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

CWP-380-2014
Date of decision: 07.08.2025

Chander Parkash ...Petitioner

Versus

HVPNL and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jai Singh Yadav, Advocate
for the petitioner.

Mr. Satyam Tandon, Advocate and
Mr. Nitin Goswami, Advocate
for respondents No.1 to 4.

<u>HARPREET SINGH BRAR, J. (ORAL)</u>

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* seeking quashing the order dated 26.03.2013 (Annexure P-6) whereby, third financial upgradation was declined to the petitioner.

2. Learned counsel for the petitioner submits that the petitioner was appointed as an Assistant Lineman on temporary basis on 31.08.1973, however, he was regularised on 15.07.1976. Subsequently, he was promoted to the post of Lineman on 02.10.1993 and ultimately superannuated on 30.06.2008. The Government of Haryana issued Assured Career Progression Rules, 2008 (hereinafter 'the Rules') vide notification dated 30.12.2008, which were made applicable w.e.f. 01.01.2006) which made upgradation subject to passing of any tests required by the Government. In the present case, the upgradation was made contingent on the applicant passing the Safety Code Test. However, the petitioner was not personally informed that a Safety Code Test was being conducted in the first place. In fact, he only came to know about the same when

his application for grant of third financial upgradation was rejected vide order 26.03.2013 (Annexure P-6). Learned counsel further contends, that the petitioner has put in requisite number of years in service to be eligible for third upgradation. In the absence of any communication to the petitioner regarding the Safety Code Test, he cannot be denied the benefit of upgradation. Moreover, similarly situated colleagues of the petitioner- Roshan Lal (retired on 19.09.2011, benefit granted on 03.03.2010) and Kundan Lal (retired on 31.07.2006, benefit granted on 19.09.2011) have already been granted pay upgradation, even though they had not passed the Safety Code Test. Lastly, the Rules were made applicable w.e.f 01.01.2006 but the notification was only issued in the year 2009, while the petitioner had retired a year before on 30.06.2008.

3. On the other hand, learned counsel representing the respondents-Corporation submits that the Rules were adopted by the respondents-Corporation vide Circular No.2 dated 27.02.2009 and as such, the condition to pass the Safety Code Test was applicable to the petitioner when he became eligible to claim a third upgradation i.e. on 14.04.2006, as the Rules came into effect from 01.01.2006. Moreover, the designation of the petitioner was also required to clear the side requirement by virtue of the amendment circulated vide S.E./Admn., Panchkula, Memo No. Ch.10/Reg-84/L dated 08.08.2002 (Annexure R-4/2). Learned counsel further he refer to the Rule 8(b) of the Rules to support their contention, which reads as follows:

> ***"8. Other general conditions of eligibilities of ACP pay structure :—***
> *The following general conditions shall also be fulfilled by a government servant for availing benefit of ACP :—*
>
> > *(a) after completing the respective prescribed period for eligibility for the grant of ACP pay structure the government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due*

to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;

*(**b) if such promotion involved passing of any departmental test or other test etc., such condition should also be fulfilled by such government servant.**" (emphasis added)*

As such, since the petitioner did not clear the Safety Code Test, he is not eligible to be considered for a third financial upgradation.

4. I have heard learned counsel for the parties and perused the record with their able assistance.

5. On 29.11.2022, the following order was passed:-

> *'Learned counsel for the petitioner inter alia submits that the petitioner was granted second ACP on 01.08.1996; under the relevant instructions his third ACP was due on 14.04.2006; the same was denied by the respondents on the ground that the petitioner had not passed safety code test; between the years 1996 and 2006 only one safety code test was held by the respondent-Nigam on 08.07.2003; no intimation for appearing in the afore test was given to any of the employees like the petitioner and therefore, non-appearance by the petitioner in such test cannot be held against him.*
>
> *On the other hand, learned counsel for the respondent-Nigam submits that adequate notice was given to all the employees of the Nigam, including the petitioner, before the safety code test was held on 08.07.2003.*
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> *Since the afore dispute would go to the crux of the matter and there is nothing on the record with regard to the mode and manner through which the respondent-Nigam had informed all concerned with regard to holding of safety code test on 08.07.2003, let an affidavit in this regard be filed by the of Managing Director of the respondent-Nigam.*
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> *Adjourned to 02.02.2023'*

