

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

(218)

CWP-28102-2018

Date of Decision : April 16, 2024

Jai Pal Tyagi

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashok Tyagi, Advocate, for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance being raised by the petitioner is that the order dated 19.08.2011 (Annexure P-4) as well as the order dated 28.02.2018 (Annexure P-8) by which, the representation of the petitioner for step up of his pay equivalent to Smt. Veena Sharma who was junior to the petitioner, has been declined.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. Petitioner was appointed as Clerk on 15.04.1982 and was posted in the office of Deputy Commissioner. One Smt. Veena Sharma was appointed as Clerk in the office of Commissioner Gurugram Division on 08.11.1990. Two candidates namely Sukanya Devi and Kunj Bihari were appointed after her on 30.07.1991 and 19.08.1993 respectively.

4. At the time when the petitioner was appointed, the post of the Clerk in the Deputy Commissioner as well as post of Clerk in the office of Commissioner Gurugram Division, Gurugram were in the separate cadre. Sh. Kunj Bihari, who was appointed on 19.08.1993 as Clerk and was working in the office of Commissioner Gurugram Division, Gurugram got further promotion in the year 2000 to the post of Assistant on the basis of reservation by superseding Veena Sharma and Sukanya Devi.

5. In the year 2000, a decision was taken to merge the cadres of the Clerk working in the office of the Deputy Commissioner as well Commissioner Gurugram Division, Gurugram. As per the division seniority, the petitioner became senior to Smt. Veena Sharma keeping in view the date of appointment in the cadre of Clerk. In the joint cadre, petitioner was promoted as Assistant on 12.07.2004 whereas Smt. Veena Sharma was promoted as Assistant on 14.07.2008.

6. Thereafter, as Sh. Kunj Bihari had already been promoted as Assistant by giving him reservation in the year 2000, upon promotion to the post of Assistant, Smt. Veena Sharma claimed seniority over and above Kunj Bihari so as to step up her pay. The said benefit was given to Smt. Veena Sharma by the Department and thereafter, the petitioner claimed that as the petitioner is also senior to Smt. Veena Sharma, he is also entitled for the salary as being given to Smt. Veena Sharma. The said claim has been declined by the impugned orders dated 19.08.2011 and 28.02.2018 (Annexures P-4 and P-8) respectively, which have been challenged in the present writ petition.

7. Learned counsel for the petitioner argues that once the petitioner is senior to Smt. Veena Sharma in the cadre of Clerk and was also promoted as Assistant prior to Smt. Veena Sharma, hence once Smt. Veena

Sharma has been granted the benefits of step up of pay equivalent to Sh. Kunj Bihari, the petitioner automatically becomes entitled for the said benefit being senior to Smt. Veena Sharma therefore, the representation filed by the petitioner claiming the said benefit has wrongly been declined.

8. Learned counsel for the respondents submits that the petitioner has not impleaded Smt. Veena Sharma as party hence, the present petition is liable to be dismissed.

9. On merits, learned counsel for the respondents submits that once the initial appointment of the petitioner and Smt. Veena Sharma as well as Sh. Kunj Bihari were in different cadre merely that the said cadre was merged in the year 2000 and the promotion of Sh. Kunj Bihari to the post of Assistant was prior to the merger, the petitioner cannot say that he was superseded by Sh. Kunj Bihari so as to claim the benefit of step up of pay which was extended to Smt. Veena Sharma, who was actually superseded by Sh. Kunj Bihari while working in the office of Commissioner, Gurugram Division, Gurugram.

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

11. First of all, the petitioner is not challenging any benefit given to Smt. Veena Sharma. The petitioner is only claiming that whatever has been given to Smt. Veena Sharma be extended to him hence, in the present case therefore, Smt. Veena Sharma is not a necessary party so as to oust the claim of the petitioner.

12. Further, it is correct that at the time when the petitioner joined the service on the post of Clerk, he was posted in the office of Deputy Commissioner whereas Sh. Kunj Bihari as well as Smt. Veena Sharma were appointed in the office of Commissioner, Gurugram Division, Gurugram

and they were different offices but in the year 2000, the Government decided to merge the cadre. Once the cadres were merged and joint seniority was framed where the petitioner is senior to Smt. Veena Sharma in the cadre of Clerk as well as Assistant, any benefit given to Smt. Veena Sharma on the basis of supersession, will also become admissible to the petitioner being senior to Smt. Veena Sharma. That being so, the petitioner was right in claiming that the junior employee namely Smt. Veena Sharma cannot be granted higher pay scale as compared to the petitioner who is senior to her. The seniority of two is not being disputed to say that the petitioner was not senior to Smt. Veena Sharma in the cadre of Clerk as well as Assistant hence, once Smt. Veena Sharma was granted higher pay scale by grant of step up equivalent to that of Sh. Kunj Bihari, the petitioner automatically becomes entitled for the said benefit for being senior to Smt. Veena Sharma as well. Hence, from the date, Smt. Veena Sharma started getting higher pay than the petitioner, the petitioner is entitled for the step up of his pay from the said date so that the junior does not get higher salary as compared to the petitioner.

13. Keeping in view the above, the impugned orders dated 19.08.2011 and 28.02.2018 (Annexures P-4 and P-5) which are totally cryptic and non-speaking, are set aside. The petitioner is held entitled for the grant of step up of his pay equivalent to Smt. Veena Sharma from the date Smt. Veena Sharma got more salary than the petitioner in the cadre of Assistant. The arrears of salary will be restricted for a period of three years and two months prior to the date of filing of the writ petition. 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 disposed of in above terms.

April 16, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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