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CM No.4007-CWP-2024 in/and
CWP No.23030-2011(O&M)
DATE OF DECISION: 12.03.2024

Mohinder Singh

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM HON’BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present

Ms. Divya Gulati, Advocate,
for Mr. L.M.Gulati, Advocate,
for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana and
Mr. Harish Nain, AAG, Haryana.

HARSIMRAN SINGH SETHI, J (ORAL)

CM-4007-CWP-2024

The present application has been filed for fixing the main petition for hearing at an early actual date.

Notice of the application.

Mr. Harish Rathee, Sr.DAG, Haryana accepts notice and raises no objection.

On the joint request of the parties, the application is allowed and the main writ petition is taken up for hearing.

CWP No.23030-2011

1. The grievance which is being raised by the petitioner in the present petition is that the petitioner is working in the cadre of Head Mechanic but is getting lesser pay than his junior namely Rama Kant which act on the part of respondents is totally arbitrary and illegal and keeping in view the settled principle of law settled in

Commissioner and Secretary to Govt. of Haryana and others versus Ram Sarup

Ganda and others (RSJ 2007 Vol. III page 154), the petitioner is entitled for step up of his pay equivalent to his junior Rama Kant.

2. As per the averments made in the present writ petition, the petitioner was appointed as a Helper in the year 1971 and was thereafter promoted on the post of Electrician in the year 1976 and was further promoted as Head Electrician on 09.10.2002, on which post the petitioner was working on the day he filed the writ petition in the year 2011. The claim of the petitioner is that one employee namely Rama Kant who was promoted as an Electrician in the year 1978 and was promoted as Head Electrician on 06.08.2004 and is junior to the petitioner in the seniority list in the Cadre of Electrician / Head Electrician, is getting higher pay than the petitioner which is not admissible. Hence, the pay of the petitioner should also be step up equivalent to Rama Kant from the date the anomaly occurred with all consequential benefits.

3. Upon notice of motion, the respondents have conceded the factum qua the date of promotion of the petitioner as well as of Rama Kant. The only objection taken to deny the claim of step up of pay to the petitioner is that the petitioner had already been granted two upgradation hence, the step up of pay of the petitioner equivalent to his junior Rama Kant will amount to be third upgradation which is not admissible in law. Hence, no benefit of stepping up of pay as being drawn by junior Rama Kant can be allowed in favour of the petitioner.

4. The further objection raised in the present petition is that as the petitioner as well as Rama Kant are working in different depots, no benefit of seniority can be claimed by the petitioner over Rama Kant hence, the petitioner cannot claim that he is senior to Rama Kant in the cadre of Head Electrician.

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

6. The question which arises for adjudication before this Court is whether, the petitioner is to be treated senior to Rama Kant or not

7. It may be noticed that the petitioner and the Rama Kant might be working in the different depots but, it has already come on record that in the cadre of Electrician as well as Head Electrician, there are joint seniority list, wherein, the petitioner has been shown at serial no.29 as a Head Electrician and Rama Kant is being shown at serial no.40 in the said seniority list. Once, there is a joint seniority list of both the employees it can not be said that the petitioner is not senior to the said Rama Kant. In case, as being argued by the learned State counsel that the seniority is depotwise, then, the name of the petitioner as well as Rama Kant could not be mentioned in the same seniority list. Once, there is a joint seniority list of the Head Electricians, wherein the petitioner has been concededly been shown senior to Rama Kant, the petitioner is to be treated senior to Rama Kant in the cadre of Head Electrician for all intent and purposes.

8. Now, the question arises as to whether, despite getting two upgradation in the service career, the petitioner is still entitled for the grant of benefit of step up of pay equivalent to his junior Rama Kant or not.

9. The said question has already been decided by this Court in **Commissioner and Secretary to Govt. of Haryana and others versus Ram Sarup Ganda and others (supra)**, wherein, a finding has been recorded that irrespective of the Feeder Cadre, once, an employee is senior in a promoted Cadre, and is getting lesser salary, he is entitled for step up of his pay equivalent to his junior from the date the anomaly occurred. The said judgment has already attained finality and has already been implemented by the State of Haryana. Relevant para no.8 of the 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."

10. The learned counsel for the respondents has not been able to rebut that the claim of the petitioner is covered in his favour keeping in view the judgment in **Commissioner and Secretary to Govt. of Haryana and others versus Ram Sarup Ganda and others (supra)**. In the absence of any differentiating fact brought before this Court, a relief already granted of stepping up of pay of senior equivalent to that of

junior, cannot be denied to the petitioner. Hence, the claim of the petitioner for step up of his claim is liable to be allowed and is accordingly allowed.

11. The last argument which has been raised by the learned counsel for the respondents is that the petitioner has already been retired from service and further that the anomaly occurred in the year 2004 and the writ petition was filed in the year 2011.

12. With regard to the said argument, learned State counsel has not been able to show that the petitioner was having the knowledge that an employee junior to him is getting more pay. Once, while in service, the petitioner raised the grievance of stepping up of his pay, the same cannot be treated as time barred or delayed in any manner. Once, the petitioner, on the date of filing of the petition was in service and the master and servant relationship existed between them, the petitioner has full right of step up of his pay and revised pensionary benefits along with arrears.

13. Keeping in view the above, the present petition is allowed. The petitioner is held entitled for stepping up of his pay equivalent to that of his junior Rama Kant from the date the anomaly occurred with all consequential benefits such as arrears of pay and revised pensionary benefits alongwith arrears.

14. As the petitioner has already retired from service in the year 2012, the respondents will also revise his pensionary benefits keeping in view the pay, which the petitioner is found entitled for under this order on the date of his retirement. The retiral benefits will also be revised and the arrears of retiral benefits including the difference in pension along with arrears will also be released in the favour of the petitioner.

15. Now the question which arises is whether, the petitioner should also be held entitled for interest or not.

16. As per the judgment of the Co-ordinate Bench of this Court in **J.S.Cheema v. State of Haryana 2014(13) RCR(Civil) 355** any amount of which the employee was entitled for but has been retained, the employee becomes entitled for

interest. The relevant paragraph of the judgment is as under:-

“xxxx

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

17. On the date, keeping in view the judgment of this Court, which was available in **Commissioner and Secretary to Govt. of Haryana and others versus Ram Sarup Ganda and others (supra)** to be implemented upon the petitioner, the respondents choose not to grant the said benefit despite eligibility of the petitioner. Hence, on the arrears of the salary, the petitioner will also be entitled for interest @ 6% per annum from the date the amount of arrears became due till the actual payment of the same. Let the judgment be complied with within a period of eight weeks from the date of receipt of certified copy of the order.

18. Allowed, in the above terms.

12.03.2024
mamta

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes