

HARYANA VIDYUT PRASARAN NIGAM LIMITED

Regd. Office : Shakti Bhawan, Plot No. C-4, Sector-6, Panchkula 134109

Corporate Identity Number : U40101HR1997SGC033683

Website: www.hvsn.org.in, E-mail: companysecy@hvsn.org.in

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Telephone No. - 0172-2560769, 0172-2571841

To

1. The CE/Admn., HVPNL, Panchkula.
2. The CE/PD&C, HVPNL, Panchkula.
3. The CE SO & Comml., HVPNL, Panchkula.
4. The CE/Financial Officer, HVPNL, Panchkula.
5. The CAO, HVPNL, Panchkula.
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7. The CE/IT, HVPNL, Panchkula.
8. The CE/TS, HVPNL, Panchkula.
9. The CE/TS, HVPNL, Hisar.
10. The CE/TS, HVPNL, Gurugram.
11. The CE/MM, DHBVN, Hisar.
12. The CE/PD&C, DHBVN, Hisar.
13. The CE/Comml., DHBVN, Hisar.
14. The CE/Op. DHBVN, Hisar.
15. The CE/Op. DHBVN, Delhi.
16. The CE/HR, DHBVN, Hisar.
17. The CE/Admn., DHBVN, Hisar.
18. The CE/MM, UHBVN, Panchkula.
19. The CE/PD&C, UHBVN, Panchkula.
20. The CE/Comml., UHBVN, Panchkula.
21. The CE/Op., UHBVN, Panchkula.
22. The CE/Op. UHBVN, Rohtak.
23. The CE/Admn., UHBVN, Panchkula.
24. The CE/HPPC, UHBVN, Panchkula.
25. The CE/IT, UHBVN, Panchkula.
26. The CE/Admn., HPGCL, Panchkula
27. The CE/RGTPP, HPGCL, Khedar
28. The CE/PTPS, I & II, HPGCL, Panipat
29. The CE/ DCRTPP, HPGCL, Yamunanagar
30. The CE/FTPS, HPGCL, Faridabad
31. The CE/Projects, HPGCL, Panchkula
32. The CE/REO, HPGCL, Panchkula

Memo No. 87/LB-2(13)

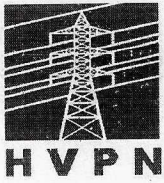
Dated: 04.06.2024

Subject: CWP No. 1692 of 2016 titled as Amjad Khan V/s UHBVN & Ors.

The aforesaid case came up for hearing on 18.04.2024 and the Hon'ble High Court vide judgment dated 18.04.2024 dismissed the same on the ground that the petitioner paid all amount in view of assessment made by Nigam under rule-135 of Electricity Act, 2003 alongwith compounding charges. The operative part of the judgment dated 18.04.2024 is reproduced here under:-

"8. I have heard the learned counsel for the respective parties and have gone through the documents available on record.

- 9. Taking into consideration that the assessed amount along with the compounding charges have already been deposited by the petitioner on 02.01.2016, I find myself in agreement with the learned counsel for the respondent-Distribution Licensee that it would no more be available to the petitioner to dispute the findings recorded by the respondents as regards the case being that of theft of electricity. There was no compulsion on the petitioner to seek compounding of the offence and by having opted for seeking compounding, the accused-petitioner herein would not be entitled thereafter to dispute the finding recorded or conclusions drawn by the Distribution Licensee.*



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10. Further, insofar as the question of assessment of demand of Rs.16,44,844/- is concerned, there is nothing on record on the basis whereof it can be said that the aforesaid assessment has not been done by the authorities as per the formula approved by the appropriate Commission under the Electricity Supply Code and the Electricity Supply Instructions Manual. Hence, the determination of the demanded amount cannot be faulted with in the absence of any reference to violation of any of the approved structured formula for assessment of the said amount. There is also nothing on record that the deposit of the above-said assessed amount was made by the petitioner without prejudice to his rights. He having accepted the liability as assessed and having deposited the amount without prejudice his rights, would not now be entitled to raise a challenge, by way of present petition, to the proceedings undertaken by the respondent authorities.

11. Finding no merits, the present writ petition is dismissed."

It is important judgment on issue of theft of electricity and assessment alongwith compounding charges. It is, therefore, requested to circulate the judgment amongst the subordinate offices under your control for dismissal of similarly situated case by placing reliance on the aforesaid judgment. A copy of judgment dated 18.04.2024 is enclosed herewith for ready reference.

DA/As above

Dy. District Attorney/Legal Retainer,

For O/o L.R. HPU, Panchkula

CC:-1. The S.E./XEN/IT, UHBVN, HVPNL, HPGCL, DHBVN, Panchkula/Hisar are requested to upload the judgment dated 18.04.2024 on the website of their utility.

2. The SDO/OP S/Divn. I/A, UHBVN, Yamunanagar.
3. Legal Retainer, HVPNL, Panchkula.
4. Legal Consultant, HVPNL, Panchkula.
5. Legal Consultant, HPGCL, Panchkula.
6. Law Officer, HVPNL, Panchkula.
7. Law Officer, DHBVNL, Panchkula.
8. Law Officer, UHBVNL, Panchkula.

DA: As above



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203

CWP-1692-2016 (O&M)

Date of decision: 18.04.2024

Amjad Khan

...Petitioner

VERSUS

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Anjum Ahmed, Advocate for the petitioner.

Mr. R.S. Longia, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order of assessment bearing Memo No.Y42/2016/20 dated 20.01.2016 issued by respondent No.4-Sub Divisional Officer, Operation, Industrial Area, U.H.B.V.N., Yamuna Nagar, vide which an amount of Rs.16,44,844/- had been demanded towards civil liability as well as to the notice for compounding bearing Memo No.Y42/2016/21 dated 20.01.2016 vide which an amount of Rs.3,00,000/- was demanded as compounding fee, from the petitioner on account of theft of electricity under Section 135 of the Electricity Act, 2003 (hereinafter referred to as 'the Act of 2003') against electricity connection bearing account No.RM-281.

2. Learned counsel for the petitioner contends that the petitioner is a subscriber and user against electricity connection No.RM-281 issued under The MS Category with a sanctioned load of 29.900 K.W. by the respondent-department for his premises i.e. Ajmer Saw Mills, situated at Village Baddi



Majra, Yamuna Nagar. He submits that the electricity meter was installed outside the boundary of the premises of the petitioner on the poles, by the officials of the respondent and the meter used to be regularly checked by the officer/staff of department. He states that on 06.01.2016, some officials of the respondent-department came to the premises of the petitioner and carried out some checking of the aforesaid electric meter as well as the wires fitted in the premises but no fault or illegality of any kind was noticed, however, the officials still removed the electric meter and prepared a checking report on LL-1 Form alleging that the seals on MCB & CTC were found tampered and lace wire was found cut and re-fixed with some adhesive. It is further alleged that upon checking, the accuracy of the electric meter was found to be working slow by 67.49%. It being a case of theft of energy, electricity supply was disconnected.

3. Learned counsel for the petitioner contends that the petitioner was called in M&T Lab., Yamuna Nagar, and upon checking nothing wrong or illegal of any kind was found to show tampering with the meter. A letter dated 12.01.2016 was thereafter received by the petitioner to remain present at Yamuna Nagar Laboratory on 13.01.2016 for internal examination of the meter. The petitioner visited the laboratory on the said date and the meter was checked again. He contends that the petitioner was apprised that there was nothing abnormal in the testing of the meter and that the report shall be sent soon. However, the petitioner was served with an order of assessment on 20.01.2016 for offence of theft under Section 135 of the Act of 2003 and a demand of Rs.16,44,844/- was raised. Another notice of even date for seeking compounding of offence was also served upon the petitioner. He



contends that the demand made by the respondents is unsustainable and illegal. It is vehemently argued that it being a case of slowness of the meter, the same cannot be labeled as theft of electricity and the case has been wrongly dealt with under the said category. It was also argued that the respondents had thereafter provided various schemes as per which the assessment was being enacted in the cases pertaining to slowness of the meter and that the petitioner is entitled to the benefit of such schemes floated by the respondents from time to time.

