

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.24093 of 2012

Date of decision: 16.11.2015

Harmail Singh and others

...Petitioners

Versus

The State of Punjab and another

...Respondents

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

Present: Mr. Amit Chopra, Advocate for the petitioners.

Mr. A.P.S.Mann, Additional Advocate General,
Punjab for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioners seek quashing of the order dated 27.9.2012 (Annexure P/14) whereby their claim for grant of annual increments in the grade of ₹ 1800-3200/- had been rejected. The condition of 12 years of service as Junior Draftsman/Tracer laid down in the notification dated 19.2.21990(Annexure P/3) having been quashed by this Court in **Balwinder Singh and others Vs. State of Punjab and others 1995(3) SCT 56** is the basis of filing of the writ petition.

A writ of mandamus is also sought for grant of the said relief.

A perusal of the impugned order would go on to show that only reasoning given for denial of annual increments is that the petitioners were appointed on 16.9.1987, 17.4.1986, 24.11.1987 and 17.4.1986 after 1.1.1986 and the decision in **Balwinder Singh's case** (supra) pertains to the employees who had been promoted as Draftsmen prior to 1.1.1986. Relevance of the date of 1.1.1986 is because of the Punjab Civil Services (Revised Pay) Rules, 1988 came into force to implement the recommendations of 3rd Punjab Pay Commission with effect from the said date.

The matter was considered in detail in **Balwinder Singh's case** (supra) and it was held that Draftsmen who have been promoted prior to 19.2.1990 could not be denied the said benefit. The Rules could only operate prospectively and could not affect the right of the persons who have already been promoted as Draftsmen. The condition to deny the said increment not having been incorporated in the Punjab Irrigation Branch

Draftsmen and Tracers State Service Class III Rules, 1960 the notification dated 19.2.1990 was to operate prospectively. Rather it was specifically mentioned that the respondents would apply this direction to all the similarly situated persons so that they are not compelled to file separate petitions. Relevant paragraphs read as under:-

6. Though Shri Khehar, learned counsel for the petitioners, advanced many fold contentions in support of the writ petition, I do not consider it necessary to deal with all of them because in my opinion the petition deserves to be allowed on the short ground that the notification issued on 19.2.1990 (Annexure P.3) cannot be applied to the persons who have already been promoted as Draftsmen before the coming into force of the revised pay-scales. The respondents have not disputed that recruitment to the posts of Draftsmen is regulated by the provisions contained in the Rules of 1960. They have also not disputed the fact that under rule 10(1)(c) a person is eligible to be promoted as Draftsman on his having qualified the examination prescribed by the Chief Engineer for the purpose. There is also no controversy on the point that the petitioners have in fact been promoted as Draftsmen between the years 1980 to 1985 on their having passed the requisite examination prescribed by the Chief Engineer, Irrigation. Thus, all the petitioners were holding the posts of Draftsmen on the date of commencement of the revised pay-scale Rules. These petitioners and those who had been recruited as Draftsmen by direct recruitment constituted one class on the date of commencement of the revised pay-scale Rules. The promotion of the petitioners did not suffer from any legal infirmity. Neither it has been pleaded nor has the learned Assistant Advocate-General argued that any of the petitioners lacked the minimum qualifications prescribed under the recruitment rules for the purpose of promotion to the post of Draftsman. Once the petitioners are treated as existing Draftsmen duly promoted in accordance with the recruitment rules, it is not open to the respondents to impose any additional qualification in order to prevent them from earning their regular increments. Right to earn increments with the completion of each year of service accrues to the petitioners in terms of the Punjab Civil Services Rules. In terms of rule 4.7 an increment is earned by a public servant as a matter of course. Rule 4.7 uses the word "ordinarily" and expression unless it is withheld. A combined reading of the word 'ordinarily' and the expression 'unless it is withheld' shows that unless there is a specific order passed by a competent authority

