



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

877

CWP-7383-2009 (O&M)
Date of decision: 27.09.2024

Dhanpat Singh

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Manoj Chahal, Advocate for the petitioner

Mr. Tapan Kumar, DAG, Haryana

AMAN CHAUDHARY, J. (ORAL)

1. The claim in the present case is for grant of pay scale at par/equivalent to his juniors, alongwith consequential benefits.
2. The petitioner, initially appointed to the post of Assistant Fitter on 07.04.1976, was promoted as Fitter on 22.04.1980 and later Mechanic on 07.11.1989, was placed at No.42 as per the seniority list of Mechanics, Haryana Roadways dated 12.01.2009. The anomaly began from 01.01.1994, when higher standard pay scale was granted to his junior Mahabir Parshad, at seniority No.185, whereafter, the same was afforded to Ram Kishan, at No.65, by way of him filing CS-63-1998, decided on 26.03.2001, appeal against which was dismissed on 28.09.2001. Ram Avtar, allotted No.78, filed CWP-13445-1998, was allowed the same higher pay scale vide judgment dated 28.12.2000 and so was Laxman Singh at No.181.
3. The justification sought to be given for the grant of higher pay scale to Mahabir Parshad and Ram Avtar was that both possessed qualification of



Matriculation with ITI diploma in specific trade. However, was granted to Ram Kishan, who was a “Middle” pass *albeit*, in compliance with the order of the civil Court and to Laxman Singh, a matriculate, his ACP having been considered on the basis of seniority at depot level and not comparing those at others, following Government Instructions, by itself makes it evident that the right of petitioner for the same could not have been eclipsed on the premise of he having been a Matriculate. The aforesaid benefit granted to employees, who are his juniors, must also enure to him, else would amount to cherry-picking.

4. It is trite that the pay of the senior cannot be lesser than that of his junior, in regard to which, reference can be made to the judgment in **Commissioner and Secretary to Govt. of Haryana and others vs. Ram Sarup Ganda and others**¹, wherein it was held that in a case of a junior drawing more on account of upgradation under the ACP Scheme and was an anomaly, the pay of a senior was required to be stepped up from the date he started to draw lesser than the juniors. The relevant paras whereof read thus:

“17. If there is any anomaly to the effect that the senior government servants are receiving lesser pay than their juniors, who entered the service from a different source of recruitment, certainly such senior government servants are entitled to stepping up of their pay in order to bring them on par with the salary which is being received by their juniors. There is no clause in the scheme which prohibits such stepping up of salary which is a common practice applicable to all government employees in case there is anomaly in the pay structure of the employees.

18. By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to “C” post, but the Rules, as such, do not provide for that. The Rules say that if there are already two upgradation, then the concerned employees are not entitled to the benefit of ACP scales. Nevertheless, if ACP scales are higher, they are certainly entitled to the ACP scales at the

¹ (2011) 15 SCC 772



starting point. The date of giving such ACP scales is the date of entry into the service and though these respondents are entitled to get ACP scales and get fixation of the ACP scales as applicable to Group “D” employees and in case there are anomalies to the effect that they receive lesser pay than their juniors working in the same cadre/post, such senior Government servants are entitled to step up of their salary to get it on par with the salary which is being received by their juniors.

19. In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the respondents. In case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary stepped up accordingly. Revised orders shall be passed within a period of two months of the receipt of the copy of this order by the Government. However, if upon revision of the pay-scales, any employee is liable to refund any amount, the Government shall not insist on refund of such amount. If any employee is entitled to get any amount by way of pay revision, the said amount shall be made available to him within a period of six months from the date of receipt of the copy of this order by the Government.

20. Consequently, the Appeals are partly allowed with no order as to costs.”

5. The principle that whenever anomaly arises due to junior drawing more pay, that of the senior is required to be stepped up, has been affirmed by Hon’ble the Supreme Court in the case **Union of India vs. C.R. Madhava Murthy**², wherein disparity resulted on account of upgradation under the ACP Scheme, prompting directions for stepping up the pay, keeping in view of scale granted to the juniors from the date the seniors started drawing lesser pay than their juniors.

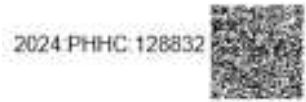
6. In **Union of India vs. P. Jagdish And Others**³, Hon’ble the Supreme Court, while explicating that principle of stepping up on notional basis is consistent with Article 39(d) of the Constitution and would prevent violation of equal pay for equal work, observed that, “Under the provisions of Fundamental

² (2022) 6 SCC 183

³ 1997 (3) SCC 176.



Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate. of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On re-fixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay. 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 seniors 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 got promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. 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 Board Clerks.” (Emphasis supplied)



7. Taking stock of the totality of facts and legal position, the present petition is allowed. Necessary relief be granted within a period of two months.
8. There shall be no order as to costs.

(AMAN CHAUDHARY)
JUDGE

27.09.2024
M.Kamra

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