4. Learned counsel for the respondent-Distribution Licensee on the other hand submitted that the premises of the petitioner was checked on 06.01.2016 and it was found that 4 number of the seals on the MCB (2 nos.) and CTC (2 nos.) were tampered with by cutting of lace wire and re-fixing of the same with some adhesive material. On checking of the accuracy of the electricity meter and verifying the seals record, the meter was found running slow by 67.49% as the meter recorded only 1200 watts against 3692 watts recorded by the LT Acqua check installed at the fuse unit at the consumer end vide MTI report No.42893 of the M&P Wing. The MCB was opened by M&P Wing to check the accuracy of the meter by removing two MCB tampered seals. Further to check any foul play inside the CT Chamber, the same was also opened after removing CTC tampered seals and it was found that all the secondary wires and PT wires of the CTC's were inter changed i.e. not connected in order to the terminal block of the meter, which resulted in slow running of the meter and the seals were found tampered on MCB and CTC which had been done intentionally to effect the working of the meter. Hence, the complete MCB Box was removed by



cutting incoming and outgoing side of the cables being a suspected theft case. Notice was accordingly given to the petitioner about the testing of the meter the same was initially fixed for 07.01.2016 in the presence of the petitioner and representative of M/s Gensus Power Infrastructure, however, on that date no one came from the side of the Company-M/s Gensus Power Infrastructure whereupon the meter was not checked. Thereafter, on 13.01.2016, the representative of M/s Gensus Power Infrastructure came in the M&T Lab., Yamuna Nagar and the testing of the meter was undertaken in the presence of petitioner and representative of the supplier-M/s Gensus Power Infrastructure.

5. The consumption of electricity by the petitioner for the last 12 months was also analysed and it recorded 17628 units whereas the units assessed in view of the guidelines contained in the sale circular No.15/2014 issued by the Distribution Licensee to deal with and count in such cases were computed as 114816 units. After deducting 17628 units, the balance units were 86112 for which the assessed amount came to Rs.16,44,844/-.

6. Letter was sent to the competent authority/designated officer for taking further action about the suspected theft in view of LLI No.17, 18/3338 dated 06.01.2016. An order of assessment under Section 135 of the Act of 2003 was issued to the petitioner to deposit amount along with the notice under Section 135 read with Section 152 of the Act 2003 for seeking compounding of the said offence. As the amount was initially not deposited, a letter was sent to the SHO, Police Station Ambala, District Ambala for lodging an FIR against the petitioner. However, the petitioner thereafter deposited the assessed compounding amount on 02.02.2016 and filed the



present writ petition thereafter. He submits that the petitioner has already deposited the compounding charges, he cannot at this juncture dispute the case to be not that of theft of electricity. In the event he had any objection to the conclusion recorded by the respondent-Distribution Licensee as regards the case being that of a suspected theft of electricity, he was under no compulsion to seek compounding whereupon the said aspects could be determined before the Special Court/Special Judge, under Section 154 of the Act of 2003. Having opted not to dispute the finding recorded and having deposited the assessed amount and compounding charges, it is no more open to the petitioner to dispute the finding recorded/conclusions drawn by the Distribution Licensee about the case being that of a theft of electricity. He further submits insofar as the contention of the petitioner that the respondent-department has notified the settlements schemes with regard to the slowness of the meter is concerned, there is no reference to any such circular/scheme in the present petition.

7. In any case, the claim of the petitioner, if any, had to be considered under an applicable scheme and in the absence of any pleading or evidence it cannot be to ascertain that the petitioner ever applied under any applicable scheme and therefore, the contention of the petitioner is nothing more than the conjecture.

8. I have heard the learned counsel for the respective parties and have gone through the documents available on record.

9. Taking into consideration that the assessed amount along with the compounding charges have already been deposited by the petitioner on 02.01.2016, I find myself in agreement with the learned counsel for the



respondent-Distribution Licensee that it would no more be available to the petitioner to dispute the findings recorded by the respondents as regards the case being that of theft of electricity. There was no compulsion on the petitioner to seek compounding of the offence and by having opted for seeking compounding, the accused-petitioner herein would not be entitled thereafter to dispute the finding recorded or conclusions drawn by the Distribution Licensee.

10. Further, insofar as the question of assessment of demand of Rs.16,44,844/- is concerned, there is nothing on record on the basis whereof it can be said that the aforesaid assessment has not been done by the authorities as per the formula approved by the appropriate Commission under the Electricity Supply Code and the Electricity Supply Instructions Manual. Hence, the determination of the demanded amount cannot be faulted with in the absence of any reference to violation of any of the approved structured formula for assessment of the said amount. There is also nothing on record that the deposit of the above-said assessed amount was made by the petitioner without prejudice to his rights. He having accepted the liability as assessed and having deposited the amount without prejudice his rights, would not now be entitled to raise a challenge, by way of present petition, to the proceedings undertaken by the respondent authorities.

11. **Finding no merits, the present writ petition is dismissed.**

(VINOD S. BHARDWAJ)
JUDGE

18.04.2024

Mangal Singh

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



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25. The CE/Projects, HPGCL, Panchkula
26. The CE/REO, HPGCL, Panchkula

Memo No. Ch.-25/LB-2(8)

Dated: 10/06/2024

Subject: CWP No. 1125 of 2020 titled as Krishna Devi Vs. State of Haryana & Ors.

Attention is drawn to judgment dated 16.12.2023 passed in subject cited case vide which Hon'ble High Court dismissed the writ petition.

The relevant part of judgment dated 16.12.2023 is reproduced hereunder:-

5. Before going into the merits of the case, it would be relevant to reproduce Rule 4.12-A of Punjab Civil Services Rules, Vol-II:-

PL
CE/Admn.

10.6.2024

SE/IT

PSB

10/06

AE/IT

AE/IT

CCO

M
13/11

No. 1243...PS/CE/Admn. & IT

Dated 10/06/2024

"In respect of Class-III and Class-IV employees, who are required to undergo departmental training relating to jobs before they are put on regular appointment, training period may be treated as qualifying service for pension, if the training is followed immediately by regular appointment. This benefit will be admissible to all such employees even if they are not given the scales of pay of the post but only a nominal allowance during the training."

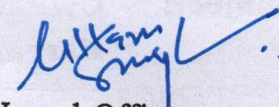
6. From the perusal of afore-said Rule, it is crystal clear that the husband of the petitioner expired on 31.05.1990 i.e. during training period and as such, he was not given offer of appointment of Plant Attendant Grade-II/Technician Grade-II in regular capacity due to death before completion of training period. The training period of the deceased employee is not followed by regular employment, thus, the petitioner is not liable for family pension in view of the afore-said Rule. Moreover, the son of the petitioner has already been given the employment to the post of Helper.
7. It is also evident from the case file that there is an inordinate delay on the part of the petitioner for approaching the Court and the petitioner is not in a position to explain as to why a delay of 30 years has occurred in approaching the Court.
8. In view of the discussions made hereinabove, the present petition lacks merit and is dismissed with costs of Rs.25,000/-, which shall be deposited with the State Exchequer within a period of one month from the date of receipt of certified copy of this order.

It is an important judgment on the issue that once the training period of employee is not followed by regular employment, then the petitioner is not entitled for family pension and moreso the son of the petitioner has already been given employment to the post of helper. Even otherwise, the case of the petitioner is also suffered on delay.

The above judgment be circulated to offices under your control for praying dismissal of similar cases by placing reliance on the judgment dated 16.12.2023 passed by Hon'ble High Court. It is also requested to host the Judgment dated 16.12.2023 on the website of concerned Power Utility. A complete copy of judgment dated 16.12.2023 is enclosed herewith for ready reference.

This issue with the approval of L.R.

DA/As Above


Legal Officer,
HPUs, Panchkula.

CC:

1. Legal Retainer, HVPNL, Panchkula.
2. Legal Consultant, HVPNL, Panchkula.
3. Legal Consultant, HPGCL, Panchkula.
4. Law Officer, HVPNL, Panchkula.
5. Law Officer, DHBVNL, Panchkula.
6. Law Officer, UHBVNL, Panchkula.



CWP-1125-2020

- 1 -

105

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCWP-1125-2020
DECIDED ON: 16.12.2023

KRISHNA DEVI

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ashish Gupta, Advocate with
Mr. G.S. Bidhar, Advocate
for the petitioner.

Mr. Safia Gupta, AAG, Haryana.

Mr. Parveen Chauhan, Advocate for
Mr. GDS Wasu, Advocate
for respondents No.2 and 3.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Mandamus* directing the respondents to grant/release the family pension benefits along-with arrears w.e.f the date it became due with interest @ 12% per annum on all the delayed payments of her family pension.

2. Brief facts of the case are that the husband of the petitioner namely Hari Om Sharma was a regular and confirmed employee of the Haryana Tenaries Limited, Jind as Assistant Mechanic. However, in the year 1988, the Haryana Tenaries Limited was closed down by the Govt. of Haryana and consequently the

employees of the Haryana Tenaries Limited were retrenched from service. Accordingly, aggrieved by the said illegal and arbitrary action of the respondents-State, the employees of Haryana Tenaries Limited challenged the order of closure by way of CW No.9469 of 1988 in this Court and after due consideration of the matter, vide Judgment Dated 01.12.1988, this Court was pleased to direct the respondents to adjust/absorb the employees of the Haryana Tenaries Limited in other Govt. Departments or Boards/Corporations according to their individual qualification and fitness. While passing the aforesaid judgement, a direction was also issued to the department that the service rendered by the employees of the Haryana Tenaries Limited shall also be taken into account, as qualifying service after their absorption/adjustment in other departments under the State of Haryana. The appointment of the husband of the petitioner in the Haryana State Electricity Board was on regular basis. Unfortunately, the husband of the petitioner died in harness on 31.05.1990 leaving behind his widow-petitioner and 4 minor children, who was the sole bread winner of the family. Despite making application seeking employment on compassionate grounds, the petitioner was denied appointment on suitable post by the erstwhile Haryana State Electricity Board vide order dated 14.08.1991 on the ground that her request is not found feasible for acceptance in terms of the rules/instructions of the State Government. Thereafter, the Petitioner filed CWP No.3238 of 1992 challenging the said order of rejection of her claim for compassionate employment, which was admitted and direction was issued to list the matter for hearing within a period of 3 months being urgent in nature. Vide order dated 26.09.2013 the said writ petition was allowed and a direction was issued to the respondents to consider and appoint the petitioner against an appropriate post as per her eligibility and it was left open for the petition to forego her right in favour of



CWP-1125-2020

- 3 -

her son. The afore-said order dated 26.09.2013 passed was challenged by the respondents by way of LPA No.170 of 2014, which stands dismissed vide order dated 03.02.2014. When the directions passed by this Court were not complied with, petitioner was compelled to approach this Court again by way of filing contempt petition No.2474 of 2014. During the pendency of the COCP, respondent Corporation issued the appointment letter in favour of the son of petitioner and in lieu thereof the contempt petition was ordered to be disposed off by this Court vide Order dated 28.04.2014 having been rendered infructuous. The petitioner through her counsel got served a Legal Demand Notice upon the respondents on 02.12.2015 claiming the benefit of family pension and other retiral/terminal dues of her late husband. The petitioner again submitted a reminder dated 5.12.2019 to the respondents to get release her due 'family pension benefits, besides personally approaching the respondents time and again but till date no action has taken by the respondents till date. Hence the present petition.

3. It has contended by learned counsel for the petitioner that since the issue with regard to the nature of the employment of the husband of the petitioner stands settled finally after grant of compassionate employment to the son of the petitioner, and it was held that the nature of the employment of the husband of the petitioner was that of a regular employee by implication, therefore, the petitioner also became entitled for grant of family pension and other retiral/terminal dues of her late husband who died in harness on 31.05.1990. The petitioner also served legal notice upon the respondents.

