

(2013) 01 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 996 of 2012 (O and M)

Dakshin Haryana Bijli Vitran Nigam and Others

APPELLANT

Vs

Santosh Devi and Others

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 3 SCT 228

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : K.S. Malik, for the Appellant; G.K. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—The first Appellate Court, while reversing the judgment dated 29.04.2011 passed by the trial Court, allowed the appeal of Tek Chand, plaintiff (hereinafter referred as "the plaintiff") and decreed his suit while holding entitled to ACP (1) and ACP (2) scale in the post of Lineman on completion of 10 and 20 years of service to be counted from the date of joining as Lineman and ACP (1) scale in the capacity of Assistant Foreman on completion of 10 years of service, thereby counting from the date of promotion of the plaintiff as Assistant Foreman. It was further ordered that his pay would appropriately be fixed and he would be paid arrears of pay and allowances as also revised pay with interest at the rate of 9% per annum from the date the respective ACPs were due for payment. The factual matrix of the case is that the plaintiff was appointed as Assistant Lineman in Haryana State Electricity Board and subsequently he was promoted as Lineman in the year 1971 and Assistant Foreman w.e.f. 10.01.1992. Ultimately, he retired on 28.02.2002. His claim is that he was entitled to Assured Career Progression Scheme (ACP) as Lineman and Assistant Foreman, but the defendants-appellants (hereinafter referred as "the defendants") did not accept his claim.

2. The defendants, in their written statement, besides taking some preliminary

objections, pleaded on merits that the case of the plaintiff was recommended for second ACP w.e.f. 01.01.1996 (covering the first ACP). It was further stated that ACP (1) was to be granted to one post only and thus, he was not entitled in the scale of Assistant Foreman. Consequently, the defendants prayed for dismissal of the suit.

3. Replication was filed. From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for the grant of 1st ACP and 2nd ACP in the capacity of Lineman on completion of 10 years and 20 years of service from the date of joining i.e. in the year 1971? OPD

2. If issue No. 1 is decided in affirmative, as to what effect? OPP

3. Whether the suit of the plaintiff is not maintainable? OPD

4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD

5. Relief.

4. The trial Court dismissed the suit, whereas the first Appellate Court took the contrary view. Therefore, the defendants filed this regular second appeal.

5. Heard, the plaintiff had joined the Haryana State Electricity Board as Assistant Lineman in the year 1968 and was promoted as Lineman in the year 1971 and Assistant Foreman on 10.01.1992. Ultimately, he retired on 28.02.2002 and filed this suit on 26.10.2006. Vide letter dated 27.02.1998 (Ex. PW 2/4), the Haryana State Electricity Board had introduced "Assured Career Progression Scheme" for its regular employees of Class "C" and "D" category w.e.f. 01.01.1996. The object of the scheme was to provide at least two financial up-gradations to its employees, if otherwise, a regular employee is not able to get promotion for financial up-gradation. The said scheme was adopted by the Dakshin Haryana Bijli Vitran Nigam vide its office order dated 23.02.2004 (Ex. PW 2/5). The ACP scales were to be granted with reference to the functional pay scale as on 31.12.1995 of the post of first entry into the erstwhile Board's service on completion of 10/20 years of regular satisfactory service, subject to the fulfillment of other conditions, as contained in office order No. 706/F dated 27.02.1998 and further amendments issued from time to time.

6. Now the question arises, "whether the plaintiff, who had completed more than 20 years of service, was entitled to the benefits of ACP scheme."

7. In this regard, I am convinced with the judgment passed by the first Appellate Court, which refers to the judgment passed by this Court in case Ramesh Dahiya v. Uttar Haryana Bijli Vitran Nigam Limited, 2008 (2) S.C.T. 624 : 2008 (3) RSJ 186, wherein it was observed that the plaintiff, who was working on the post of Draftsman since April 1983, had completed 20 years of service on April, 2003 and he did not get any financial up-gradation in the functional pay scale

prescribed for the post as on 31.12.1995 during this period of 20 years either as a consequence of his functional promotion in the hierarchy or as a consequence of revision of pay scale for the same post. Therefore, he was entitled to the benefit of the ACP. In para No. 6 of the aforesaid judgment, this Court observed as under:-

The petitioner had been promoted as Draftsman with effect from April 13, 1983. So, under the A.C.P. Rules of 1998, his pay should have been fixed in the 1st A.C.P. Scale on account of ten years of regular satisfactory service on the post of Draftsman with effect from January 01, 1996 and in the 2nd A.C.P. Scale on account of twenty years of regular satisfactory service on this post with effect from April 01, 2003. Vide the impugned order dated October 20, 2004 (Annexure P-2), the petitioner has been erroneously granted the 2nd A.C.P. Scale of the post of junior Draftsman on which post he was initially appointed on November 07, 1980 on completion of 20 years of regular service. The purpose of providing 1st and 2nd A.C.P. pay scale is to remove stagnation of the employees on one post for more than 10/20 years. The petitioner joined the Nigam as Junior Draftsman on November 07, 1980. He was promoted as Draftsman on April 13, 1983. Had he remained on the post of Junior Draftsman for all this period, he would have been granted 1st and 2nd A.C.P. pay scale on the post of Junior Draftsman. Since after his promotion as Draftsman, he remained on the same post for more than ten years on the date of coming into force of the A.C.P. Rules of 1998 i.e. January 01, 1996, he was entitled to be given the 1st and 2nd A.C.P. Pay scale by counting his service as Draftsman. To make it more clear, if the petitioner was promoted as Head Draftsman, which is the next promotional post after Draftsman and had remained on this post for ten years as on January 01, 1996, he would have been given the 1st A.C.P. Scale of the post of head Draftsman on January 01, 1996.

8. While applying the ratio, as laid down in the aforesaid judgment and in the light of the facts and circumstances of the present case where the plaintiff had remained on the same post for more than 20 years on the date of coming into force the ACP Rules of 1998 i.e. January 01, 1996, this Court is of the view that he was entitled to be given the 1st ACP and 2nd ACP scales by counting his service as Assistant Foreman.

9. While discussing the scope of Rule 5 of the Haryana Civil Services (Assured Career Progression) Rules, 1998, the Hon'ble Apex Court in case Commissioner and Secretary to Govt. of Haryana and others v. Ram Sarup Ganda and others, 2007 (2) S.C.T. 476 : 2007 (3) RSJ, 154, observed as under:-

From the scheme, it is clear that the benefit of ACP scale was intended to be given to the Government employees to avoid stagnation and to confer them at least two promotions/upgradations. Rule 5 quoted above specifically provides that these ACP scales may not be granted to Government employees who have already got at least two financial upgradations within 20 years of service. This also mentions that the starting point for giving such ACP scales shall be the initial

entry into the service.

10. The Hon"ble Apex Court, in the aforesaid judgment, further observed 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 up-gradations, 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.

11. Similarly, this Court in case Mohinder Kumar Vs. The Chairman, Haryana Vidut Parsaran Nigam Ltd., Panchkula and Others , while discussing Rule 5 of the aforesaid Rules and relying upon Ramesh Dahiya's case (supra), observed as under:-

This issue of entitlement to the ACP scales with reference to the very same rule has also been considered by a Division Bench of this Court in Ramesh Dahiya v. UHBVN in its decision dated 04.04.2008. The division Bench was holding that if a person had not earned promotion within the period specified in the notification then, ACP scales will have to be applied. As an illustration, the Division Bench had also observed that even a person had earned a promotion as a Chief Draftsman and stagnated in that post for 10 or 20 years, would be entitled to the ACP scales. The issue relating to the applicability of the ACP scales cannot be only by a reference to whether the petitioner had during his service obtained any promotion. The very fact that a person had obtained a promotion, cannot disentitle him with reference to the fact that such promotion had come in his way before or after the 10 years or 20 years period. If within the said period of 10 or

20 years, a person had not earned a promotion, the denial of ACP scales to him shall be unjustified. The contention of the respondents, therefore, that the petitioner had earned promotion after his initial entry of service as disentitling him to ACP scales is not correct and is rejected.

12. Again this Court, while deciding bunch of petitions in case of Narinder Kumar Vs. State of Haryana and Others, observed as under:-

1. The benefit of ACP scale was intended to be given to the Government employees to avoid stagnation and to confer them at least two promotions/up-gradations.

2. As per Rule 5 of the ACP Rules, ACP scales may not be granted to Government employees who have already got at least two financial up-gradations within 20 years of service.

3. The starting point for giving such ACP scales shall be the initial entry into the service.

4. In the event 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.

Having scrutinized the impugned judgment, the view taken by the first Appellate Court appears to be quite reasonable and no further interference is called for.

No substantial question of law arises for determination.

Dismissed.