

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

CWP No.10494 of 2012

Date of Decision: 24.04.2015

D.V. Gaur

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present petition has been filed for issuance of a writ in the nature of certiorari quashing the orders dated 15.04.2009 (Annexure P-2) as well as 03.04.2012 (Annexure P-4), whereby, the pay of the petitioner has wrongly been fixed and his claim has wrongly been rejected in response to legal notice served upon the respondents.

Briefly, the facts of the case, as made out in the petition, are that the petitioner was promoted to the post of Chief Engineer in the pay scale of ₹ 18400-22400 vide order dated 31.12.2005. The pay scale of the employees in the State of Haryana was revised w.e.f. 01.01.2006 and the pay scale of the petitioner was also revised from ₹ 18400-22400 to ₹ 37400-67000. Ultimately, the petitioner retired from his post on 30.06.2006 on attaining the age of superannuation. The pension of the petitioner was fixed in the pay scale of the Superintending Engineer though

the grade pay of ₹ 10,000/- was paid. The revised pay was fixed from ₹ 42,120/- + ₹ 10,000/- Grade pay, which came out to ₹ 52,120/- vide order dated 15.04.2009. The petitioner made representation to the respondents to pay ₹ 53,390/- in stead of ₹ 52,120/- w.e.f. 07.01.2006 and to re-fix his pension in the pay scale of ₹ 43,390/- with grade pay of ₹ 10,000/- w.e.f. 07.01.2006 along with all consequential benefits. When no action was taken by the respondents on the representation made by the petitioner, a legal notice dated 01.08.2011 was served upon respondent No.2 but to no avail. Thereafter, the petitioner filed **CWP No.867 of 2012** before this Court, which was disposed of vide order dated 16.01.2012 with a direction to respondent No.2 to decide the legal notice within a period of four months.

In compliance of directions issued by this Court, the claim of the petitioner was rejected vide order dated 03.04.2012. The pension of the petitioner was wrongly fixed vide order dated 15.04.2009 (Annexure P-2). Both these orders dated 15.04.2009 and 03.04.2012 are subject matter of challenge in the present writ petition.

Learned counsel for the petitioner submits that in view of ratio of judgment passed in **CWP No.19641 of 2009** titled as **R.K. Aggarwal and others vs State of Haryana and others** decided on **21.12.2012**, the petitioner is entitled for higher pay and for re-fixation of pensionary benefits but his claim has wrongly been rejected. Learned counsel also submits that the action of the respondents in not releasing the basic pay of ₹ 43,390/- + ₹ 10,000/- (grade pay) w.e.f 07.01.2006 and not fixing the pension of the petitioner in the aforesaid scale is illegal, arbitrary, discriminatory and being unconstitutional, is liable to be set aside.

Learned counsel for the respondent-State has opposed the submissions made by learned counsel for the petitioner. He submits that

the petitioner was promoted to the post of Chief Engineer in the pay scale of ₹ 18400-22400 and that pay scale was revised w.e.f. 01.01.2006 to pay scale of ₹ 37400-67000+10000 Grade pay, whereas, the pay scale of Superintending Engineer was revised to ₹ 37400-67000+8700 Grade pay from ₹ 14300-18300. Learned counsel also submits that the petitioner was promoted by giving relaxation in the experience and it was a case of premature promotion and as such, he was working in the officiating capacity as relaxation of minimum requirement of three years' experience on the post of Superintending Engineer was allowed. The petitioner was promoted as Superintending Engineer on 04.08.2004 and at that time, he was not having three years' experience. Ultimately, he retired from service on 30.06.2006 without completing three years' minimum experience. Learned State counsel also submits that the pay scale of ₹ 43390/- + ₹ 10,000/- Grade pay has rightly been released not only to the petitioner but to other similarly situated persons as well. He further submits that one Shri Chaman Lal also made a representation to the effect that he was drawing pay of ₹ 18400/- in the pre-revised scale of ₹ 18400-500-22400 and his pay was fixed in the corresponding scale to ₹ 18400/- i.e ₹ 43390+Grade pay of ₹ 10,000/-. He made a representation stating therein that his date of increment dated 12.09.2007 be got changed to 01.07.2006 as per revision in rules. His representation was considered and it was decided that his pay be fixed as ₹ 43390/- in PB-4 as on 01.01.2006 but it was directed to rectify his pay fixation subsequently and ultimately, his pay was fixed as ₹43390/- + ₹ 10000/- Grade pay as on 01.01.2006 vide Order dated 17.05.2010 but later on, his pay was re-fixed as ₹ 41150+ ₹ 10,000/- Grade pay vide Order dated 26.04.2011 in pursuance to Finance Department notifications dated 30.12.2008 and 07.01.2009, which has been clarified by Chief Secretary to Government of Haryana vide letter dated 08.03.2011 as

his promotion was also pre-mature.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned orders dated 15.04.2009 (Annexure P-2) as well as 03.04.2012 (Annexure P-4) and other documents on the file.

Admittedly, the petitioner was promoted to the post of Superintending Engineer on 04.08.2004 in the officiating capacity by relaxing the minimum requirement of three years' experience which was to be completed on 03.08.2007 but he retired prior to 03.08.2007, meaning thereby, he got retired before completing three years' experience as his date of retirement was 30.06.2006. In case of pre-mature promotion because of lack of experience, the petitioner was granted pay scale, which cannot be the pay scale of the Chief Engineer. In the same manner, the case of one Shri Chaman Lal, Chief Engineer was also considered and benefit given to him was subsequently modified/withdrawn. The clarification was issued by the Government of Haryana vide its letters dated 22.04.1994 and 08.03.2011, wherein, it was mentioned that on pre-mature promotion, the minimum of pay in pay band of the promotional post is higher than the pay drawn in pay band of lower post, the minimum of pay band of higher post may be allowed plus Grade pay of higher post would be admissible till completion of deficiency in experience. The petitioner was also given pre-mature promotion and he was drawing pay as ₹ 42120+8700 G.P i.e on the higher side of the minimum of promotional pay scale i.e ₹ 37400-67000+10000 G.P. His substantive pay as Superintending Engineer was protected being more than the minimum of PB-4 i.e. ₹ 37400/- and grade pay of ₹ 10,000/- as Chief Engineer on 07.01.2006. The benefit of 3% increment was not admissible to the petitioner as he did not complete his relaxation period up to the date of his retirement i.e 30.06.2006 which was to be completed only on 03.08.2007 and as such,

the benefit of 3% increment was also not admissible in view of Finance Department notification dated 09.04.2010 as the petitioner was drawing his pay in ACP scale of Superintending Engineer on completion of 13 years service as Executive Engineer. Had the relaxation period been completed before the date of retirement, the petitioner would have been granted the benefit and as such, his case is not covered under the Government policy dated 22.04.1994 and 08.03.2011.

The relevant portion of the instructions dated 08.03.2011 is reproduced as under :-

“.....(i) If on premature promotion, the minimum of pay band of the promotional post is higher than the pay drawn in pay band of lower post, the minimum of pay in pay band of higher post may be allowed plus grade pay of higher post till the completion of deficiency in experience. In case, during the deficiency in experience, the presumptive pay in pay band of lower post exceeds the minimum of the higher post the pay in pay band of lower post will be protected from time to time and in addition he will be eligible for the grade pay of higher post.”

In view of the above, the judgment relied upon by learned counsel for the petitioner is not applicable to the facts and circumstances of the case. Hence, there is no merit in the submissions made by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

24.04.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE