
(2015) 04 P&H CK 0408
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6829 of 2013

Satya Narain Sharma

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) 4 SCT 353

Hon'ble Judges : Daya Chaudhary, J.

Bench : Single Bench

Advocate : R.N. Sharma, Advocate, for the Appellant; P.S. Poonia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—The prayer in the present petition is for issuance of a writ in the nature of certiorari quashing order dated 20.11.2012 (Annexure P-12), where by, step up in pay of the petitioner at par with his junior, namely, Subhash Chander, Lower Division Clerk, has been withdrawn in terms of Finance Department Haryana Office Memorandum dated 23.06.2009 (Annexure P-13), adopted by the respondents vide letter dated 13.01.2010. A further prayer has also been made for issuance of directions to the respondents to give step up in the pay at par to similarly situated employees as well as junior to the petitioner, in view of decision of Hon"ble the Apex Court in case Commissioner and Secretary to Government of Haryana and others v. Ram Sarup Ganda and others, , 2007 (2) S.C.T. 476 : Civil Appeal No. 3250 of 2006, decided on 02.08.2006 (Annexure P-2) .

2. Learned counsel for the petitioner submits that the services of the petitioner were regularized w.e.f. 20.02.1980 and there after, he was promoted to the post of Lower Division Clerk vide order dated 08/11.04.1983. Hon"ble the Apex Court in Ram Sarup Ganda and others" case (supra) directed the respondents to step up the pay and pay scale to seniors at par with juniors. The respondent-Department also ordered to grant that benefit to all senior employees at par with

juniors vide letter dated 05.03.2007. Learned counsel also submits that as per order dated 13.04.2007, the ACP scale was granted to all seniors in case that has been allowed to juniors. It is also the argument of learned counsel for the petitioner that in spite of giving that benefit to the petitioner, a show cause notice was issued for withdrawal of the same and ultimately, that benefit was withdrawn in view of Finance Department Instructions dated 23.06.2009, whereas, this benefit was granted in the pay band of Rs. 5200-20200 with Grade Pay of Rs. 3300/- w.e.f. 01.01.2006 i.e. the date on which the pay scales were revised and ACP scales, which came into existence vide notification dated 30.12.2008. Learned counsel also submits that the case of present petitioner is squarely covered by decision of Hon''ble the Apex Court in Ram Sarup Ganda's case (supra).

3. Learned State counsel submits that one Rajbir Singh approached this Court by way of filing CWP No. 25750 of 2013 and said petition was allowed by holding that the petitioner is entitled to step up in pay scale with his junior vide judgment dated 08.01.2015.

4. Learned counsel for the respondent has not disputed the decision of Hon''ble the Apex Court in Ram Sarup Ganda's case (supra) as well as decision in Rajbir Singh v. UHBVNL and others (CWP No. 25750 of 2013), decided on 08.01.2015.

5. Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

6. Admittedly, the case of the petitioner is squarely covered by decision of Hon''ble the Apex Court in Ram Sarup Ganda's case (supra) as well as judgment of this Court in Rajbir Singh's case (supra).

7. The relevant portion of the judgment passed in Rajbir Singh's case (supra), while relying upon the judgment of Hon''ble the Apex Court, is reproduced asunder:-

"A combined reading of the operative para of the judgment in Ram Sarup Ganda's case (supra) and instructions issued in compliance thereof would show that no ambiguity of any kind, whatsoever, was left and the petitioner was rightly granted benefit of stepping up the pay scale with his junior Ajay Kumar, by passing the order dated 19.2.2008 (Annexure P-8). It seems that the respondent authorities completely misread, misunderstood and misinterpreted the ratio of the Division Bench judgment in P.C. Manchanda's case (supra), wherein a clear exception has been carved out in the following terms:-

"If the higher pay to the petitioners has resulted from the application of ACP Scales, then there is no question of withdrawal of benefits and there will also be no question of recoveries to be made."

Another equally important aspect of the matter is that while issuing instructions Annexure R-4/1, which was duly adopted by the respondent-corporation, the authorities failed to take into notice earlier instructions issued by the State vide

Annexures P-3 to P-7. In fact, there was not even a passing reference of the instructions contained in Annexures P-3 to P-7, while issuing instructions dated 23.6.2009. This seems to be the basic reason which has resulted in passing of the impugned orders. However, it is an undisputed fact that the impugned orders are clearly against the law laid down by the Hon''ble Supreme Court in Ram Sarup Ganda's case (supra). Having said that, this Court feels no hesitation to conclude that the impugned orders cannot be sustained.

Further, if the impugned orders are allowed to stand, the benefit which was rightly granted to the petitioner in compliance of the directions issued by the Hon''ble Supreme Court in Ram Sarup Ganda's case (supra), would be set at naught and the impugned action would be in clear violation of the law laid down by the Hon''ble Supreme Court. In this view of the matter, it is unhesitatingly held that the respondent authorities acted contrary to the law laid down by the Hon''ble Supreme Court, because of which the impugned orders cannot be sustained.

While carving out the above said exception in P.C. Manchanda's case (supra), the Division Bench was conscious about the fact that the Hon''ble Supreme Court has already issued the directions in this regard in Ram Sarup Ganda's case (supra). However, the respondent authorities failed to appreciate the above said exception in the correct perspective, while issuing later instructions Annexure R-4/1. It is so said, because neither earlier instructions contained in Annexure P-3 to P-7 were superseded nor any clarification was issued in that regard. Thus, the impugned orders cannot be sustained."

In view of the facts and law position as discussed above in Ram Sarup Ganda's case (supra) and Rajbir Singh's case (supra), the present petition deserves to be allowed.

However, the impugned order dated 20.11.2012 (Annexure P-12) is set aside and the petitioner is held entitled for benefit of step up in pay scale at par with his junior, namely, Subhash Chander, Lower Division Clerk. However, the earlier orders dated 18.05.2007 (Annexure P-8) and 28.06.2007 (Annexure P-9) are ordered to be restored.

No order as to costs.