
(2009) 04 P&H CK 0116
In the Punjab And Haryana At Chandigarh

Bishambar Dass

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Citation : (2009) 04 P&H CK 0116

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.—The petitioner was appointed as Class IV employee in May 1970 with the respondent-department. Thereafter, on 20.11.1985 he was appointed as Driver on adhoc basis against a post meant for direct quota. As per the policy decision dated 28.2.1991, the services of the petitioner were regularized w.e.f 1.1.1991. Thereafter, as per the decision of the Hon'ble Supreme Court in State of Haryana v. Piara Singh's case, the claim of the petitioner was again considered and his services were regularized w.e.f 1.10.1988. The petitioner applied for the grant of Ist ACP grade w.e.f 1.10.1998 after completing 10 years of service but his claim was rejected vide the impugned order.

2. The defence taken is that the petitioner was appointed as Peon and thereafter promoted as Driver and is now in the pay scale of Rs. 4000-6000 which is higher than the scale of Class IV employee. Thus, the petitioner is not entitled to the ACP Grade which could only be granted to a direct recruit driver who had stagnated for 10 years.

3. In T.R. Bansal v. Punjab State Electricity Board 2005 (2) SLR 410, a Division Bench of this Court held as follows:

10. Applying these principles to the facts and circumstances of the case in hand, it is clearly spelt out from the order dated 13.9.2000 (Annexure P-6) as well as from the written statement that it is not the case of the Board that juniors to the petitioner have been granted higher pay scale and/or some additional increments

either on account of their higher academic qualifications or for some special nature of duties. Rather, the fixation of pay of the petitioner at a stage which is lower than that of his juniors is sought to be justified merely on the mode of their entering into the feeder cadre, namely, the petitioner coming as a promotee whereas his juniors as direct recruits.

11. Can the source of recruitment by itself be a valid ground for classification for the purpose of grant of higher scale of pay, was considered and negatived by a Division Bench of this Court (to which one of us S.S. Nijjar, J. is a Member) in the case of Bhakra Beas Management Board v. Rajinder Singh Patpatia 2002 (1) RSJ 32 after holding as follows:

A perusal of the above regulation shows that Regulation 10.2 deals with Circle Head Draftsman and Chief Head Draftsman. It requires only possession of diploma. Hence, it does not require the qualification of degree or A.M.I.E as contended by Shri D.S. Nehra. The circular letter dated 25.4.1990 (supra) is not confined only to the category of those who have been given promotion under Regulation 10.4. Therefore, the basic argument of Shri D.S. Nehra that degree/A.M.I.E qualification is required for the purpose of earning the scale of Rs. 4500-6300 after completion of 16 years of service is not supported by the reading of Regulation which deals with Circle Head Draftsman as the case of the petitioner. Moreover, by deeming fiction all promotees having been treated as direct recruits and there is no requirement for them to possess degree/A.M.I.E qualifications. Any other construction of the circular would render Clause 2 of the circular referred to in the proceeding para as otiose and illusory. We are of the considered view that the benefit of higher scale of pay cannot be confined by the B.B.M.B to those engineers who have come from P.S.E.B only. The benefits are meant for all the engineers working in the B.B.M.B who are covered by circular letter dated 24.5.1990 (supra) whether they have come from P.S.E.B or from any other organization. The B.B.M.B has adopted the circular dated 24.5.1990 for its application to the engineers working with them. The petitioner was promoted as A.D.E/S.D.O on 25.4.1971 and was regularized as such w.e.f 1.5.1979. He completed 16 years of service in the year 1987 much before the date of his superannuation i.e 30.11.1990. Another reason for taking the view that the petitioner is entitled to the benefit of circular dated 24.5.1990 is that these are beneficent provisions made for the breaking of stagnation to bring efficiency in the working of the officers. The petitioner has since retired on 30.11.1990, no prejudice is likely to be caused to any employee in the service.

4. Counsel for the respondents has sought to distinguish the above judgment by asserting that the said judgment did not relate to an anomaly arising out of the grant of time bound promotional scale. He has argued that there is a difference between cases where a benefit was granted to a junior directly recruited employee which resulted in his pay becoming higher than that of a senior promoted employee and the present case where the petitioner has not given any details about any junior to whom the ACP Grade may have been granted.

5. However, I feel that the point which arose for decision in the said case has been enunciated in the paragraphs quoted above and the same issue arises in the present case too, viz differential treatment of employees for the grant of a benefit only on the basis of source of recruitment. The argument that the grant of ACP was not based on stagnation in the post but stagnation in the career would, if accepted, lead to such anomalous situation.

6. In SLP(C) No. 9615 of 2000, Punjab State Electricity Board and Anr. v. Ajit Singh Aujla and Anr. decided on 14.7.2000, the Hon"ble Supreme Court held as follows:

In view of the law laid down by this Court in Jaipal and Ors. v. State of Haryana and Ors. 1968 (3) SCC 354 that the mode of recruitment could not be a basis for discrimination and also in view of the fact that no point has been raised in the counter affidavit that the discrimination is made because of the difference of educational qualifications, we are of the view that the High Court was right in holding that the promotees after completing 16 years of service as a Lineman will be entitled to the same benefits as the direct recruits who put in 16 years of service.

7. In the circumstances, the denial of ACP Grade to the petitioner cannot be justified. However, it also cannot be lost sight of that this writ petition had been filed only in the year 2008. Since it is a recurring loss, this petition cannot be dismissed on the ground of delay and laches but the relief can be restricted.

8. Consequently, this writ petition is allowed and the respondents are directed to grant the ACP Grade to the petitioner w.e.f 1.10.1998. However, actual benefits will be restricted to a period of 38 months prior to the filing of the writ petition viz 1.5.2005.