

Civil Writ Petition No.6600 of 2014

Sukhpal Vatish and otherspetitioners

Versus

State of Punjab and othersrespondents

Civil Writ Petition No.3141 of 2014

Madan Mohan Dua and otherspetitioners

Versus

State of Punjab and othersrespondents

Civil Writ Petition No.2505 of 2014

Kuldip Singh and otherspetitioners

Versus

State of Punjab and othersrespondents

Civil Writ Petition No.18519 of 2014

Rachpal Singhpetitioner

Versus

State of Punjab and othersrespondents

Civil Writ Petition No.14796 of 2015

Jagdish Kumar and otherspetitioners

Versus

State of Punjab and othersrespondents

Civil Writ Petition No.13452 of 2015

Madan Lal Saini and otherspetitioners

Versus

State of Punjab and othersrespondents

Civil Writ Petition No.4396 of 2015

Sawinder Singh and otherspetitioners

Versus

State of Punjab and othersrespondents

Civil Writ Petition No.15031 of 2015

Pritpal Singh and otherspetitioners

Versus

State of Punjab and othersrespondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Arjun Pratap Atma Ram, Advocate
Mr.K.S.Dadwal, Advocate
Mr.C.L.Sharma, Advocate
Mr.R.K.Arora, Advocate
Mr.H.S.Tuli, Advocate
Mr.Gursharan Singh, Advocate
Mr.Sawinder Singh, Advocate
for the petitioners

Mr.Rakesh Verma, Senior DAG Punjab and
Mr.L.S.Virk, Additional Advocate General, Punjab

ARUN PALLI, J.(ORAL):-

The issue involved being common, this order shall dispose of a bunch of civil writ petitions i.e.CWP Nos.10575, 25956, 26054, 8763, 9520, 9550 of 2013, 2505, 3141, 6600 ,18519 of 2014,- 4396,13452 ,14796 and 15031 of 2015. The facts are being culled out from CWP No.10575 of 2013.

Even on an earlier occasion, the petitioners had

approached this Court, vide CWP No.23138 of 2010 and prayed for a writ of mandamus to equate and grant them the same revised pay scales as were granted to their counterparts in the Animal Husbandry Department. During the pendency of the said petition, the department on a re-consideration of the issue, passed an order dated 21.12.2011 (Annexure P2), vide which claim of the petitioners as regards pay parity was accepted, however, the benefit of arrears or fixation of pay on notional basis was since declined. This Court having found that there was hardly any basis to deprive the petitioners, of the notional pay fixation, modified the order dated 21.12.2011 (Annexure P2). Accordingly, the petitioners were held entitled to the notional pay fixation w.e.f.01.01.2006. As regards the arrears of pay, the petitioners were set at liberty to represent to the authorities to claim arrears for a period of 38 months, immediately, preceding the date of filing of the petition i.e.22.12.2010. And it was observed that the State Government shall consider the said representations in the wake of the binding decisions within a period of four months from the receipt of the certified copy of the order dated 05.01.2012 passed by this Court.

In response, the representations made by the petitioners and those who were identically situated and circumstanced, have since been rejected by respondent No.2, vide order dated 22.11.2012 (Annexure P6). This is how, the petitioners are before this Court and have assailed the said order.

A bare analysis of the order being assailed (Annexure P6), reveals that while considering the claim of the petitioners,

respondent No.2 had sought the approval of the Finance Department and in the advice dated 02.07.2012 of the Department of Finance, it was observed that since this Court, while passing an order on 05.01.2012 (Annexure P3) had not found the petitioners entitled to receive the arrears of pay, therefore, the petitioners could not be afforded the arrears as claimed. Accordingly, the claim of the petitioners were rejected. It would be expedient to refer to para 3,4 and 5 of the order under challenge and the same reads as thus:

3. That in the case of Dr. Naresh Kumar Kataria (Civil Writ Petition No. 23138 of 2010) there were two issues. The first issue relates for the grant of higher scale to the officers of the Agriculture Department after completion of 4/9/14 years of services from the due dates and the other issue is taking decision on the representation submitted for payment of arrears. In the orders of the Hon'ble Punjab and Haryana High Court there is no specific order for grant of arrears of pay to the applicants but according to the order of the Hon'ble High Court, there is necessity to pass speaking order. In this regard the case was sent to the Finance Department for approval wherein the Finance Department vide its Endst. No. F.No.7/56/2012-2F.A.1/271 dated 02.07.2012 had given the following advice:-

“in compliance with the decision of the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 23138 of 2010 dated 05.01.2012, while making correction in para No. 2 of letter No. 5/10/09-5 F.P. 12/1359 dated 21.12.2011 of the

Finance Department is and in agreement to give benefit of grant of higher pay scale from the due date on notional basis after completion of 4/9/14 years of regular service to all the Chief Agriculture officer/Deputy Director Agriculture, Agriculture officer, Agriculture Development officers, Assistant Agriculture Engineer Grade-1 (Implement/Tube Wells/Boring) and Agriculture Engineers (Implement/Tube wells) working in the Agriculture Department and to fix the pay but according to the order of the Hon'ble Punjab and Haryana High Court in this case the concerned officers would not be entitled to receive arrears of pay.

In the cases of the officers who had retired from government service, as a result of fixation of pay on notional basis, their pension would be re-fixed.”

4. That according to the advice of the Finance Department, the power to grant high pay scale after 4/9/14 years of service is with the Director Agriculture Punjab and these higher pay scales are being sanctioned by him. But from the petitioners in separate writ petitions and especially from petitioners in Civil Writ Petition No. 13955 of 2012 (Jagir Singh and others Vs. Punjab State and others, Civil Writ Petition No. 3118 and 2012 (Kuldip Singh and others Vs. Punjab State and others), Civil Writ Petition No. 3119 of 2012 (Arvinder Singh Chhina and others Vs. Punjab State), Civil Writ Petition No. 5758 of 2012 (Dewan Singh and others VS. Punjab State) and Civil Writ Petition No. 9708 of 2011 (Jagtar Singh and others Vs.

Punjab State) according to the above orders of the Hon'ble High Court, representations for grant of 38 months arrears have been received on this basis such other representations have been received from the petitioners in other petitions.

5. Therefore, in view of the advice of the Finance Department issued vide Endst. No.7/56/2012-2F.P.1/271 dated 02.07.2012 in the decisions of the Hon'ble Punjab and Haryana High Court dated 05.01.2012 in Civil Writ Petition No. 23138 of 2010-Dr. Naresh Kumar Kataria and on the same basis the decision taken in different writ petitions, a decision has been taken not to grant arrears of pay. Therefore, after considering the representations submitted by the petitioners in Civil Writ Petition No. 13955 of 2012 (Jagir Singh and others Vs. Punjab State and others, Civil Writ Petition No. 3118 and 2012 (Kuldip Singh and others Vs. Punjab State and others), Civil Writ Petition No. 3119 of 2012 (Arvinder Singh Chhina and others Vs. Punjab State), Civil Writ Petition No. 5758 of 2012 (Diwan Singh and others VS. Punjab State) and Civil Writ Petition No. 9708 of 2011 (Jagtar Singh and others Vs. Punjab State), the claim of 38 months arrears of pay is rejected. Apart from this, the claim the petitioners in Civil Writ Petition No. 23138 of 2010 (Dr. Naresh Kumar Kataria and others) on the same basis the petitioners in other similar petitions is rejected.

Ex facie, the order under challenge 22.11.2012

(Annexure P6) is erroneous and cannot be sustained. A bare reading of the order passed by this Court on 05.01.2012 (Annexure P3), reveals that the issue as regards the entitlement of the petitioner to claim arrears for a period of 38 months, preceding the date of institution of the petition i.e. CWP No.23138 of 2010, was never determined by this Court. Consequently, there was no occasion to hold that the petitioners were not entitled to the arrears. In fact, as regards the arrears, this Court had specifically set the petitioners at liberty to represent the respondents and it was observed that the representations made by the petitioner shall be considered by the State Government in the light of the binding decisions within a period of 4 months. It would be apposite to refer to the observations made in this regard in para No.7 of the order, and the same reads as thus:

“Similarly, the petitioners shall be at liberty to represent for the grant of arrears of pay for a period of 38 months immediate prior to the filing of this writ petition along with copies of the decisions of this Court supporting their claim and the said representation shall be considered by the State Government in the light of those binding decisions within four months from the date of receipt of a certified copy of this order.”

That being so, the expression that forms basis of advice of the Department of Finance dated 02.07.2012 i.e. ***“but according to the order of the Hon'ble Punjab and Haryana High Court in this case the concerned officers would not be entitled***

to receive arrears of pay”, is not only cryptic and conjectural but contemptuous as well. Learned State counsel concedes this position. That being so, the petitions are allowed. Consequently, the order dated 22.11.2012(Annexure P6) is set aside. Respondent No.2 is directed to re-visit the matter in issue and pass appropriate orders, strictly in accordance with law, within a period of three months from the receipt of the certified copy of this Court. Needless to assert, a comprehensive order shall be passed, dealing with each aspect/issue raised in the representations submitted by the petitioner and assigning reasons, in support of the decision arrived at. However, it is made clear that this order shall not constitute any expression of opinion on the merits of the claim of the petitioners.

30.07.2015

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JUDGE**