In compliance thereof, an additional affidavit dated 31.08.2023 of Sh. Sanjay Yadav, XEN, TS Division, HVPNL, Rewari was filed and the same is available on record. It has been specifically indicated therein the Safety Code Test was conducted on 08.07.2003 and that the same was conveyed to Junior Engineer, Rewari on 03.07.2003. by the office of XEN, TS Division, Rewari.

The said information was also conveyed by the control room to all Sub-stations at Rewari, Mahendergarh and Bhiwani by 220 KV Control Room, Rewari, as evidenced by Annexure R-10. It is further stated that the petitioner was present in the sub-station on the day the said test was conducted but he did not participate in the same in spite of being aware of the same. The affidavit also categorically mentions that no separate document exists vide which each and every employee was informed personally.

5. It appears that the petitioner retired from service on 30.06.2008. However, the Rules were notified vide notification dated 30.12.2008 but made applicable with effect from 01.01.2006. However, the condition of passing the Safety Code Test was introduced with respect to the respondent-Department as the vide Circular No.2 dated 27.02.2009 (Annexure R-4/3), much after the superannuation of the petitioner. Admittedly, the respondents-Corporation did not make any personal communication regarding conducting the oral examination in lieu of the Safety Code Test.

6. The Rules were framed by the State to ensure that no government employee suffers stagnation in his/her career owing to lack of vacancies with respect to promotional posts. The financial upgradation aids in boosting the morale of the employees who have spent the requisite time period in service, even in absence of a promotion. The petitioner had availed two upgradations earlier and indubitably, the conduct of the petitioner remained satisfactory during his service. Undisputedly, the petitioner has also completed the requisite time period in service to be eligible for his claim to be considered for a third upgradation. The sole objection put forth by the respondent-Corporation with respect to grant of a third upgradation is that the petitioner failed to appear in the oral examination conducted in lieu of Safety Code Test, in terms of the

Rules. The argument of learned counsel for the respondent-Corporation with regard to passing of the Safety Code Test is not tenable as the petitioner had already retired on 30.06.2008, before the Rules were made applicable to the employees of the respondent-Corporation on 27.02.2009. Therefore, the Rules cannot be construed to govern the case of the petitioner.

7. Further still, the petitioner was required to clear an oral test in compliance of Clause 3(1)(e)of the instructions dated 08.08.2002 (Annexure R-4/2), which in turn relate to the initial instructions dated 22.09.1989 (Annexure R-4/1). The same reads as follows:

> *"3. While revising the Safety Code Instructions, this part has inadvertently been omitted. Accordingly, under Chapter-2 of the 'HSED Safety Code (Ist Edition, 1985), dealing with 'Knowledge of Safety Code,' the following additional provisions, may be added:-*
>
> *(1)Knowledge of Safety Code/Supervisory staff/ Gazetted Staff*
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> *xxx xxx xxx*
>
> *(e) Failure to pass the initial examination will render the employees concerned ineligible for confirmation/crossing E.B. Further, no employee shall receive promotion to a higher grade without passing oral examination prescribed for that occasion and also a practical examination if so required by the Examiner."*

However, the respondents have failed to provide any detail with regard to scheduling such tests as well as the mode and manner in which the petitioner was called upon to clear the oral examination so prescribed. Clearly, the inability to meet the said requirement did not arise from neglect, incompetence, or unwillingness of the petitioner but can be entirely attributed to the omission on part of the respondent-Department to hold the test at regular intervals and duly notify the prospective candidates before conducting the same. While it is true that such requirements aim to ensure merit, skill, and eligibility, however failure of the petitioner to appear for the same cannot be held against him when the fault lies with the State instrumentality. Considering the inequitable and irresponsible conduct of the respondent-department, especially when financial upgradation of its employees is contingent on passing the test, cannot be overlooked by this Court. At this juncture, a reference may be made to the judgment rendered by a two-Judge bench of the Hon'ble Supreme Court in ***A.P. Showkath Ali vs. State of Kerala (2018)11 SCC 688*** wherein, speaking through Justice Kurian Joseph, the following observations were made:

> *"12. Close to the facts, a situation where the Government had not conducted the tests, had arisen for consideration before the Kerala High Court in Sherafuddin v. State of Kerala, 2004 (2) KLT 731, where at paragraph-9, it was held that (paragraph numbers are given as they appear in. :*
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> > *"9. **The Government having never conducted the examination, it will be unjust and inequitable to deny the service benefits to the incumbents if they are otherwise fit for such benefits. In fact the very purpose of the rule is to tide over such situations. There is no point in requiring the incumbents to perform an impossibility. They are required to pass the examination if only it is held. Admittedly it was never held. Therefore, the invocation of Rule 39 in such circumstances is justifiable in terms of justice and equity.** The purpose of the rule is to use the principles of justice to supplement law in a fair and reasonable manner and for a just and equitable 2 2004 (2) KLT 731 cause. **The action/inaction of the Government shall not prejudice an incumbent who is otherwise fit for service benefits and hence the order is perfectly justifiable."***
> >
> > *and at paragraph-13, it has been further held:*
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> > *"13..... When there is failure of justice resulting in inequity and injustice, Rule 39 of the General Rules is to be invoked in the interests of equity and justice. Such power can be exercised even with retrospective effect for doing complete equity....."*
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> *13. We respectfully endorse the views expressed by the Kerala High Court."* (emphasis added)

8. Additionally, it is trite law that employees must not be deprived of the lawful benefits accrued to them or suffer adverse consequences due to omissions made by the employer. It would be against the principle of equity and fairness to the burden employees with the financial and career-impacting consequences of administrative or technical lapses, solely caused by the negligence of the employer. Reliance in this regard can be placed on the

judgment rendered by a two judge bench of the Hon'ble Supreme Court in ***Calcutta State Transport Corporation vs. Ashit Chakraborty 2023 SCC Online SC 594***, speaking through Justice Rajesh Bindal opined as follows:

> *"11. It is not in dispute that the respondent no.1 had exercised his right to receive pension under the 1990 Regulations in the year 1991. Thereafter, it was the duty of the Corporation to have given effect to the same. Merely because there were some wrong deductions from his salary and he was treated as a member of the CPF Scheme, cannot be permitted to be raised as a ground to defeat his rightful claim. The pension was to start after the retirement of the respondent. When the same was not released to him, immediately representation was made by him. As no response was received from the appellant, the writ petition was filed. The argument that there are a number of similarly situated employees who will also stake their claims, will not deter this Court in granting the relief to the respondent, which is legitimately due to him.* ***Rather this argument shows that the Corporation was at fault in implementing the 1990 Regulations in the cases of number of employees though these were notified on 4.1.1991 and were given retrospective effect from 1.4.1984. Technical objections are sought to be raised, which are not tenable. For any fault on the part of the Corporation, the employees cannot be made to suffer.****"* (emphasis added)

9. Equity often comes into play when mechanical adherence to the statutory law leads to an unfair and unconscionable outcome. At times, when statutory law is silent on certain aspects or even ambiguous regarding a situation, the gap ought to be filled by relying on principles of equity, as it allows the justice dispensation mechanism to ensure that legal rights are not abused to meet unjust ends. However, equity follows the law and expects the person seeking to invoke it to be fair as well. On that note, learned counsel for the respondents has been unable to indicate how frequently is the Safety Code Test conducted. In fact, he concedes that the respondent-department did not find it necessary to notify those whose financial up-gradation would be affected by failure to take the said test, prior to their retirement. Further still, the test cannot occur once in a blue moon subject to the whims and fancies of the respondent-

department, especially considering its relevance. The employees must be given a reasonable opportunity to appear in the same by not only notifying them beforehand but also holding it regularly, at least twice a year. Further reliance can be placed on the judgment rendered by a Constitution bench of the Hon'ble Supreme Court in ***M. Siddiq through Legal Representatives vs. Suresh Das, (2020) 1 SCC 1,*** wherein the following observations were made:

> *"1003. The correlation between law and justice was the defining factor — **in one sense, equity modifies the applicable law or ensures its suitability to address the particular circumstances before a court to produce justice.** The modification of general rules to the circumstances of the case is guided by equity, not in derogation or negation of positive law, but in addition to it. It supplements positive law but does not supplant it. In a second sense, however, **where positive law is silent as to the applicable legal principles, equity assumes a primary role as the source of law itself. Equity steps in to fill the gaps that exist in positive law. Thus, where no positive law is discernible, courts turn to equity as a source of the applicable law.** In addition to these, Derrett notes that there is a third sense in which equity or aequitas assumed importance — where established political authority is taken away or is in doubt and the formal sources of law are in doubt, the nature of judicial office requires a decision in accordance with ex bono et aequo. This was evidenced in decisions concerning widows and orphans and in the realm of mercantile law.*
>
> *xxx xxx xxx*
>
> ***Justice, Equity and Good Conscience today***
>
> *1019. With the development of statutory law and judicial precedent, including the progressive codification of customs in the Hindu Code and in the Shariat Act, 1937, the need to place reliance on justice, equity and good conscience gradually reduced. There is (at least in theory) a reduced scope for the application of justice, equity and good conscience when doctrinal positions established under a statute cover factual situations or where the principles underlying the system of personal law in question can be definitively ascertained. But even then, **it would do a disservice to judicial craft to adopt a theory which excludes the application of justice, equity and good conscience to areas of law governed by statute.** For the law develops interstitially, as Judges work themselves in tandem with statute law to arrive at just outcomes. **Where the rights of the parties are not governed by a particular personal law,***

or where the personal law is silent or incapable of being ascertained by a court, where a code has a lacuna, or where the source of law fails or requires to be supplemented, justice, equity and good conscience may properly be referred to.

xxx xxx xxx

1022. The common underlying thread is that justice, good conscience and equity plays a supplementary role in enabling courts to mould the relief to suit the circumstances that present themselves before courts with the principal purpose of ensuring a just outcome. ***Where the existing statutory framework is inadequate for courts to adjudicate upon the dispute before them, or no settled judicial doctrine or custom can be availed of, courts may legitimately take recourse to the principles of justice, equity and good conscience to effectively and fairly dispose of the case.*** *A court cannot abdicate its responsibility to decide a dispute over legal rights merely because the facts of a case do not readily submit themselves to the application of the letter of the existing law. Courts in India have long availed of the principles of justice, good conscience and equity to supplement the incompleteness or inapplicability of the letter of the law with the ground realities of legal disputes to do justice between the parties.* ***Equity, as an essential component of justice, formed the final step in the just adjudication of disputes. After taking recourse to legal principles from varied legal systems, scholarly written work on the subject, and the experience of the Bar and Bench, if no decisive or just outcome could be reached, a Judge may apply the principles of equity between the parties to ensure that justice is done.*** *This has often found form in the power of the court to craft reliefs that are both legally sustainable and just."* (emphasis added)

10. In view of the above discussion, the present petition is allowed. The respondents are directed to release the consequential benefits of third financial upgradation to the petitioner, within a period of three months from the date of receipt of a certified copy of this order. Any further delay would entail 7.5% interest per annum commencing from the date of retirement of the petitioner, in terms of ***A.J. Randhawa Supg. Engineer (Retd.) vs. State of Punjab 1998 (1) SCT 343.***

(HARPREET SINGH BRAR)
JUDGE

07.08.2025
Neha

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