of the petitioner that the petitioner is senior to them cannot be accepted.

15. Keeping in view the above, as per the reply, the date of appointment of both the employees as a Conductor is on prior date and therefore, they were very much entitled for the grant of ACP from a date prior to the date of the petitioner as they both completed 10 years of service prior to the petitioner.

16. Accordingly, the present writ petition is dismissed.

May 22, 2024*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No