

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

CWP No.638 of 2010

Date of decision: April 09, 2015

Jagdish Chander and others

....Petitioners

versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. R.K. Arora, Advocate
for the petitioners.

Mr. Sushant Maini, DAG, Punjab.

Mr. Subhankar Bawasia, Advocate for
Mr. A.R. Takkar, Advocate
for respondent No.3.

DEEPAK SIBAL, J.

The petitioners who are five in number joined the respondent-Punjab Small Industries and Export Corporation Limited (hereinafter referred to as the 'Corporation') between the years 1977 to 1981 as Fitter/T. Mate/Pump Driver. Through order dated 31.01.1992, the respondent-Corporation regularized their services and thereafter, vide order dated 18.11.1992, the petitioners along with their posts were transferred to Notified Area Committee, Mohali (now Municipal Council, Mohali) (hereinafter referred to as the 'Council'). Till date, the petitioners are serving with the respondent-Council.

On 26.10.1988, the Government of Punjab accepted the recommendations made by the 3rd Pay Commission and made the same applicable to all Government employees w.e.f. 01.01.1986. Thereafter, vide order dated 16.09.2002, the revision of pay scales, as recommended

by the 3rd Pay Commission, were made applicable w.e.f 01.01.1986, to the employees of all local bodies including the respondent-Council.

It is not disputed before me that the recommendations of the 3rd Pay Commission with regard to revision of pay scales were also made applicable to all the employees of the respondent-Corporation w.e.f. 1.1.1986.

In view of the above, the petitioners made a representation to both the respondent-Council and respondent-Corporation for re-fixing their pay after giving them the benefit of the recommendations of the 3rd Pay Commission. When their representations were not responded to they served upon the above said respondents a legal notice. Receiving no reply to the legal notice, they were forced to knock the doors of this Court through CWP No. 20721 of 2006 titled as 'Rajinder Singh and others versus State of Punjab and others'. This writ petition was disposed of by this Court vide order dated 23.12.2006 directing the respondents to take a decision on the legal notice served upon them by the petitioners. In compliance with the above said directions passed by this Court, the respondent-Council passed an order dated 31.03.2008, the operative part of which is reproduced below:-

“As per above, the pay scales of the employees were further due to revise on 19.11.2007 due to the implementation of the fourth Pay Commission Report w.e.f. 01.01.1996, the pay scale admissible as per recommendations of the third pay commission report cannot be granted to them.

“As per recommendations made under chapter 26 by the 3th Pay Commission, the revised pay scale are to be given effect w.e.f. 01.01.1986. But, the above said employees were working in Punjab Small Industries & Export Corporation during the period from 01.01.1986 to

18.11.1992. Therefore, the benefit of 3rd pay commission upto the period of 18.11.1992 will have to be granted by the Punjab Small Industries & Export Corporation. If the Punjab Small Industries & Export Corporation will revise pay scale and designation that will be implemented by the Municipal Council, Mohali. This order has been issued in continuation to the speaking order.”

From the above reproduced portion of the order passed by the respondent-Council, it is clear that since the benefits of the 3rd Pay Commission were to be given w.e.f. 01.01.1986 and the petitioners from 01.01.1986 to 18.11.1992, were employees of the respondent-Corporation, therefore, according to the respondent-Council, the petitioners were first required to get their pay re-fixed from the respondent-Corporation for the period that they had served therein and only then, the respondent-Council would be able to re-fix the pay of the petitioners for the subsequent period when they has served the respondent-Council.

However, through a subsequent order dated 12.08.2008 passed by the respondent-Council, the claim of the petitioners was sought to be denied as under:-

“As per above, those categories of employees have been granted the benefit of revised higher pay scales and re-designation, the necessary entries have already been made in their service books. However, no arrear is admissible to them because they are already drawing more pay w.e.f. 19.11.1994 than what has been fixed in the revised pay scales. All categories are entitled for revised pay scale w.e.f. 19.11.1997, and as per recommendations of 3rd pay commission the benefit is admissible only up to 13.12.1995. Therefore, the pay which has been fixed on 31.13.1995, the salary is to be fixed in the revised scale on that basis. This speaking order has been issued keeping in view the decision of Hon'ble Punjab and Haryana High Court in COCP No.174

of 2008 titled Balwinder Singh and others versus Sameer Kumar and others.”

The petitioners again represented their case before both the respondent-Council and respondent-Corporation and again got a legal notice served upon both the above said respondents. The legal notice was answered by the respondent-Council wherein they took the following stand:-

“The petitioners can only be considered for the grant of benefit admissible under chapter 26 when they became employees of Municipal Council i.e. From 19.11.1992 and not from 1.1.1986. Because at that time they were employees of PSIEC. Municipal Council Mohali cannot given the benefit for the service period rendered with other organization. Separate seniority list was framed for pump drivers and pump attendants.

All the petitioners were given the benefit of the 3rd pay commission on the advise and approval of the Examiner Local Fund Audit Punjab Chandigarh and Director Local Government Punjab Chandigarh, the highest authority in state on all financial matters relating to staff salary payouts. There is big difference in the staff patterns of Municipal Corporation, Jalandhar and Municipal Council, Mohali. In case of Municipal Corporation, Jalandhar, their employees were appointed on or before 1.1.1986 whereas petitioners became the employees of Municipal Council, Mohali on 19.11.1992. So terms of Municipal Corporation, Jalandhar cannot be adopted in case of Municipal Council, Mohali.

As per the recommendations of the 3rd pay commission qualifications are important aspect while promotion in case of employees who were appointed after 1.1.1986. So speaking order dated 31.3.2008 and 12.8.2008 were issued accordingly. Copy retained for records.”

In view of the above reproduced order the benefit of revised pay scales as per the accepted recommendations of the 3rd Pay Commission were denied to the petitioners.

The respondent-Corporation did not respond the legal notice.

In the above facts and circumstances, the petitioners have approached this Court through the present writ petition.

I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

It is not disputed before me that the recommendation of the 3rd Pay Commission were made applicable w.e.f. 01.01.1986 to the employees of both the respondent-Council as well as the respondent-Corporation. It is further the admitted position that the petitioners served the respondent-Corporation w.e.f. 01.01.1986 till 18.11.1992 when they along with their posts they were ordered to be transferred to the respondent-Council and thereafter, till date, have served the respondent-Council.

In view of the above admitted position, I seen no reason so as to why the benefit of the 3rd Pay Commission be not granted to the petitioners but for the grant of the aforesaid benefit initially their pay has to be fixed in the revised pay scales, after giving them the benefit of the recommendations of the 3rd Pay Commission by the respondent-Corporation for the period that they served therein and then on the basis of the re-fixed and revised scales of pay as on 18.11.1992 the same exercise is required to be done by the respondent-Council. The petitioners have virtually been begging the respondent-Corporation to do the needful but I do not understand why the respondents have not exceeded to this genuine request made on their part. In particular I find the stand taken by the respondent-Corporation to be most unfair which is to the effect that since

on 18.11.1992, the services of the petitioners were transferred from the respondent-Corporation to the respondent-Council, the respondent-Corporation was not competent to take a decision in this regard even for the period that the petitioners had served under the respondent-Corporation. The petitioners had admittedly served the respondent-Corporation w.e.f. 01.01.1986 till 18.11.1992. The pay of the petitioners, after giving them benefit of the 3rd Pay Commission, was required to be re-fixed w.e.f. 01.01.1986 till the date that the petitioners had served the respondent-Corporation. This could and should have been done only by the respondent-Corporation. After such fixation as on 18.11.1992, the respondent-Corporation was required to forward the re-fixed pay scale to the respondent-Council on the basis of which the respondent-Council was required to revise the pay scales of the petitioners after given them the benefit of the recommendations of the 3rd Pay Commission.

It was rather a simple matter on the part of the respondent-Corporation and I do not appreciate the way that the respondent-Corporation had been dilly dallying the whole matter, particularly when the learned counsel for the petitioners had stated before this Court that the respondent-Corporation may only be directed to only notionally re-fix the petitioners' pay after giving them the benefit of the 3rd Pay Commission for the period that they served the respondent-Corporation.

In view of the above, the present writ petition is allowed. The respondent-Corporation is directed to notionally re-fix the pay of the petitioners after giving them benefit of the 3rd Pay Commission for the period that they served under the respondent-Corporation w.e.f. 01.01.1986 to 18.11.1992 as granted by the respondent-Corporation to similarly situated employees and then forward such re-fixed pay to the

respondent-Council. This exercise be completed within one month from the date of receipt of a certified copy of this order.

On the receipt of the above information from the respondent-Corporation, the respondent-Council is directed to re-fix the pay of the petitioners after giving them benefit of the recommendations of the 3rd Pay Commission for the period of service that they have rendered in the respondent-Council as given by it to its other similarly situated employees. This exercise be done by the respondent-Council within a period of one month from the date of receipt of the above referred information from the respondent-Corporation.

In view of the above, the arrears w.e.f. 18.11.1992 to which the petitioners would be held entitled to be paid to them within a period of one month from the date that the respondent-Council re-fixes the pay of the petitioners as per the above directions.

For the unreasonable and unjustifiable stand taken on the part of the respondent-Corporation to unnecessary delay the whole matter, I deem it proper to burden the respondent-Corporation with costs which are quantified at ₹ 10,000/-.

(DEEPAK SIBAL)
JUDGE

April 09, 2015
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