

THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CWP No.15639 of 1998
Decided on : 18.02.2015

Inderpal Singh Sawhney

... Petitioner

Versus

Haryana State Electricity Board, Panchkula

... Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr.Namit Kumar, Advocate for the petitioner.
Mr.Raman Gaur, Advocate for the respondent.

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Rameshwar Singh Malik , J. (Oral)

Feeling aggrieved against the order dated 24.03.1998 (Annexure P/7) passed by the respondent-board, whereby benefit of modification in the pay scale w.e.f. 01.05.1990 was denied to the petitioner by passing a non-speaking order, he has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari. The petitioner also seeks a writ in the nature of mandamus, directing the respondent board to grant the modified pay scale to the petitioner w.e.f. 03.08.1990, with arrears of salary in the modified pay scale along with interest.

Notice of motion was issued and pursuant thereto, written statement has been filed on behalf of the respondent-board. Petitioner filed his replication, and the respondent-board filed its rejoinder to the replication. Thereafter, the writ petition was admitted for regular hearing by the Division Bench of this court. That is how this Court is seized of

the matter.

Learned counsel for the petitioner places reliance on communication dated 01.04.1991, Annexure P/3 to contend that once the pay scale of numerous categories of employees, including the category which was drawing the same pay scale i.e. Rs.1640-2900/- with Rs.150/- as special pay, was modified by the respondent-board itself w.e.f. 01.05.1990, there was no justification with the respondent-board to deny exactly the same service benefit to the petitioner. He further submits that the petitioner submitted numerous representations and finally the impugned order dated 24.03.1998, Annexure P/7 was issued which was just a non-speaking and cryptic order.

Learned counsel for the petitioner would contend that petitioner was not seeking any new pay scale but he was seeking only the modified pay scale, which had already been granted to exactly similarly situated employees of the respondent-board. In support of his contention, learned counsel for the petitioner places reliance on the judgment of Hon'ble Supreme Court titled as "**Haryana State Minor Irrigation Tubewells Corporation and others Vs. G.S.Uppal and others**" 2008 (7) SCC 375 which was followed by this Court in the case titled as "**Anil Kumar Aggarwal and another Vs. State of Haryana and others**" 2009(3) RSJ 20 and "**Mussadi Lal Garg and another Vs. State of Haryana and others**" 2014(2) SCT 504. Finally, learned counsel for the petitioner prays for setting aside the impugned order, by allowing the present writ petition.

Per contra, learned counsel for the respondent-board submits that as per order dated 03.08.1990, Annexure R-6, petitioner

accepted the offer of appointment on the post of Legal Assistant in the pay scale of Rs.1640-2900/- and in view of this unconditional acceptance of offer of appointment, petitioner was estopped to agitate for any modified pay scale. He refers to the averments taken in para No.13 of the written statement, to contend that the representation dated 16.03.1998, Annexure P/7 was not received from the petitioner and he might have got this letter along with the impugned communication at his personal level from the Under Secretary, which would not confer any right on the petitioner nor it will give any cause of action to the petitioner. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation, the instant writ petition deserves to be allowed, for the following more than one reasons.

It is an undisputed fact on record that after joining by the petitioner on 03.08.1990 (Annexure R-6) in compliance of his appointment order dated 08.07.1990 (Annexure P-2), respondent-board itself removed the anomaly in the pay scale of Rs.1640-2900/- which was being drawn by the petitioner. This anomaly in revision of pay scale was removed by modifying the pay scale w.e.f. 01.05.1990 vide communication dated 01.04.1991, Annexure P/3. Vide this communication, along with another communication dated 07.02.1991, Annexure P/3 (Colly), this very pay scale of Rs.1640-2900/- earlier drawn by Deputy Superintendent, Personal Assistant,

SAS Accountant and Circle Head Draftsman, total categories being 9 in para No.9 of the writ petition, was modified to the pay scale of Rs.2000-3200/- with Rs.100/- per month as special pay.

The modification was ordered w.e.f. 01.05.1990, meaning thereby when the petitioner joined his post of Legal Assistant on 03.08.1990, his pay scale ought to have been Rs.2000-3200 with Rs.100/- as special pay instead of Rs.1640-2900/-. However, since this modification of pay scale took place a little after joining of the petitioner, he was fully justified in submitting his numerous representations, seeking grant of modified pay scale of Rs.2000-3200/-. It seems that numerous representations made by the petitioner were not considered by the competent authority. However, finally the impugned order dated 24.03.1998 (Annexure P/7) came to be issued by the Under Secretary (F&B), HSEB, Panchkula denying the benefit of modified pay scale to the petitioner.

The impugned order reads as under:-

“Returned in original to Shri I.P.S. Sawhney, Legal Assistant with remarks that the case regarding pay scale i.e. w.e.f. 1.5.90 and spl. pay was considered and not accepted by the authority, however, regarding spl pay case is under consideration.

Sd/- 24/3

Under Secretary (P&N) HSEB Panchkula.”

