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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-965-2018
Date of Decision: 21.02.2024

Jai Singh

..... Petitioner

Versus

UHBVNL and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Naveen Daryal, Advocate,
for the petitioner.

Mr. C.S. Bakhshi, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of the impugned order dated 20.11.2017 (Annexure P-2) vide which the 1st ACP dated 15.11.2006 granted to the petitioner was withdrawn and also a writ in the nature of *mandamus* directing the respondents to release the full pensionary benefits after the retirement as per the LPC on the date of retirement dated 31.05.2017 and also to grant 3rd ACP to the petitioner and thereafter, to pay all the benefits along with interest.

2. The brief facts involved in the present case are that the petitioner was working as a Driver in the respondent-Nigam w.e.f. 01.01.1987 and he was granted 1st ACP on 15.11.2006 w.e.f. 01.01.1997. Thereafter, he was granted 2nd ACP w.e.f. 01.01.2007. He retired from the

post of Driver on 31.05.2017. However, after his retirement his 1st ACP was withdrawn on 20.11.2017. However, during the pendency of the present petition, the aforesaid 1st ACP has now been restored to the petitioner in the year 2019. In this way, the petitioner has already availed of two ACPs i.e. first ACP and second ACP. Now, the petitioner is also claiming his 3rd ACP which would fall due in the year 2014. The provisions with regard to the grant of ACP are so incorporated in Haryana Civil Services (Assured Career Progression) Rules, 1998. Thereafter, the Government of Haryana in the Department of Finance issued a Notification by amending the rules wherein the aforesaid term of 10, 20 and 30 years was changed to 8, 16 and 24 years respectively. In this way, as per the petitioner, he completed 24 years in service as a Driver in the year 2011 and therefore, was entitled to 3rd ACP on completion of 24 years as Driver and he retired in the year 2017.

3. Learned counsel for the petitioner submitted that there was no reason for the respondents to have withdrawn the 1st ACP and he was deprived of his 1st ACP without any justifiable reason especially in view of the fact that his 2nd ACP was still intact. However, the respondents have now rectified their mistake and have restored the 1st ACP of the petitioner for the same, he has no grievance except for fixation of pay and consequential benefits etc. He further submitted that now the dispute is also pertaining to the non-grant of 3rd ACP and also submitted that in pursuance of the aforesaid Rules as amended in the year 2014 which have been appended as Annexure P-3 with the petition, for the purpose of avoiding of stagnation three ACPs are provided at an interval of 8 years each. He further submitted that the petitioner worked as Driver from 01.01.1987 and earlier he was

working as a Cleaner. He also submitted that as per the stand taken by the State especially in the reply since the petitioner was promoted to the post of Driver in the year 1987, he already got an upgradation and once he got the upgradation then he is not entitled to 3rd ACP. He referred to the judgment of a Division Bench of this Court passed in “*Ramesh Dahiya Vs. Uttar Haryana Bijli Vitran Nigam Limited*”, 2008(2) SCT 624, to contend that such kind of objection is not sustainable because in that case as well, the ACP was granted to the petitioner of that case. He submitted that therefore a direction may be issued to the respondents to grant the 3rd ACP in accordance with the Notification (Annexure P-3) and also to fix the notional pay of the petitioner and thereafter, the pension and to grant all the consequential benefits along with interest.

4. On the other hand, Mr. C.S. Bakshi, learned counsel appearing on behalf of the respondents-Nigam submitted on instructions from Mr. Yashbir Singh, Superintending Engineer (OP), Jhajjar that the scheme and rationale for grant of ACP is to avoid stagnation. He further submitted that once an upgradation is provided to an employee then he is not entitled to the respective ACPs. He also submitted that the petitioner was appointed as a Cleaner and he stood promoted to the post of Driver w.e.f. 01.01.1987 and thereafter, as of now he has got two ACPs and so far as the 3rd ACP is concerned, he is not entitled to the same because he already got one upgradation when he was promoted and the purpose of grant of ACPs is to avoid stagnation and therefore, the petitioner is not entitled to 3rd ACP.

5. I have heard the learned counsel for the parties.

6. The only short point involved in the present case is as to

whether the petitioner is entitled to the 3rd ACP in accordance with the Rules (Annexure P-3) or not. As per the Rules, an employee who is working on a particular post and remained on that post for a period of 8, 16 and 24 years, then he is entitled to 1st, 2nd and 3rd ACP respectively. However, in case during the subsistence of that post, he gets any upgradation of the post or there is a revision in the pay-scale of the post itself then the ACP may not be given in accordance with 1998 Rules. However, in the present case, the only objection which has been taken by the respondents is that the reason as to why the petitioner is not entitled to 3rd ACP is that he was promoted to the post of Driver and therefore, he availed of one promotion which is an upgradation of post and therefore, for the 3rd ACP, he is not entitled.

7. On the other hand, the learned counsel for the petitioner has relied upon the judgment of a Division Bench of this Court in ***Ramesh Dahiya's case (supra)***. In the aforesaid judgment, the petitioner of that case was appointed as Junior Draftsman and thereafter, he was promoted to the post of Draftsman. Division Bench of this Court held that once he has worked on the post of a Draftsman for more than 20 years, he was entitled for the two ACPs after 10 and 20 years after the unamended Rules. In that case also the petitioner worked on that post and in the present case also, the petitioner worked as a Driver from 1987 till the time of his retirement which is more than 24 years. The mere fact that the petitioner was promoted to the post of Driver would not make any difference because he still worked on the post of driver for more than 24 years and there is nothing in the Rules to suggest that on the ground of him being promoted earlier to the post of Driver, the petitioner is not entitled to 3rd ACP. This Court is of the view that

the prayer of the petitioner is covered by the aforesaid judgment of the Division Bench of this Court in *Ramesh Dahiya's case (supra)*.

8. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The respondents are directed to fix the pay of the petitioner after grant of 3rd ACP as well and thereafter to fix his pension and grant him all the consequential monitory benefits emanating from the same along with interest @ 6% per annum.

9. In case any recovery has been effected from the petitioner in pursuance of the withdrawal of the 1st ACP which has thereafter been restored, the same shall also be refunded to the petitioner along with interest @ 6% per annum.

21.02.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |