

sale. In such like cases, the Estate Officer would be entitled to issue show-cause-notice to the allottee for resumption of the site. However, in the present case, no infringement of any clause of the lease deed has been highlighted. On the basis of the imaginary classification, which was not even in sight in 1973, no violation could be alleged. The order dated 5th July, 2007 is wholly illegal and unwarranted.

(17) For the reason afore-mentioned, this petition succeeds. The order dated 5th July, 2007 (Annexure P-I) passed by respondent No. 2 is hereby quashed. The petitioners shall have their costs, which is quantified at Rs. 10,000.

(18) Photocopy of this order be placed on the file of each connected case.

R.N.R.

Before Mehtab S. Gill & K. Kannan, JJ.

PREM CHAND MANCHANDA AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents*

CWP No. 4563 of 2007

9th January, 2009

Constitution of India, 1950—Art. 226—Department wrongly stepping up pay of petitioners and ordering recovery from date of issue of instructions by Finance Department—None of petitioners could be imputed with any fraud or any voluntary act that had resulted in payment of higher pay—No fault with withdrawal of benefit of higher scale by stepping up of their pay—Petition allowed, order of recovery modified—No recovery at all for any excess amount paid to petitioners.

Held, that whatever the petitioners had not been apprised of, would be really irrelevant so long as the mistake which the Department had committed, was found later and all the petitioners had been granted

an opportunity to show cause against the withdrawal of the benefits. It had not sought for return of the entire amount that had been wrongly paid by stepping up of the pay. On the other hand, it had specifically mentioned that no recovery will be effected with retrospective effect but would be effected only with effect from 23rd July, 2003 from the date of issue of instructions by the Finance Department. If there is a scope for intervention in this regard, it is in this direction that would have to be modified. None of the petitioners could be imputed with any fraud or any voluntary act on their part that had resulted in payment of higher pay. While not finding fault with the withdrawal of the benefit of higher scale by stepping up of their pay for what they were not entitled, we find interest of justice would be best subserved if the recovery which had been ordered with effect from 23rd July, 2003 is modified to the effect that there shall be no recovery at all for any excess amount paid. The Department would be entitled to recompute/refix the scale of pay notionally for the period from the day when their scales were stepped up and the retiral benefits would be paid on such notional refixation of pay. Here again, we direct that there shall be no recoveries for any excess payment that have been made for the retired employees.

(Para 12)

Raghuvinder Singh, Advocate and Ravi Sharma, Advocate,
for the petitioners.

Harish Rathee, Sr. DAG, Haryana.

2. **C.W.P. No. 9780 of 2008**

Ravi Sharma Advocate with Sunil Bhardwaj, Advocate,
for the petitioners.

Harish Rathee, Sr. DAG, Haryana.

3. **C.W.P. No. 12144 of 2008**

Ravi Sharma Advocate with Sunil Bhardwaj, Advocate,
for the petitioners.

Harish Rathee, Sr. DAG, Haryana.

K. KANNAN, J.

I. Nature of lis :—

(1) The benefit of retaining the stepped-up pay by giving effect to Assured Career Progression Scales in the department of PWD and its subsequent withdrawal by the department gives rise to these bunch of writ petitions that effect fairly a large number of persons who have figured as petitioners in the respective writ petitions.

(2) C.W.P. No. 4563 of 2007 seeks for quashing of the proceedings of respondent No. 2 dated 15th January, 2007 (Annexure P-6) under which the increased pay scales granted to the petitioners earlier on 8th March, 1996 had been withdrawn. The impugned order, however, clarified that no recoveries would be effected with retrospective effect but that recovery would be effected from 23rd July, 2003 i.e. from the date of issue of instructions by the Finance Department. The impugned order further stated that the pension of the retirees would be compounded/refixed notionally for the period prior to the date of issue of instructions dated 27th March, 2003 and actually from the date of issuance of directions i.e. 23rd July, 2003. C.W.P. Nos. 9780 and 12144 of 2008 impugned the order of respondent No. 2 issued on 17th April, 2008, similarly, withdrawing the benefits of stepping up of pay granted to the petitioners and for recovery in the manner stated in the earlier order.

II. Facts giving rise to the dispute :

(3) All the petitioners had initially joined services of the respondent-department as Draftsmen. The promotional post for them was Head Draftsmen. During their employment with the respondent-department, pay scales of all categories had been revised with effect from 1st January, 1986 and consequent upon some anomalies pointed out by the employees association in some departments, pay scales were modified with effect from 1st May, 1990 instead of 1st January, 1986. The modification of the pay scales meant better emoluments but they had the benefit only from 31st April, 1990 through modified instructions issued on 23rd August, 1990. The department came to issue another set of instructions on 8th February, 1994 providing for Assured Career

Progression Scales to prevent stagnation in service. The issue of how these instructions operated in the manner of their application together with the subsequent modifications that were effected gives rise to the core controversy between the parties.

III. Details instructions for claiming ACP Scales :

(4) The instructions which were applicable to all the Government employees of Group 'C' and Group 'D' provided, *inter alia*, that persons who had completed 20 years of regular service or more of satisfactory service before 1st January, 1994 but who had got only one promotion or promotional scales/higher time scale/selection grade/, could be allowed in the place of present pay scale, the first higher standard scale with respect to the pay scale of the post applicable from 1st January, 1986. Any employee who completed such regular satisfactory service of 20 years after 1st January, 1994 but had got only one promotion or the higher pay scale could be allowed the first higher standard scale with effect from the first day of the month following the month in which he completed such service. In case of an employee who had got promotion already but the pay scale of the promotional post was only equal to or lower than the pay scale of the feeder post, the benefits of higher standard scale was also to be given.

IV. The petitioner's grievance :

(5) The petitioner's complaint was that in spite of the applicability of the instructions for the higher scales, they had not been awarded the same and certain representations yielded to fresh instructions dated 29th December, 1995 granting the benefits of stepping up of their pay with effect from 1st April, 1995 instead of 1st January, 1994 as has been previously said in the earlier instructions. The instructions had also specifically given the scales of pay at the various levels, namely, at Rs. 1400—2300 as was applicable with effect from 1st January, 1986. The corresponding higher pay scale was given as Rs. 1600—2660. This scale of Rs. 1600—2660 was higher than the revised pay scale of Rs. 1400—2600 and as such benefit of first higher pay scale was admissible. However, in the case of Head Draftsmen, the modified pay scale with effect from 1st May, 1990 remained at par with the higher standard pay scale admissible on the basis of pay scale of Rs. 1600-

2660. In such an event, the instructions stated that the benefit of higher standard pay scale could not be availed but they would be entitled for stepping up their pay in the manner specifically set forth in the notification. It could be noticed that the Assured Career Progression Scheme itself was only to act as an incentive in the nature of employment with assured promotions. If any employee had already received two promotions or more, by implication, the benefit of Assured Career Progression Scales was not applicable at all. According to the petitioners, it was this aspect which was lost sight of Assured Career Progression Scales had been given across the board to all persons holding the posts of Draftsmen and who, in some cases, had been promoted as Head Draftsmen. The instance of a mistake, as pointed out by the petitioner, was the case of Abhnashi Lal Chugh who was originally a Tracer, later promoted as Draftsman and still later promoted as Head Draftsman, had also been given the Assured Career Progression Scales but during the relevant period, the said person had received two promotions and that his initial appointment was on a lower post as Tracer and the benefit granted under the Assured Career Progression Scale for him who had obtained two promotions was clearly wrong. When they found out the mistake and sought the recovery against Abhnashi Lal Chugh, they applied the same yardstick to all the persons such as petitioners who had obtained promotion in some cases as Draftsmen. The order of withdrawal of the stepped up pay scales was given effect by the proceedings impugned in the writ petition on 15th January, 2007. The petitioners treated all the Draftsmen at par and visited to some persons with similar orders of withdrawal of ACP Scales and for recoveries subsequently by its proceedings dated 17th April, 2008 which came to be challenged in the other two writ petitions referred to above.

V. The State's defence :

(6) The justification proffered by the respondents was that the claim for grant of ACP was originally applied as Rs. 10,000 and Rs. 20,000 in the time scale but to Group 'C' and Group 'D' employee,— *vide* letter of the Government dated 14th May, 1991 to take effect from 1st January, 1991 itself and was implemented on 7th August, 1992. The subsequent claim for ACP referred to its application that refers to the completion of years of service, namely, 8/18 years. This period of

8/18 years had been subsequently changed as 10/20 years by Government letter dated 8th February, 1994 which was to take effect from 1st April, 1994. This claim was again modified on 1st January, 1996 by the introduction of Haryana Civil Services Assured Career Progression (Rules 1998).

(7) When this scheme through its notification and later through the rules came into effect, it gave rise to some anomalous situation requiring several clarifications to be issued over a period of time. In a writ petition filed by Surinder Singh and other in C.W.P. No. 7255 of 1997, this Court dealt with the issue of counting of *ad hoc* service for computing 'regular satisfactory service' for entitlement to ACP Scheme. In the factual position that the case grappled with, the Court observed that the benefit of higher standard pay scale to a senior on the ground that the pay of his junior had been fixed higher to his pay in terms of the scheme contained in circular shall not be admissible to such a senior. This observation was purported to be in consideration of the instructions dated 8th February, 1994. The rationale of such a statement was that the ACP Scales were intended to provide for higher scales based on length of service without involving higher responsibilities and hence in cases where a junior earned higher pay under fortuitous circumstances, no benefit of step up of pay would be admissible only on the basis of seniority. The judgment sent the department scurrying to issue the notification dated 23rd July, 2003 that withdrew the clarification that it had given on 29th December, 1995 (Annexure P-3) in C.W.P. No. 4563 of 2007 in answer to a query that the scale of senior employee would be stepped up to the level of his junior provided this benefit shall not be admissible to a senior government employee besides junior government employee who had been appointed on temporary basis. It only confirmed the earlier instructions made on 8th February, 1994 (Annexure P-2) that the higher standard pay scale being in the nature of compensation for stagnation and as an incentive based on length of service without involving their responsibilities, there would be no benefit of stepping up of pay to a senior just under the head of seniority. The Government felt that it had stepped up the scales of pay to the seniors only on the basis of the seniority over the scales of some of the juniors and sought to withdraw the benefit and also

obtained recoveries in the manner referred to in the impugned notice. Preparatory to the action, the Government had issued a show cause notice and a final order had been made.

VI. Relevant considerations :

(a) Basis of Surinder Singh's Case

(8) The impugned order is on a perception that while applying the ACP Scale, instead of taking the relevant number of years qualifying for entitlement, there had been wrong application of the normal principle applied in service jurisprudence that the scales of pay of the seniors should be stepped up to match with the scale of a junior. It has been found that such a stepping up of scales were made for certain seniors when the juniors had been given a higher pay and purporting to apply the principle of law laid down by this Court in **Surinder Singh and others versus State of Haryana** in C.W.P. No. 7255 of 1997, dated 10th September, 1997 that the benefit of higher standard pay scale to a senior on the ground that pay of his junior had been fixed higher to his pay in terms of the scheme contained in the circular ought not to be admissible to such senior. This decision had been rendered particularly in reference to a point raised before the Bench whether period of *ad hoc* service should be counted for reckoning the qualifying number of years of service for extending the benefit of the ACP Scheme. The Bench was merely reaffirming a clarification that had already been given by the Department that such a benefit could not be extended only on the ground of seniority, without reference to the number of years of regular satisfactory service within the cadre.

(b) Parity of scales for senior and junior admit of exceptions :

(9) The application of ACP Scales have always to be done with reference to the terms of the Scheme itself. It would be wrong to apply the principle that a senior would always be entitled to a higher pay merely because a junior had obtained to such a higher scale. There could be several instances when such a situation may not happen. Stepping up of pay on the only ground that a junior is drawing more pay will be untenable where a junior is enjoying special pay for some arduous work and earn a higher pay, as pointed out by the Hon'ble

Supreme Court in **Surinder Kumar versus Union of India (1)**. The parity of pay shall be only in the context of the constitutional principle of “Equal Pay for Equal Work” enacted through Article 39(d) of the Constitution of India. A similar situation may also result when an ad hoc promotee draws a higher pay on earlier officiation on a higher post, when he may have earned increments. When the previous pay is taken on account of fixing his pay on promotion, his senior cannot expect stepping up of pay. This situation was considered in the case of **Union of India versus R. Swaminathan (2)**. Another situation that Courts have dealt with is that when a direct recruitee was offered scale attached to the post, when the same post had been earlier meant for ad hoc appointees of lower scales on contract, such an ad hoc appointee cannot ask for stepping up of his pay if under a Scheme his services are sought to be regularised and his pay is fixed at the scale which he would have earned if his services have been regularised on that day. This situation was noted in **State of Karnataka versus Sh. G. Halappa (3)**. There may be another instance, when there are two streams of promotional avenues and when the promotional post is occupied from two different feeder cadres, the issue of stepping may not arise. This situation was dealt with in a decision of the Hon’ble Supreme Court in the case of **Union of India versus O.P. Saxena (4)**.

(10) The impugned order dated 15th January, 2007 in C.W.P. No. 4763 of 2007 cites of the office order No. 197/E-II dated 8th March, 1996 that 81 Head Draftsmen (HDM) were stepped up to the scale of Rs. 2000-3200 with effect from 1st April, 1995 to the level of their juniors and consequently the benefit of stepping up of pay allowance to the senior officers was sought to be withdrawn. The situation under which the juniors earned higher pay is not discernible from the order. The petitioners have responded to this act by stating that the petitioners were holding the posts whose pay scales were modified with effect from 1st May, 1990 against the pay scales of 1st January, 1986. According to them, the petitioners were not given the benefit of higher

(1) (2005) 2 SCC 313 = AIR 2005 S.C. 1103

(2) (1997) 7 S.C.C. 690

(3) (2002) 4 SCC 662

(4) (1997) 6 S.C.C. 360

standard pay scales but were merely placed at par with similarly situated juniors. They cited the instance of a Head Draftsman who got one promotion and completed 20 years or more of regular satisfactory service in the pay scale of Rs. 1600-2660 as on 1st January, 1986, the first higher standard pay scale was Rs. 1640-2900 as per column III of the Annexure of letter dated 8th February, 1994. It was at par with the promotional scales of Circle Head Draftsman as on 1st January, 1986 and hence the benefit of higher standard pay scale of Rs. 2000-3200 was admissible as per para 5 of the letter dated 8th February, 1994. The said letter clarifies as follows :—

“In case an employee who has got promotion already but the pay scale of the promotion post is either equal to or lower than the pay scales of the feeder post, the benefit of higher standard scale will be granted in such cases.”

