



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

Sr. No.930

CWP No.10272 of 2015 (O&M)

Date of Decision: 02.12.2024

S.L. Verma

.... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Raman B. Garg, Advocate and
Mr. Mayank Garg, Advocate for the petitioner.

Mr. Harish Rathi, Sr. DAG, Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed *inter alia* seeking a writ of *mandamus* directing the respondents to fix the petitioner's pay at par with that of his junior/Ram Gopal Sharma.

2. Facts of the case in brief are, the petitioner was appointed as Junior Basic Training (JBT) Teacher on *ad hoc* basis on 26.11.1969, and was regularised in service with effect from 01.01.1979. Later, he was promoted as S.S. Master vide order dated 01.04.1992; joined as such on 25.04.1992, and was placed in the seniority list at serial no.9822. On attaining the age of superannuation, he retired from service on 30.06.2008.

2.1. Another employee, Ram Gopal Sharma, was appointed as JBT Teacher on temporary basis in the Cantonment Board School, Ambala, on 26.10.1970; his services were confirmed on 02.08.1972. He was later absorbed in government service, and was treated as a fresh entrant from the

date of issue of Government sanction for taking-over the schools, viz.,



18.11.1971. He was promoted as S.S. Master on 07.02.1994; and placed at serial no.12022 in the seniority list.

2.2. The Government notified Haryana Civil Services (Assured Career Progression) Rules, 2008, with effect from 01.01.2006, for financial upgradation of employees on completion of ten, twenty and thirty years of regular satisfactory service. The petitioner was, accordingly, given first and second ACP scale/financial upgradation in pay band ₹9300-34800 with grade pay of ₹4800 with effect from 01.01.2006, vide office order dated 26.05.2009, Annexure P-1. Whereas Ram Gopal Sharma was given third ACP scale/financial upgradation in pay band ₹9300-34800 with grade pay of ₹5400 with effect from 01.01.2006, vide office order dated 08/12.06.2009, Annexure P-2.

3. In this factual background, learned counsel for the petitioner has contended that Ram Gopal Sharma was petitioner's junior in the cadre of S.S. Master as he was promoted on 07.02.1994, whereas the petitioner was so promoted on 25.04.1992. And their seniority positions as Masters, as aforementioned, have also not been disputed, since there is no specific denial to the averments to that effect made in paragraphs 2 and 3 of the petition. Despite being senior, the petitioner was fixed in lower scale of pay by granting him financial upgradation with grade pay of ₹4800, instead of ₹5400, the grade pay given to his junior employee.

4. *Per contra*, learned State counsel contends that the petitioner is not entitled to step-up of pay at par with that of Ram Gopal Sharma since as per seniority list of JBT cadre of district Ambala as it stood on 01.01.1989, the latter was at serial no.900, whereas the former stood at serial no.1049. Therefore, the petitioner cannot be termed senior to Sharma, who was given the benefit of third ACP scale/financial upgradation with grade pay of ₹5400



petitioner has approached this Court after a delay of more than seven years of retirement from service on 30.06.2008, and accepting his retiral dues. Accordingly, at this stage, he is not entitled to stepping up of pay.

5. Arguments advanced by learned counsel for the parties have been considered.

6. It is apparent on record that the petitioner joined as JBT Teacher on 26.11.1969, though regularised as such from 01.01.1979, and was promoted as S.S. Master on 25.04.1992. Whereas, Ram Gopal Sharma, though initially appointed as JBT Teacher in the Cantonment Board School on 26.10.1970, was promoted as S.S. Master after the petitioner on 07.02.1994. It is also apparent on record that the petitioner's pay has been fixed in the grade pay of ₹4800 with effect from 01.01.2006, as compared to Sharma, whose pay has been fixed in the grade pay of ₹5400 from the same date. Despite being junior, grant of higher grade pay to Sharma is being justified by the respondents by considering his date of appointment as JBT Teacher, i.e., 26.10.1970, and his consequential entitlement to third ACP scale/financial upgradation on completion of thirty years in service. This is palpably wrong since having been promoted as S.S. Master after the petitioner on 07.02.1994, Sharma in any case remains the petitioner's junior in the cadre of S.S. Master. As per settled law, a senior cannot draw salary less than that of his junior in the same cadre. Therefore, the Department cannot refuse to step up the petitioner's pay at par with that of Sharma.

7. Law in this regard is well settled by the Supreme Court in *Union of India and others v. P. Jagdish and others*, 1997(3) SCC 176; relevant paragraph whereof reads as under:

7. ... This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the

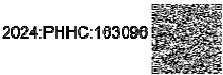


promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being senior to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. ...

Accordingly, the petitioner is entitled to stepping up of pay equivalent to that of his junior.

8. Further, though the petitioner has approached this Court after more than seven years from the date of superannuation, that cannot be a ground to non-suit him for the claimed relief in the facts of this case. The upgradation of petitioner's pay equal to that of his junior will have effect on his pensionary benefits as well, which is a recurring cause of action. Therefore, the equities can be balanced by holding the petitioner entitled to the benefit of stepping up of pay only for thirty-eight months prior to filing of the petition.

9. In view thereof, the petition stands disposed of. Respondents are directed to re-fix the petitioner's pay at par with that of his junior/Ram



Gopal Sharma by granting him ACP grade pay of ₹5400 with effect from the date anomaly in their pay crept in, with all consequential benefits. He shall, however, be entitled to arrears of pay/pensionary benefits for thirty-eight months prior to filing of the petition, which will be released with interest at the rate of six per cent per annum from the due date to actual payment. The directions are to be carried out within four weeks of receiving a certified copy of this order.

10. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

02.12.2024
Maninder

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