IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2368-1994 (O&M)
Date of decision : 11.03.2015

R.P. Sharma

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Tangri, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J. (Oral)

Prayer in the present petition filed under Articles 226 and 227 of the Constitution of India, is for issuance of direction to the respondents to fix the pay of the petitioner at Rs.3,500/- per month in the revised scale of Rs.2400-4000 w.e.f. 02.06.1986, the date from which his junior started drawing higher pay, and all consequential benefits flowing therefrom.

On the last date of hearing, the learned counsel for the petitioner made a statement that the case of the petitioner is squarely covered by the ratio of law laid down in ***G.S. Grewal Vs. State of Punjab, 1993(1) SLR 640,*** and the same relief may be granted to the petitioner.

At the very outset, the learned State counsel admits that the case of the petitioner is covered by G.S. Grewal's case (supra).

Heard.

In G.S. Grewal's case (supra), this Court has held as under:-

> *"5. In exercise of powers conferred by the proviso to Article 309 of the Constitution, the President of India promulgated the rules revising the pay scales of the employees of the State of Punjab. The notification dated September 13, 1988 was published in the Punjab Government gazette (extraordinary) on September 13, 1988 though the Rules were made to come into force retrospectively w.e.f. The 1st day of January, 1986. Rule 8 of the Rules providing for fixation of pay on promotion reads as under:-*
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> > *"8. Fixation of pay on promotion – Notwithstanding anything contained in these rules, in case of promotion to higher post effected after the date of publication of this notification in Punjab Government Gazette, the benefit of minimum two increments shall be given while fixing the pay in the scale of the higher post. The next increment is the*

scale of the higher post shall be allowed after the completion of twelve months' qualifying service in that scale."

In the matter of fixation of pay on promotion to the higher post, the aforesaid Rule classifies the government employees in two categories, namely, those promoted before and those promoted after the promulgation of the rules. This classification has to my mind, no reasonable basis nor any nexus with the object to be achieved and, therefore, highly arbitrary, the implementation of which results in violation of Article 14 of the Constitution. The employees after their promotion to the same higher post whether whether before or after the promulgation of the Rules from one class and cannot justifiably be treated differently. In other words, unequal treatement is meted out to the same class of employees after their promotion which offends Articles 14 and 16 of the Constitution. Unreasonableness of this provision can be seen from the following illustration. Let us assume that two Superintending Engineers drawing same pay in the department got promoted to the post *of Chief Engineer, the senior of the two is promoted prior to the promulgation of the Rules while the junior gets promoted after the said date. The result is that the senior does not get the benefit of two increments as envisaged by Rule 8 whereas the junior gets the same and consequently draws higher pay than the senior though both are in the same hither rank. Could there be anything more unconscionable, unjust and unreasonable. The Rule, thus, obviously operates in a discriminatory manner as against the senior. When such anomalies were brought to the notice of the State Government, it realised that the Rule was operating harshly as against those who were promoted prior to the date of promulgation of the rules in as much as they were drawing lesser pay than those who ere promoted thereafter even though they were senior. The government then with a view to move the hardship of the senior employees decided that the pay of the senior employees could be stepped up to an amount equal to the pay drawn by the government employee who is junior to him and accordingly issued instructions to all Heads of*

Departments, Commissioners of Divisions, Registrar of this Court, District & Sessions Judge and the Deputy Commissioners in the State, as per letter dated June 21, 1990. The Government further directed that the aforesaid stepping up shall be done w.e.f. May 1, 1990 even though the rules became effective w.e.f. 1.1.1986. It was also stated in the instructions that necessary amendment in the Rules would be made in due course. Since the petitioner had already superannuated on November 30, 1989, he was not in service on 1.5.1990.

6. After hearing counsel for the parties, I am of the view that the petitioner was entitled to the benefit of two increments at the time of his promotion. As already observed earlier, Rule 8 in its implementation is discriminatory and the anomaly having come to the notice was sought to be removed only w.e.f. 1.5.1990. If there is an anomaly in the implementation of the rules and the same had to be removed, it goes without saying that it should be removed from the date when the rules came into force. There would, in my opinion, be no meaning in *removing an anomaly from a date subsequent to the date when the Rules came into force and the fixation of the subsequent date of 1.5.1990 for removing the hardship/anomaly in the case of seniors is equally arbitrary and the affected seniors are entitled to the benefits of Rule 8 from the date of enforcement of the Rules no matter they were promoted before the promulgation of the rules. No reason on justification has been pointed out on behalf of the respondents as to why May 1, 1990 was fixed as the date with effect from which the anomaly was sought to be removed. Thus, if pay of the senior employees had to be stepped up in order to remove the hardship then it should be stepped up from the date of enforcement of the Rules.*

7. The question that now arises is as to whether Rule 8 should be struck down as unconstitutional. If it is struck down the result would be that no employee whether promoted before or after the promulgation of the rules will be entitled to the benefit of two increments which will work still greater hardship. Instead of striking down Rule 8 of the rules, in my

> *opinion, it should be read down so as to give the benefit to all the employees who are promoted after the coming into force of the Rules irrespective of their dates of promotion whether they be before or after the date of promulgation.*

In view of the above and the concession made by learned State counsel, this writ petition is disposed of in terms of G.S. Grewal's case (supra) and the respondents are directed to grant the arrears and refix the pension of the petitioner accordingly, within a period of three months from the date of receipt of a certified copy of this judgment.

If this judgment is not complied with, within the stipulated period, the arrears shall carry interest at the rate of 12% per annum recoverable from the salary of the concerned employee.

Disposed of.

11.03.2015 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**