

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.18301 of 2013

Date of decision: 12.10.2015

Jagdish Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Nitin Kant Setia, Advocate for the petitioner

Mr. Anshul Gupta, Assistant Advocate General, Punjab
for the respondents.

G.S.SANDHAWALIA, J, (Oral)

In the present writ petition challenge is to the order dated 4.8.2003 (Annexure P/8) vide which the benefit of proficiency step up granted to the petitioner has been withdrawn. The reasoning given by respondent no.2 is that the scale of post of Technical Assistant was less than the post of Craft Instructor and therefore, service from 1.5.1982 to 28.7.1995 could not be counted in the Craftsman cadre and the benefit granted on 9/16.2.2000(Annexure P/4) was withdrawn.

The case of the petitioner is that he was appointed as a regular employee on the solitary post of Technical Assistant in the grade of ₹ 570-1080 at Work Centre, Rajpura on the recommendations of the Service Selection Board, Punjab (Annexure R/1) and his services were governed by the Punjab Civil Service Rules and instructions prevailing. On account of the Work Centre, Rajpura being closed down, the petitioner was adjusted on the post of Drawing/Crafts Instructor against a vacant post at ITI Mehar Chand, Jalandhar in equal pay scale of ₹ 1640-2925 as was being drawn by him on the post of Technical Assistant vide office order

dated 14.7.1995 (Annexure P/2). On the basis of instructions dated 25.9.1998 (Annexure P/3) on the recommendations of the Fourth Punjab Pay Commission, under "Assured Career Progression Scheme", proficiency step up was to be granted to the employees after 16 years of service subject to fulfillment of conditions. On completion of 16 years of regular service, first proficiency step up was granted to the petitioner vide order dated 9/16.2.2000 (Annexure P/4) which was sought to be withdrawn by issuing show cause notice dated 6.9.2000 (Annexure P/5) on the ground that he was not entitled to the same because he had not completed 16 of service with effect from 2.8.1995 the date on which he joined at Jalandhar. The petitioner submitted various representations during his service on 28.2.2001 and 26.11.2002 (Annexures P/6 and P/7 respectively) bringing to the notice of the respondents that his pay on both the posts was in the same scale and the Technical Assistants of the Head Quarter had also been given the said benefit. The petitioner retired on 31.12.2002 and the impugned order was passed on 4.8.2003 which reads as under:-

"Shri Jagdish Singh, Drawing Instructor had been working as Technical Assistant from 1.5.82 to 28.7.95. The scale of the post of Technical Assistant is less than the Crafts Instructors, hence as per instructions of the State Government bearing No.7/14/88-5PP-1/16200 dated 1.9.89 his service from 1.5.82 to 28.7.95 can not be counted in Craftsman Cadre. Therefore, the benefit given vide office order of this office Endorsement No. IT/EC/160/41/5325 dated 16.2.2000 to Shri Jagdish Singh, Drawing Instructor, Industrial Training Institute, Jalandhar is being withdrawn. Accordingly, the required proceedings may be initiated."

The petitioner for reasons best known to him unfortunately resorted to jurisdiction of the Labour Court by filing an application under Section 33-C(2) of the Industrial Disputes Act, 1947 which was eventually decided against him vide order dated 26.9.2012 (Annexure P/11) under

issue no.1 on the ground that the petitioner was not a workman, issue of jurisdiction was decided against him. On merits also, the Labour Court touched the issue on the ground that proficiency step up has been withdrawn after following the procedure and could be challenged before a competent Court of jurisdiction and thus dismissed the application filed under the Industrial Disputes Act, 1947. Resultantly the present writ petition was filed.

Counsel for the State has tried to justify the impugned order while admitting that there was breakdown of Work Centre, Rajpura and its staff was adjusted/shifted and the petitioner was joined as Crafts Instructor at Industrial Training Centre Mehar Chand Technical Institute Jalandhar on 2.8.1995. Reliance has been placed upon the instructions dated 25.9.1998 (Annexure P/3) apart from relying upon the order of the Labour Court dated 26.9.2012 (Annexure P/11) to submit that the petitioner had not completed 16 years tenure of regular service on the same post or in the same cadre and therefore, he was not entitled for the benefit of proficiency step up.

A perusal of the impugned order would go on to show that the withdrawal was on the basis that scale of the post of Technical Assistant is less than the Crafts Instructor. The categorical averment made in paragraph 3 of the writ petition is that the petitioner was adjusted on the post of equivalent pay scale which was being drawn by him on the post of Technical Assistant at Work Centre, Rajpura. The same has not been denied in paragraph 3 of the written statement rather the said paragraph is admitted being matter of record. A perusal of the notification dated 13.5.1991 (Annexure P/1) would also go on to show that the petitioner's pay scale as Technical Assistant was revised from ₹ 570-1080 to ₹ 1640-2925 which is shown at Sr. No.33. The pay scale of the Craft Instructors

has been mentioned at Sr. No.11 which has been revised to the pay scale of ₹ 1640-2925 for the grade II instructors and ₹ 1800-3200 for the Grade I Instructors. Thus, it is apparent that averment made that the petitioner was adjusted in the same pay scale is correct and the finding which had been recorded in the impugned order is contrary and rather even had not been denied in the written statement. In such circumstances, the order is based upon a finding which is against the record.

Secondly, reliance has been placed upon instructions dated 1.9.1989 (Annexure P/12) wherein under Clause 8, a clarification was sought that “can the entire service of an employee who had served on the posts in the same cadre/different cadres, the pay scale of which are the same/identical be counted for the purposes of grant of proficiency step-up(s)”. The State had clarified that the benefit is to be granted if the pay scale is identical because during this service, he has not gained any enhancement in his basic pay.

In such circumstances, the impugned order dated 4.8.2003 (Annexure P/8) cannot be held to be justified and the same is accordingly quashed. The petitioner shall be entitled to all consequential benefits which are due to him and the arrears will be paid to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

Accordingly, the present writ petition is allowed.

October 12, 2015
Pka

(G.S.SANDHAWALIA)
Judge