4. Learned counsel for respondents No.2 and 3 has put in appearance and filed a short reply stating that the present petition suffers from inordinate delay and laches, as the petitioner is claiming for family pension w.e.f. 01.06.1990 for which

she has served a legal notice on 05.12.2019 i.e. after a gap of 30 years. Hence, the same is liable to be dismissed on this ground alone. It is contended on behalf of respondents No.2 and 3 that the petitioner expired on 31.05.1990 during the period of training and he could never be appointed on regular basis of HSEB. It is further contended that the son of the petitioner has already been given an employment to the post of Helper on compassionate ground.

5. Before going into the merits of the case, it would be relevant to reproduce Rule 4.12-A of Punjab Civil Services Rules, Vol-II:-

“In respect of Class-III and Class-IV employees, who are required to undergo departmental training relating to jobs before they are put on regular appointment, training period may be treated as qualifying service for pension, if the training is followed immediately by regular appointment. This benefit will be admissible to all such employees even if they are not given the scales of pay of the post but only a nominal allowance during the training.”

6. From the perusal of afore-said Rule, it is crystal clear that the husband of the petitioner expired on 31.05.1990 i.e. during training period and as such, he was not given offer of appointment of Plant Attendant Grade-II/Technician Grade-II in regular capacity due to death before completion of training period. The training period of the deceased employee is not followed by regular employment, thus, the petitioner is not liable for family pension in view of the afore-said Rule. Moreover, the son of the petitioner has already been given the employment to the post of Helper.

7. It is also evident from the case file that there is an inordinate delay on the part of the petitioner for approaching the Court and the petitioner is not in a position to explain as to why a delay of 30 years has occurred in approaching the Court.



CWP-1125-2020

- 5 -

8. In view of the discussions made hereinabove, the present petition lacks merit and is dismissed with costs of Rs.25,000/-, which shall be deposited with the State Exchequer within a period of one month from the date of receipt of certified copy of this order.

16.12.2023

Sham

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

(SANDEEP MOUDGIL)
JUDGE

8617



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25. The CE/Projects, HPGCL, Panchkula
26. The CE/REO, HPGCL, Panchkula

Memo No. Ch.-59/LB-2(49)

Dated: 03.05.2024

Subject: CWP No. 28134 of 2017 titled as Naresh Kumar Kaushik Vs. HPGCL.

Attention is drawn to judgment dated 16.12.2023 passed in subject cited case vide which Hon'ble High Court dismissed the writ petition.

The relevant part of judgment dated 16.12.2023 is reproduced hereunder:-

- (13). It is not the case of the petitioner that he was promoted to the post of Head Store Keeper, or appointed on officiating basis, to that post by the Appointing Authority and had the right to the higher pay scale on the basis of his promotion, either on ad hoc or regular or officiating basis. Nor did the stop gap order declaring or conferring him with the position of Head Store Keeper was made by the appointing authority. The petitioner is seeking this benefit only on the strength of discharging the duties as Head Store Keeper, although his substantive capacity was that of Plant Assistant.

PD
CE/Admn.
10.6.2024

SE/IT

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10/01

Xen/mms

CO

13/16

No. 1940 PS/CE/Admn.& IT

Dated 03.05.2024

(14). Taking into the account the totality of facts and circumstances of the case and taking note of the fact that the petitioner has already retired from the post of Plant Assistant and was given charge as Head Store Keeper, only as a stop gap arrangement, this Court is of the considered view that the petitioner would not be entitled to any pay and allowances of the post of Head Store Keeping for the period from 01.10.2010 to 28.12.2016 held by him on stop gap arrangement.


(15). Dismissed.

It is an important judgment on the issue that once the petitioner has given charge only a stop gap arrangement, then he is not entitled to any pay and allowances for the period of stop gap arrangement.

The above judgment be circulated to offices under your control for praying dismissal of similar cases by placing reliance on the judgment dated 16.12.2023 passed by Hon'ble High Court. It is also requested to host the Judgment dated 16.12.2023 on the website of concerned Power Utility. A complete copy of judgment dated 16.12.2023 is enclosed herewith for ready reference.

This issue with the approval of L.R.

DA/As Above


Legal Officer,
HPUs, Panchkula.

CC:

1. Legal Retainer, HVPNL, Panchkula.
2. Legal Consultant, HVPNL, Panchkula.
3. Legal Consultant, HPGCL, Panchkula.
4. Law Officer, HVPNL, Panchkula.
5. Law Officer, DHBVNL, Panchkula.
6. Law Officer, UHBVNL, Panchkula.



HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28134-2017

Reserved on 28.11.2023

Decided on 16.12.2023

Naresh Kumar Kaushik

... Petitioner

VS.

Haryana Power Generation Power Corp.Ltd. & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RS Panghal, Advocate for the petitioner

Mr. RS Budhwar, Advocate for the respondents

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of order dated 27.09.2017 (Annexure P7) by which the respondents have declined to grant pay scale to the petitioner for the work rendered by him in the office of higher post of Head Store Keeper in the pay scale of Rs.9300-34800 with Grade Pay of Rs.3200/- from 01.10.2010 to 28.12.2016.

(2). Learned counsel for the petitioner submits that the petitioner joined the service in the respondent-Corporation on 16.02.2009 in the pay band of Rs.5200-20200 with GP of Rs.2400/- and was drawing the basic pay of Rs.7740+2400 = Rs.10140/- on the post of Plant Attendant and was given the charge of Head Store Keeper in "General and Electrical Store".

(3). It is urged that though the petitioner was reluctant, however, he was forced to work as such on the higher post of Head Store Keeper and was warned that he might be held liable for disciplinary action and disobedience. He submits that the petitioner accepted the higher responsibility and as such

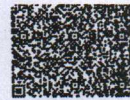


made various representations (Annexures P1 to P7) to the authorities to grant him higher pay scale. However, the requests of the petitioner were declined vide order dated 27.09.2016 (Annexure P7) wherein the District Level Grievance Committee formed under the Chairmanship of the Chief Manager observed that since it was only a temporary adjustment as a stop gap arrangement keeping in view the urgency of work and shortage of staff of store, therefore, no claim of higher pay scale from 01.10.2010 to 28.12.2016 is justified.

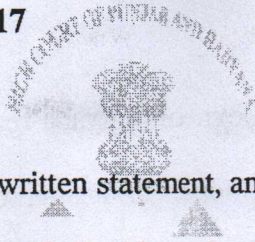
(4). The argument raised on behalf of the petitioner is that as per the principle of 'equal pay for equal work', the petitioner is entitled to the higher pay scale since the petitioner has rendered the higher responsibility of the same pay scale. Reliance has been placed on *P. Grover vs. State of Haryana 1983 AIR SC 1060* and *Arindam Chattopadhey & Ors. Vs. State of West Bengal & Ors. (2013) 4 SCC 152* as well as the decision of this Court rendered in similar situation in case of *Gurmej Singh vs. State of Punjab 1995(3) RSJ 491*.

(5). Notice of motion was issued on 12.12.2017 and thereafter, the respondents have filed their written statement dated 03.07.2018 through AK Miglani, Administrative Officer, PTPS, HPGCL, Panipat.

(6). Learned counsel for the respondents, on the basis of the averments made in the written statement submits that the petitioner was given charge of Sub-Store of General & Electricals as a time gap arrangement keeping in view the urgency of work and shortage of staff vide office order dated 12.04.2010 (Annexure P1). He further averred that the petitioner was working in one of the 7 Sub-Store i.e. General & Electrical Store, as



CWP-28134-2017



mentioned in the written statement, and was thereafter relieved from the Store Division on 03.01.2017 vide order dated 02.03.2016 (Annexure R1) after handing over the charge of General & Electrical (Sub Store) to Smt. Santosh Kumari, Asstt. Store Keeper on her promotion from the post of Store Munshi to Asstt. Store Keeper.

