

**CWP-18261-2018****1**

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

(238)**CWP-18261-2018****Date of Decision : October 15, 2024****Tej Paul Wadhwa****.. Petitioner**

Versus

**State of Punjab through Secretary, Government of Punjab, Department
of Water Supply and Sanitation, Civil Sect. Chandigarh and others**

.. Respondents**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Amrik Singh, Advocate, for the petitioner.

Mr. T.P.S. Chawla, Sr. Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the instructions dated 21.12.2015 (Annexure P-10) by which, it has been mentioned that even if a Junior Engineer gets more pay than his superior i.e. Sub Divisional Officer, only due to the structure pay scale admissible to the Junior Engineer, then also, the senior employee cannot claim step up of salary equivalent to his junior.

2. As per the facts mentioned in the writ petition, the petitioner was appointed as Junior Engineer on 18.01.977 and one Sucha Singh was appointed after him on 23.06.1979. The petitioner was promoted as Sub Divisional Officer on 14.06.2011. While working on the post of Junior

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Engineer, the pay of Sucha Singh was enhanced keeping in view the structure pay scale granted to the post of Junior Engineer and thereafter, when Sucha Singh was promoted as Sub Divisional Officer on 08.11.2012, he was getting more salary than the petitioner, who was also working in the said cadre.

3. Learned counsel for the petitioner submits that when the petitioner claimed step up of the pay equivalent to his junior, the same has been declined on the basis of the Clarification dated 21.12.2015 (Annexure P-10) that any Junior Engineer, who has been granted the structure pay scale in the cadre of Junior Engineer and is getting higher pay than his senior, then the senior cannot claim step up of pay even if there exists an anomaly.

4. Learned counsel for the petitioner argues that the Clarification dated 21.12.2015 (Annexure P-10) is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India while passing order in ***Civil Appeal No.3250 of 2006 titled as Commissioner and Secretary to Govt. Of Haryana and others vs. Ram Sarup Ganda and others, decided on 02.08.2006*** wherein, it has been held that a senior cannot get lower salary than the junior and in case, there is an anomaly, the senior is entitled for step up of his pay equivalent to his junior.

5. Upon notice of motion, the respondents have filed the reply wherein, they have conceded the factum that in the present case, there is an anomaly though the petitioner is senior to Sucha Singh but is getting lesser pay than Sucha Singh. The justification being given by the respondents is that while working on the post of Junior Engineer, Sucha Singh got a

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structural pay in the cadre of Junior Engineer, which has resulted that he is getting more salary than the petitioner though even in the cadre of Junior Engineer as well as in the cadre of Sub Divisional Officer, Sucha Singh is junior to the petitioner.

6. In order to deny the benefit to the petitioner, the reliance is being placed by the respondents upon the Clarification dated 21.12.2015 (Annexure P-10).

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

8. It is a settled principle of law that senior cannot get lesser salary than his junior unless and until there is exceptional circumstances such as the junior getting higher pay on account of higher qualification or on account of any punishment meted out towards senior. In the present case, no such circumstances exist rather, the junior Sucha Singh has been granted the higher pay only due to the fact that the petitioner got promotion from the post of Junior Engineer to that of Sub Divisional Officer prior to the structural revision of pay in the cadre of Junior Engineer. After the structural change in the pay scale of Junior Engineer, Sucha Singh, who was working as a Junior Engineer, got higher pay and the same was reflected when he got promotion to the post of Sub Divisional Officer.

9. It is a conceded position that Sucha Singh is junior to the petitioner in the cadre of Junior Engineer as well as in the cadre of Sub Divisional Officer. That being so, the petitioner cannot be denied the benefit of step up of pay by placing reliance upon the Clarification dated 21.12.2015 (Annexure P-10).



10. As per the judgment in **Ram Sarup Ganda's case (supra)**, the Hon'ble Supreme Court of India has held that where an employee is senior, giving higher pay to the junior, creates anomaly and such anomaly has to be rectified by stepping up the pay of the senior to that of junior. The relevant paragraph 8 of the said judgment is as under:-

"8. Rule 9 quoted above only says that the senior Government servants, who are direct recruits, are not entitled to get any stepping up in case any anomaly arises regarding the receipt of lesser pay by them. However, the same is not applicable to the respondents herein who joined the service as Group "D" employees and later got promotion to Group "C" post by selection. 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. By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to Group "C" post, but the Rules, as such, do not provide for that. The Rules say, that if there are already two upgradations, 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 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. 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 shall be 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.”

11. Learned counsel for the respondents has not been able to rebut that as per the judgment in ***Ram Sarup Ganda’s case (supra)***, senior’s pay has to be stepped up equivalent to the junior.

12. Further, no reason has been given in the Clarification dated 21.12.2015 (Annexure P-10), not to step up the salary of the junior. The only reason given is that in case in the cadre of Junior Engineer, the junior employee was getting more salary, he can still continue to get higher salary than his senior in the promoted cadre of Sub Divisional Engineer. The same is no ground. The seniority has to be maintained and unless and until there are differentiating facts relating to the educational qualification, performance of the duties or any punishment imposed upon the senior etc, the senior cannot be denied the benefit of the higher salary or the salary equivalent being drawn by a junior and his salary needs to be stepped up.

13. Keeping in view the above, the respondents are directed to grant the petitioner the benefit of step up of pay equivalent to Sucha Singh, from the date Sucha Singh got promotion to the post of Sub Divisional Officer in which cadre the petitioner was already working, with all



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consequential benefits such as arrears etc. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.

14. The present writ petition is allowed in above terms.

October 15, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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