

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

223

CWP-36254-2019(O&M)
Date of Decision:29.02.2024

Ashok Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Aditya Yadav, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Rajesh Lamba, Advocate for respondent No.2

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 16.10.2019 (Annexure P-4) thereby rejecting the representation filed by the petitioner dated 27.06.2018. (Annexure P-2).

2. Brief facts of the present case are that the petitioner was appointed on the post of Peon-cum-Chowkidar on 23.10.1981 and thereafter he was promoted to the post of Clerk on 23.01.2001 in the pay-scale of Rs.5000-150-7100-EB-1150-7850. Thereafter, he stood confirmed on the post of Clerk on 23.01.2003. Learned counsel for the petitioner submitted that the post of Peon is a Class-IV post whereas post of Clerk is a Class-III post.

3. He further submitted that the petitioner is drawing a basic salary of Rs.20920/- to the post of Clerk but one another person namely Jai Parkash

who is much junior to the petitioner is drawing basic salary of Rs.24120/- which is much higher to that of the petitioner. He further asserted that on the post of Clerk no distinction can be made with regard to the persons serving on the same post and once junior is drawing more salary than the petitioner then the petitioner is also entitled to the same pay-scale.

4. In this regard, learned counsel for the petitioner referred to seniority list vide Annexure P-1 and submitted that a perusal of the same would show that the petitioner is at Sr. No.76 and the aforesaid Jai Parkash is at Sr. No.90 and is much junior to the petitioner. The aforesaid Jai Parkash is enjoying more basic pay than that of the present petitioner and no distinction can be made when both are working on the same post. He also submitted that the aforesaid basic pay of the Jai Parkash was fixed on the basis of petition filed by him since he had claimed that his junior namely Wazir Singh was getting basic pay of Rs.24120/- and the aforesaid official (Wazir Singh) is also working on the post of Clerk and his seniority is at Sr. No.149 in the seniority list and because of the aforesaid reason, Wazir Singh who was drawing more salary than Jai Parkash, he was granted the aforesaid pay scale. Learned counsel for the petitioner further submitted that Jai Parkash, Wazir Singh and the present petitioner are working on the same post i.e.Clerk but so far as the present petitioner is concerned, he is senior to both Jai Parkash and Wazir Singh and getting salary of Rs.20,920/-which is much less than the aforesaid Jai Parkash as well as Wazir Singh. He further submitted that in the reply which has been filed by the respondents, it has been so stated that reason for distinction was that the feeder channel of the petitioner and that of the aforesaid Jai Parkash and Wazir Singh were different and so far as the present

petitioner is concerned he was promoted from the post of Peon-cum-Chowkidar whereas Jai Parkash was promoted from the post of Daftari but ultimately they were working as Chowkidar and the seniority list (Annexure P-1) is pertaining to the final seniority list of Clerks. He further submitted that such plea taken by the respondents is totally untenable and the aforesaid ambiguity has to be removed and the petitioner is entitled to all the benefits of fixation of pay and equal to his junior as aforesaid alongwith all the consequential benefits.

5. On the other hand, Mr. Rajesh Lamba, Advocate appearing on behalf of the respondent No.2 submitted that the only distinction which has been drawn out in the case of the petitioner and the aforesaid Jai Parkash was with regard to the respective cadre from which they were promoted. Since the petitioner was Peon-cum-Chowkidar and the aforesaid Jai Parkash and Wazir singh were promoted from the post of Daftari and as such the petitioner would not be entitled for the same pay-scale.

6. I have heard learned counsel for the parties.

7. The short controversy involved in the present case is as to whether the petitioner is entitled to the same pay which his juniors are admittedly getting/drawing. It is an admitted position that his juniors which is at seniority no.90 namely Jai Parkash and Wazir Singh who is at seniority No.149 are drawing basic pay of Rs.24120/-whereas the petitioner is admittedly senior even as per the seniority list (Annexure P-1) is getting/drawing Rs.20920/-. The reason and justification so stated by learned counsel for the respondent No.2 on the basis of written statement filed by him with regard to the source of promotion is not tenable in the eyes of law.

The petitioner as well his juniors as aforesaid are working on the same post and, therefore, the petitioner cannot be denied the same pay structure as compared to what his juniors are drawing/getting.

8. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 16.10.2019 (Annexure P4) is hereby set aside and respondent No.2 is directed to fix the pay of the petitioner at par with their juniors as aforesaid are drawing and also to pay all the consequential benefits pertaining to the arrears of salary alongwith interest of @6% per annum within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

29.02.2024.
shweta

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