for withholding an increment payable to an employee, such an employee earns increment as a matter of right and as a matter of course. Note below rule 4.7 further clarifies that increment can be denied to an officer/official who does not fulfil the basic conditions as prescribed in the respective service rules regarding the minimum number of years in the lower rank who is promoted to the higher rank by invoking an alternative provision. The note in my opinion clinches the issue in so far as this case is concerned. It could have been legitimately argued by the respondents that the petitioners should not be given the benefit of annual increments in the revised pay scale because at the time of promotion they did not fulfil the requirement of the minimum number of years of service. However, as has already been mentioned above, it is not the case of the respondents that any of the petitioners lacked the minimum number of years of service prescribed under the rules under which they were promoted as Draftsmen. Therefore, the petitioners could not have been denied increments to which they became entitled in the cadre of Draftsmen. If at all the respondents could legitimately incorporate a condition requiring 12 years service for the purpose of promotion to the post of Draftsmen, such condition was required to be incorporated in rule 10(1)(c) of the 1960 Rules. If that had been done, such a condition would have operated prospectively and could not have affected the rights of the persons who have already been promoted as Draftsmen. The principle of law that the rights acquired in respect of promotion and even in respect of consideration for promotion at a particular point of time it cannot be taken away by amendment made in the statutory rules does not require a detailed discussion. If that be the position, in the event of an amendment in the rules of 1960, there is every justification in the argument of the learned counsel for the petitioners that the respondents have arbitrarily incorporated the condition of 12 years of service in Annexure P.3 and have unjustly denied the benefit of annual increments due to the petitioners in the revised pay-scale with effect from the date of completion of each year's service. In fact, operation of the amendment made vide notification dated 19.2.1990 would result in depriving the petitioners of the annual increments which they have already earned. In my considered view the amendment brought about by notification dated 19.2.1990 could at the best operate prospectively and it was not open to the respondents to have invoked the note given in the said notification against the posts of Draftsmen held by the petitioners.

7. In view of the above, the writ petition is allowed. It is

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Punjab and Haryana High Court,
Chandigarh

declared that the note incorporated in the notification dated 19.2.1990 cannot be applied *qua* the petitioners who have already been promoted as Draftsmen prior to 1.1.1986. The decision taken by respondent No.2 vide Annexure P.13 is hereby declared illegal and is hereby quashed. Respondents are directed to take action to grant annual grade increments to the petitioners in accordance with this order within a period of three months. The monetary benefit by way of granting annual grade increments shall be paid to them within the next two months. It is hoped that the respondents will apply the directions given by this Court in this case to the cases of all similarly situated persons so that they are not compelled to file separate petitions in this Court.”

The petitioners approached this Court by way of filing Civil Writ Petition No.17615 of 2010 which was disposed on 12.1.2012 (Annexure P/13) with a direction to consider the claim of the petitioners. The respondents rejected the claim of the petitioners vide order dated 27.9.2012 (Annexure P/14) which has now been challenged in the present writ petition. Even in the said case, this Court had restricted the claim only to notional benefits as it was the case of the State that there was delay. In affidavit filed in the said case it has been conceded that relief was similar to **Balwinder Singh's case** (supra) which had been upheld in **Letters Patent Appeal No.730 of 1995-the State of Punjab and others Vs. Balwinder Singh and others** decided on 6.10.2015 (Annexure P/5). In spite of that the claim has been declined. Relevant portion of the order reads as under:-

“In view of the conceded position in the reply-affidavit filed on behalf of the respondents that the relief sought for in this writ petition has already been granted to similarly situated persons by this Court in **Balwinder Singh and others Versus State of Punjab and others -CWP No.18115 of 1991 decided on 10.01.1995 (1995 (3) Recent Service Judgments 31)**, against which LPA No. 730 of 1995 was also dismissed on October 06, 1995, the writ petition is disposed of in terms of the above cited decision in Balwinder Singh and others (supra).

The respondents are directed to consider the claim of the petitioners accordingly. In case the petitioners' claim is found covered under the aforesaid decision, they shall be granted notional benefits only. However, if the respondents find that the claim of the petitioners is distinguishable, they shall dispose of it by passing a speaking order within a period of six months from

the date of receiving a certified copy of this order.

Ordered accordingly.”

This Court is of the opinion that the judgment in **Balwinder Singh's case** (supra) squarely applies to the facts and circumstances of the present case and subsequent notification dated 13.3.1996 (Annexure P/8) is of no help. This Court had duly considered the relevant service rules and granted the relief. It is accordingly held that technical grounds have been taken in denying the benefits to the petitioners which is not sustainable and the relief to the notional benefits has already been limited which has been noted above.

Accordingly, the present writ petition is allowed. Order dated 27.9.2012 (Annexure P/14) is quashed. A writ of mandamus is accordingly issued to the respondents to grant the benefit of increments with notional effect from the date they became due after the petitioners were promoted.

November 16, 2015
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(G.S.SANDHAWALIA)
Judge