

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP No.10596 of 2000

Date of Decision:- 09.09.2015.

Baldev Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. A.K. Walia, Advocate for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

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**P.B. BAJANTHRI, J.**

1.) The petitioner joined the service as a Clerk on 23.10.1958. He has earned promotions to the cadre of Assistant and Superintendent Grade-II in the office of second respondent. On 2.3.1989, petitioner was appointed to the post of Tehsildar Class-II (Group 'B') under the quota reserved for ministerial staff of Revenue Department. Pursuant to the same he joined on 21.3.1989. Pay scale of the post of Tehsildar was ₹ 2000-3500 as on 1.1.1990. Having regard to the condition imposed in the appointment order dated 2.3.1989, the petitioner was granted basic pay of the post of

Tehsildar, since petitioner failed to pass prescribed departmental examination. It is stated that petitioner never made any attempt to pass departmental examination during the probation period. Between 1990 till date of his retirement i.e. 30.11.1995, the petitioner was not granted annual increments apparently for the reasons that he did not pass departmental examination, as per the conditions stipulated in the appointment order dated 2.3.1989. The respondents have not taken any action like reverting him or extending the probation period and allowed the petitioner to continue as Tehsildar till 30.11.1995. The petitioner was allowed provisional pension of ₹ 945/- per month on 5.8.1996 while ignoring the service rendered in the post of Superintendent Grade-II. In this background, the petitioner has presented this petition seeking following directions:-

- i) a Writ or direction especially a writ in the nature of Mandamus directing the respondent No.1 to re-fix/revise the pension and other retiral benefits to the petitioner after allowing him benefit of pay protection and annual grade increments on his appointment as Tehsildar;*
- ii) a Writ, Order or direction declaring that the failure of Respondent No.1 to grant benefit of pay protection and annual grade increments to the petitioner in the post of Tehsildar is wrong, unjust, arbitrary, discriminatory, confiscatory, contrary to the rules and terms and conditions of appointment and is illegal and*

*unconstitutional;*

*iii) a Writ, order or Direction directing the respondent No.1 to grant arrears of pay and allowances, arrears of pension and arrears of retiral benefits of the petitioner with interest @ 18% per annum from the due date till the date of appointment;*

*OR:*

*in the alternative a Writ, Order or Direction directing the respondents to allow deemed reversion to the petitioner from the post of Tehsildar to the post of Superintendent Grade-I in accordance with Rule -13 and terms and conditions of the appointment order and to fix the pay, pension and other retiral benefits to the petitioner accordingly and release the same with interest @ 18% per annum from the due date till the date of payment.*

*OR;*

*Writ, Order or direction directing the respondent No.1 to consider the case of the petitioner for grant of exemption from passing the departmental examination of Tehsildar in terms of Annexure P-8;*

2.) Learned counsel for the petitioner vehemently contended that even though the petitioner has not passed the prescribed departmental examination for the post of Tehsildar, however, the respondents have not taken any action to revert him to the post of

Superintendent Grade-II. On the contrary, the petitioner was allowed to discharge the duties of the post of Tehsildar till the date of his retirement. Having continued, the petitioner in service as a Tehsildar, he is entitled for pensionary benefits in the post of Tehsildar with reference to pay scale attached to the post.

3.) Per contra, learned counsel for the State submitted that there is a delay in filing this petition since the cause of action accrued to the petitioner in the year 1995 itself. However, he has approached this Court only in the year 2000. On this short ground, the petition is liable to be rejected. It was further argued that the petitioner has not passed prescribed departmental examination in terms of appointment order to the post of Tehsildar, therefore, the petitioner is not entitled to pension in the post of Tehsildar pay scale. However, retiral benefits have been settled with reference to the basic pay of the Tehsildar post. Therefore, there is no infirmity in the respondents' action in not allowing the petitioner to get pension in the pay scale of Tehsildar.

4.) Heard learned counsel for the parties.

5.) Learned counsel for the petitioner after arguing for some time restricted his prayer to the alternative prayer i.e. for not passing the prescribed departmental examination to the post of Tehsildar. At the best petitioner could be reverted to the post of Superintendent Grade-I. It is undisputed that petitioner has not passed the prescribed departmental examination while holding the post of Tehsildar which is one of the condition stipulated in the order of

appointment. The respondents had sufficient time to revert the petitioner from the post of Tehsildar to that of Superintendent Grade-II. However, the respondents allowed the petitioner to continue in the post of Tehsildar and retired in the same post. Consequently, there is a serious lapse on the respondents in not taking action at the same time while finalizing the retiral benefits of the petitioner. The respondents could have reverted him to the post of Superintendent Grade-II and settled his retiral benefits. In view of these facts and circumstances, it is necessary to direct the respondents to revert the petitioner to the post of Superintendent Grade-II and then to adjust him to the upgraded post of Superintendent Grade-I and settle his retiral benefits in the cadre of Superintendent Grade-I. The upgradation of Superintendent Grade-II to Grade-I was ordered on 30.05.1991 which is a policy decision. The said upgradation was benefitted by the juniors to the petitioner. Therefore, the petitioner is also entitled to the benefit of upgradation. No doubt there is delay in approaching this Court by the petitioner. However, by reverting the petitioner from Tehsildar to Superintendent Grade-II and to adjust in the upgraded post of Superintendent Grade-I, third party right would not be affected. Further there is serious lapse on the part of the respondents in not taking action even to this day results in ignoring the delay in approaching this Court by the petitioner. The respondents are directed to pass formal order of reversion from the post of Tehsildar to Superintendent Grade-II and further adjust the

petitioner to the upgraded post of Superintendent Grade-I and treat the petitioner had retired in the cadre of Superintendent Grade-I before 30.11.1995, the date on which he retired from service and consequently, calculate the retiral benefits of the petitioner in the cadre of Superintendent Grade-I and to release the difference of amount within a period of eight weeks.

6.) It is made clear that the petitioner is not entitled to any interest on arrears of retiral benefits for the reasons that there is delay of more than five years in approaching this Court.

7.) Accordingly, this petition is disposed of.

**(P.B. BAJANTHRI)  
JUDGE**

**September 09, 2015.**

*sandeep sethi*