The pay scales of the petitioners have been stepped up with effect from 1st April, 1995 along with Mr. Abnashi Lal Chug and others similarly situated employees with reference to the pay scale of Draftsman namely Rs. 2000-3200. The applicants have also been given the highest pay scales of Rs. 2000-3200 with effect from 1st April, 1995. This according to the petitioners had been merely in satisfaction of their claims to ACP Scales and they never knew that there was any stepping up of pay on account of the fact that Mr. Abnashi Lal Chug had been put on higher scale of Rs. 2000-3200. The so called clarification which was effected on 29th December, 1995 had never been applied to them, being part of internal departmental communication.

VII. Our dispensation :

(11) The whole exercise of fixation of higher scale has to be reappraised in the light of the scheme by first computing the length of service ‘regular satisfactory service of 10/20 years’. This will be done by computing the period of *ad hoc* service also, in the manner set forth in Surinder Singh’s case (*supra*). While awarding the higher scales, if a junior draws a higher pay, stepping up of pay for the senior will not always result in the circumstances outlined above. If higher scales have been fixed on completion of relevant number of years of satisfactory service of 10/20 years to the seniors, without reference to the scales

of juniors, who may have earned higher pay through increments by officiation in *ad hoc* promotion posts and such like situations, there is no scope for withdrawal of the benefits of higher pay. However, if the scales of pay have been stepped up wrongly, there is justification for the withdrawal of the benefit. Even in such a case, there shall be no recovery of higher pay already made.

(12) Whatever the petitioners had not been apprised of, would be really irrelevant so long as the mistake which the Department had committed, was found later and all the petitioners had been granted an opportunity to show cause against the withdrawal of the benefits. It had not sought for return of the entire amount that had been wrongly paid by stepping up of the pay. On the other hand, it had specifically mentioned that no recovery will be effected with retrospective effect but would be effected only with effect from 23rd July, 2003 from the date of issue of instructions by the Finance Department. If there is a scope for intervention in this regard, it is this direction that would have to be modified. None of the petitioners could be imputed with any fraud or any voluntary act on their part that had resulted in payment of higher pay. While not finding fault with the withdrawal of the benefit of higher scale by stepping up of their pay for what they were not entitled, we find interest of justice would be best subserved if the recovery which had been ordered with effect from 23rd July, 2003 is modified to the effect that there shall be no recovery at all for any excess amount paid. The Department would be entitled to recompute/refix the scale of pay notionally for the period from the day when their Scales were stepped up and the retiral benefits would be paid on such notional refixation of pay. Here again, we direct that there shall be no recoveries for any excess payment that have been made for the retired employees.

(13) All the writ petitions, therefore, are disposed of with the direction that higher scale of pay, if they have been refixed by stepping up their pay only on the ground that some juniors have been granted higher pay, shall be withdrawn. No recoveries shall be made for excess payments made already. The retiral benefits shall be refixed/recomputed on a notional refixation of the pay drawn on the last day of retirement of the respective employees. 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. The decision and reasoning in C.W.P. No. 45673 of 2007 will govern also the findings of C.W.P. Nos. 9780 and 12144 of 2008. The petitioners in the respective writ petitions will also be not entitled to the higher scale of pay if they had been stepped up on a wrong basis, apart from the fact that they not also be liable for any recovery. The retiral benefits whenever arise, they shall be recomputed on notional refixation of pay without stepping up their pay. The impugned orders are set aside for re-examination of the issue in the light of the observations made above.

(14) All the writ petitions are disposed of in terms of the above directions.

R.N.R.

Before Augustine George Masih, J.

ANIL KUMAR,—Petitioners

versus

VIJAY KUMAR AND OTHERS,—Respondents

CrI. Misc. No. 20019-M of 2008

8th August, 2008

Code of Criminal Procedure, 1973-S.357-Maintainability—Murder of father of petitioner—Accused convicted & sentenced—Conviction & sentence upheld by High Court—Claim for compensation—Whether High Court has jurisdiction to grant compensation u/s 357 Cr. P.C.—Held, no—Competent authority to grant compensation would be trial court, revisional court or appellate court and no other court—Petition dismissed being not maintainable.

Held, that a bare reading of Section 357 of the Code of Criminal Procedure would clearly show that the competent court, which can