(7). Mr. RS Budhwar, Advocate for the respondents vehemently urged that no representation was received from the petitioner during the period from 12.04.2010 to 30.08.2015 i.e. a gap period of more than 5 years and no sooner the representation was made by the petitioner on 31.08.2015, the authorities immediately transferred him from the office of XEN/Store, PTPS, HPGCL, Panipat to the office of SE/O&M-V, PTPS, HPGCL, Panipat and as such, the petitioner stood transferred on 02.03.2016 and during the period of stop gap arrangement, no extra burden was put on the petitioner.

(8). Heard learned counsel for the parties and gone through the record.

(9). Admittedly, the petitioner was given the charge of Sub-Store of General & Electricals as a time gap arrangement keeping in view the urgency of work & shortage of staff. It is case of the respondents that the post of Sub-Store is being looked after independently by the Asstt. Store Keeper in same pay scale of Plant Attendant-II. In fact, the representations of the petitioner were duly considered by the Committee under the Chairmanship of Chief Manager, at length, and it was found that the petitioner along with 3 other officials were adjusted as a time gap arrangement keeping in view the urgency of work and shortage of staff i.e. Head Store Keeper/Store Keeper/Asstt. Store Keeper. The Committee further found that the references of court



cases/instructions by Govt. of Haryana regarding allowing the said benefits mentioned by the petitioner in his representation were found to be not applicable in the case of the petitioner and also the pay scales of Asstt. Store Keeper and Plant Attendant-II are same.

(10). Reliance placed on Gurmej Singh's case, and P.Grover's case are totally distinguishable as those were the cases where the writ petitioner were either given current duty charge until his retirement or that the writ petitioner was given promotion on acting basis, entitling them to claim salary/allowances for the higher post. In the present case, the petitioner was given the charge of Head Store Keeper on 12.11.2010, as an 'adjustment', keeping in view the urgency of work and shortage of staff as a time gap arrangement until he was replaced w.e.f. 02.03.2016 by Santosh Kumari, Asstt. Store Keeper on her promotion.

(11). The contention of the petitioner that he would be eligible for pay scale for higher post, will not stand as the same is ordinarily payable in a situation where a Government servant is placed in additional charge of an equivalent post or a higher post without any element of promotion. Such arrangements are envisaged only for short periods as stop gap arrangements for avoiding any interruption of work.

(12). It is trite that when a person is employed on a stop gap or temporary arrangement basis, he will be entitled to the benefits of pay scales with increments during the period of service on daily or stop gap or *ad hoc* basis, only, if he is able to establish that either in the contract or applicable rules, or settled principles of service jurisprudence, he is entitled to the benefits of pay-scales with increments during the period of stop gap



arrangements etc. The petitioner has failed to press into aid any such rule/instructions which provides for grant of pay scale to higher post in case of stop gap arrangement. This view of mine is reinforced by the view taken by the Apex Court in Surendra Nath Pandey and Ors. Vs. Uttar Pradesh Cooperative Banck Limited and Anr., (2010)12 SCC 400.

(13). It is not the case of the petitioner that he was promoted to the post of Head Store Keeper, or appointed on officiating basis, to that post by the Appointing Authority and had the right to the higher pay scale on the basis of his promotion, either on *ad hoc* or regular or officiating basis. Nor did the stop gap order declaring or conferring him with the position of Head Store Keeper was made by the appointing authority. The petitioner is seeking this benefit only on the strength of discharging the duties as Head Store Keeper, although his substantive capacity was that of Plant Assistant.

(14). Taking into the account the totality of facts and circumstances of the case and taking note of the fact that the petitioner has already retired from the post of Plant Assistant and was given charge as Head Stote Keeper, only as a stop gap arrangement, this Court is of the considered view that the petitioner would not be entitled to any pay and allowances of the post of Head Store Keeping for the period from 01.10.2010 to 28.12.2016 held by him on stop gap arrangement.

(15). Dismissed.

16.12.2023

V.Vishal

(Sandeep Moudgil)

Judge

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No

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