

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.17627 of 1996
Date of Decision: March 11, 2015

Gajraj Singh

...Petitioner

Versus

The State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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.R.K.Malik, Senior Advocate with
Mr.Tej Pal Dhull, Advocate,
for the petitioner.

Mr.Ravi Pratap Singh, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The prayer in the present writ petition is for quashing of the orders/letters (Annexures P-3, P-5 and P-6).

The essential grievance of the petitioner is for challenging the order dated 13.9.1996 (Annexure P-6), vide which the representation of the petitioner, after the directions issued by this Court, was rejected. The petitioner had sought innocuous relief by submitting representation that he was appointed as a Driver on 17.3.1971 and prior to 1.1.1986 was having the pay scale of 420-700+150 (as special pay). After the revision in the pay scales, i.e., after 1.1.1986, the pay scale of the Drivers was re-fixed as 1200-

2040+300 as special pay. The petitioner was promoted to the post of Yard Master on 25.2.1986. The pay scale prior to 1.1.1986 of the Yard Master was as under:-

“Before: 525-900 plus ₹50/- as special pay.

After: 1400-2600 plus Rs.100/- as special pay.”

On the date when the petitioner was promoted, he was placed in the pay scale of ₹1520/- plus ₹100/- as special pay, i.e., ₹1620/- against the total emoluments of ₹1800/-, which he was drawing prior to his promotion.

Mr.R.K.Malik, learned Senior Counsel appearing on behalf of the petitioner, in support of his contentions, relied upon the provisions of Rule 4.4 Note 9 of Punjab Civil Services Rules, Vol.I, Part I as applicable to the State of Haryana to contend that where a Government employee is in receipt of special pay in a post, then his pay on promotion to a higher post, should be fixed after taking into account the special pay drawn in the lower post. For the sake of brevity, Rule 4.4 Note 9 is extracted herein below:-

“Note.9(1) Where a Government employee is in receipt of a special pay in a post, his pay on promotion to a higher post will be fixed after taking into account the special pay drawn in the lower post subject to the following conditions:-

- i) the special pay in the lower post should have been granted in lieu of a separate higher time scale e.g. special pay granted to steno-typist, clerks in-charge etc.;
- ii) if the special pay has been drawn in the lower post continuously for a minimum period of three years on the date of promotion, the pay in the higher post will be fixed under the normal rules, treating the special pay as part of basic pay. In other cases, the pay in the time scale of the higher post will be fixed under the normal rules with reference to basic pay drawn

in the lower post (excluding the special pay), where this results in drop in emoluments, the difference between the pay so fixed and the pay plus special pay drawn in the lower post will be allowed in the form of personal pay to be absorbed in future increases of pay;

iii) in both the kinds of cases referred to in clause (ii) above, it should be certified that, but for the promotion the Government employee would have continued to draw the special pay in the lower post.”

By relying upon the Rule reproduced above, Mr.Malik has argued that the petitioner would have been entitled to special pay as he had been continuously working on the lower post, i.e., Driver for more than three years. In essence, he had been working since 1971 and the condition of three years of continuous service on the lower post was also given up vide instructions dated 4.5.1982. The impugned order (Annexure P-6) purported to have been passed by relying upon the instructions dated 7/14.11.1994 (Annexure P-9), whereby an amendment was caused in Rule 4.4 and Note 9 by incorporating as under:-

“Provided that where the lower and higher promotion posts carry special pays in lieu of a separate higher time scale, the special pay drawn in the lower post shall not be taken into account while fixing pay on promotion to a higher post.”

From the perusal of the amendment caused in the Rule, it is evident that the special pay drawn in the lower post shall not be taken into account. Mr.Malik contends that the amendment shall not apply retrospectively but will have a prospective effect as the petitioner was promoted on 25.2.1986.

Mr.Ravi Pratap Singh, learned Assistant Advocate General,

Haryana appearing on behalf of the State contends that the special pay would be granted only to the Car and Jeep drivers in lieu of the over time allowance owing to the arduous duties and, therefore, the petitioner was rightly given the pay scale of 1520+100 as special pay, which, a Yard Master is entitled to.

I have heard the learned counsel for the parties and appraised the paper book and as well as their arguments with their able assistance and am of the view that the order dated 13.9.1996 (Annexure P-6) is liable to be quashed/set-aside on the premise that the amendment in Rule 4.4, Note 9 was caused in the year 1994 and it did not specify the date of its applicability. In essence, until and unless the Legislature in its wisdom do not clarify applicability of the Act, then the amendment caused in the rules would always apply prospectively and not retrospectively as has been sought to be done in the present case. It is also settled law that the accrued right also cannot be taken away when the person is promoted. In the instant case, the petitioner, prior to his promotion, was drawing total emoluments of ₹1800/-, whereas on promotion had been drawing ₹1620/-.

Mr.R.K.Malik, learned Senior Counsel, in support of his submissions, has relied upon the Division Bench judgment of this Court in **Sunder Lal Jain Versus State of Haryana, 1995(2) RSJ 94** to contend that the act of the respondent-State was totally undesirable to place the petitioner in the lower scale while promoting him to the post of Yard Master and, therefore, the action of the Government in rejecting the claim of the petitioner is preposterous and capricious.

Since the reasoning given by the respondents is not on sound

footing, therefore, the petition is allowed. The petitioner would be entitled to all the arrears.

Since the petitioner, as stated by the counsel, has retired, the respondents are directed to release all the retiral benefits as per revised pay scale along with interest @ 6% per annum within a period of three months from the date of receipt of certified copy of this order.

March 11, 2015
ramesh

(AMIT RAWAL)
JUDGE