A bare reading of the above said impugned order would show that it was a cryptic and non-speaking order. Once the impugned order was going to visit the petitioner with civil consequences, the competent authority was duty bound to give reasons, while passing the impugned order. However, since the

impugned order is a non-speaking and cryptic one, it cannot be sustained.

Even if the argument raised by the learned counsel for respondent-board is accepted for the sake of argument that the representation dated 16.03.1998, Annexure P/7 submitted by the petitioner was not received by the competent authority, it will not improve the case of the respondent-board on merits. It is so said because firstly, the specific averment taken by the petitioner in para no.13 of his replication has gone undisputed in the rejoinder filed by the respondent to the replication of the petitioner. Secondly, during the course of hearing, when a pointed question was put to learned counsel for the respondent-board as to why the petitioner is not entitled for the modified pay scale, he had no answer and rightly so because it is a matter of record. Once, the similarly situated employees drawing this very pay scale, which was being drawn by the petitioner, have been granted the benefit of modified pay scale, the petitioner alone could not have been singled out. Having said that, this Court feels no hesitation to conclude that action of the respondent-board was arbitrary as well as discriminatory which cannot be sustained.

In fact, petitioner was not claiming any revision in the pay scale for the post of Legal Assistant. As a matter of fact, he was seeking only the benefit of modified pay scale which has already been granted to other similarly situated employees. It is also neither pleaded nor argued case on behalf of the respondent-board that in

the given circumstances of the case, petitioner was not entitled for the benefit of modified pay scale of Rs.2000-3200/- with Rs.100/- as special pay. Under these circumstances, it can be safely concluded that the petitioner was entitled for the benefit of modified pay scale right from the date of his joining the service, that is from 03.08.1990 itself because the pay scale of Rs.1640-2900/- had been modified to Rs.2000-3200/- w.e.f. 01.05.1990.

The above said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in G.S.Uppal's case (supra). The relevant observations made by the Hon'ble Supreme Court in para 23 of the judgment, which can be gainfully followed in this case, read as under:-

“23. A careful examination shows that the issue was not really about grant of pay scales to Corporation Engineers on par with PWD Engineers. When the pay revision took place, the revised pay scales that were given to the Engineers of the State Government were also given to the engineers of the Corporation with effect from 1.1.1986 thereby maintaining the parity. What was not extended to the Corporation employees, which is the subject matter of the grievance, is the further revision by way of 'removal of anomaly in pay scales' given to AEE/AE/SDO/SDE of the State Government with effect from 1.5.1989 vide circular dated 2.6.1989 of the Finance Commissioner. The real question would be whether what is given by way of anomaly removal in the case of Engineers of State Government, should automatically be extended to the corresponding categories of engineers of the Corporation. When, after a pay revision, an anomaly is found in the pay scale given to a class of Government servants and such anomaly is rectified, it is not a new pay revision but a correction of the original pay revision, or an amendment to the pay scale that has already been granted. Therefore, where the pay revision extended to the government servants has already been extended to the employees of the Corporation also, it follows that any correction of anomaly in the revised pay scale given

to the government servants should also be made in the case of those who were earlier given parity by extending the pay scale which is the subject matter of the correction. It should be borne in mind that the question whether Corporation engineers were on par with PWD Engineers and should be given parity in pay scales was already decided when the pay scale revision granted to Government (PWD) engineers was extended to the corporation Engineers also with effect from 1.1.1986. That question did not again arise when the anomaly in the pay revision was rectified with reference to the Government engineers. When the anomaly in the pay scale of Government engineers was rectified, the rectification should apply to Corporation engineers also to maintain the parity.”

The above said judgment rendered by the Hon'ble Supreme Court has also been followed by this Court in Anil Kumar Aggarwal's case (supra) and “Mussadi Lal Garg's case (supra).

No contrary judicial precedent has been cited at the bar, at the hands of learned counsel for the respondent-board.

No other argument was raised.

Considering the peculiar circumstances of the case noted above, coupled with the reasons mentioned, this Court is of the considered opinion that since the impugned action including the order Annexure P/7 has been found to be violative of Articles 14 and 16 of the Constitution of India, the same cannot be sustained, and is hereby set aside.

Natural consequences would follow. The petitioner is declared entitled for the benefit of modified pay scale of Rs.2000-3200/- with Rs.100/- as special pay, right from the date of his joining i.e. 03.08.1990 with all consequential benefits. Let the respondent-authority do the needful at an early date but in any case within a period of two months from the date of receipt of a certified copy of

this order. Since the service benefit of modified pay scale has been illegally held by the respondent-board, the petitioner is entitled for interest on the arrears of salary at the rate of 9% per annum from the date the amount became due, till the actual payment.

If the needful is not done within stipulated period, the petitioner will be entitled for interest at the rate of 12% per annum.

Resultantly, with the above said observations made and directions issued, the present writ petition stands allowed, however with no order as to costs.

[Rameshwar Singh Malik]
Judge

18.02.2015

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