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

CWP No. 2407 of 2013
Date of decision : 05.02.2015

Partap Singh and others

...... Petitioner

versus

State of Haryana and others

...... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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Present:- Mr. Vikas Chatrath, Advocate
for the petitioners.

Dr. Sushil Gautam, DAG, Haryana.

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AMOL RATTAN SINGH, J.(Oral)

This petition simply seeks a direction that the petitioners be allowed to change their option with regard to the date from which they got the revised pay and pensionary benefits, in the light of the judgment of a Division Bench of this Court in CWP No.6567 of 1990, decided on 30.10.1990, i.e. Prem Chand and others vs. State of Haryana and others (Annexure P-1). The petitioners in that case, were allowed the benefit of increments/higher fixation of pay as had been withdrawn from them, in terms of another judgment dated 23.04.1990 passed in CWP No.5563A of 1989, i.e. Nitya Nand and Ors. vs. State of Haryana and Ors. (Annexure P-2).

It is not in dispute that the order in favour of the petitioners in

CWP No.6567 of 1990 was not implemented in view of the pendency of an SLP filed by the State of Haryana on the issue, which was eventually dismissed on 18.11.1991, after which a Curative petition and a Review petition were also dismissed in the year 2011. Thereafter, the petitioners of that petition had filed COCP No.67 of 2012, during the pendency of which the payment was made to them in terms of the judgments in their favour which was admitted by the respondents in the affidavit filed by them, in the COCP. A copy of that affidavit is annexed as Annexure P-6 with the present petition.

2. On asking, learned counsel for the respondents submits, as per the reply filed, that it is not the stand of the State that the change of option is not relatable to re-fixation of pay consequent upon the re-grant of increments to the petitioners after the judgment in their favour. The stand taken in the reply is that the petitioners failed to exercise such option for a period of 26 years from the date when the judgment came in their favour, and revised pay scales came into existence.

3. After having considered the rival arguments and having seen the pleadings, though, undoubtedly, if any person sleeps over his right for such a long time, it may get extinguished with the passage of time. In the present case also, the petitioners were silent while their counterparts were agitating their rights before this Court, which litigation continued up to the Supreme Court. Thus, obviously the petitioners cannot be put on par with the petitioners of the aforesaid CWPS No.6567 of 1990 and 5563A of 1989.

However, factually the situation is that, pursuant to the respondent-State having lost the litigation up to the Supreme Court, the benefits sought in those petitions were eventually implemented only in the year 2012, upon filing of COCP No.67 of 2012.

It is also not denied by the respondents that even the pay of the petitioners was revised as a consequence of the said litigation, only in the year 2012. Thus, naturally, the change of option which was to be exercised by the petitioners, could only have been after seeing what was beneficial to them upon refixation of their pays, in 2012, w.e.f. 1996. Hence, they sought to revise that option for grant of the next increment w.e.f. 01.04.1997, rather than w.e.f. 01.01.1996.

That is now being denied to them by the respondents on the ground that they were not agitating for their rights which led to the re-fixation of pay in 2012.

4. In my opinion, the stand of the respondent is wholly untenable, inasmuch as, to repeat, the right to change of option for the date of grant of increment, was only found to be more beneficial to the petitioners w.e.f. 01.04.1987, when their pay had been fixed retrospectively in 2012. Therefore, though non-agitation for their right to re-fixation of such pay may dis-entitle them to grant of arrears, however, the right to change their option upon their pay being refixed in terms of Rule 5 of Haryana Civil Services (Revised Pay) Rules 1987, which has been relied by the respondents, cannot be denied as regards Explanations 1 and 3 under the said Rule, because it became operative for the petitioners, only in the year 2012. The Rule, as reproduced in the reply of the respondents, is further reproduced hereinunder:-

> "5. Drawal of pay in the revised scale.- Save as otherwise provided in the rules, a Government employee shall draw pay in

the revised scale applicable to the post to which he is appointed.

Provided that a Government employee may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Explanation-1. The option to retain the existing scale under the proviso to this rule shall be admissible only, in respect of one existing scale.

Explanation-2. XXXXX

Explanation-3. Where a Government employee exercises the option under the proviso to this rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of a regulation of pay in that scale under rule 4.4 of the Punjab C.S.R. Volume I, Part I, or any other rule or under applicable to that post, his substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher."

The above explanations to Rule 5, therefore, pertain to exercise of option to retain the old scale. As to how the said explanation pertains to the case of the petitioners, has not been explained. Nevertheless, the respondents have also relied upon their instructions dated 31.08.1987, which, in reference to the Revised Pay Rules, 1987, conveyed the decision of the Finance Department that the benefit of Rule 7 of the said Rules, with regard to change of option to revise the scale of pay from the date of the next/subsequent increment, falling after 01.01.1986, would only be available till 31.12.1987.

5. However, Mr. Chatrath, learned counsel for the petitioners, has also drawn attention of this Court to the instructions of the Haryana Government dated 14.06.2004 (Annexure P-8 with the petition), which provide as under:-

> "2. The Finance Department, after considering the matter has now decided that the Government departments must ensure that at the time of issuing an order giving higher pay scale, promotion etc. from a retrospective date it is clearly mentioned in the order that if the employee wants to re-exercise his option he can do so **within a period of three months from the date of issue of such orders**. Any delay in exercising revised option would not be condoned and no relaxation will be allowed by Finance Department.
>
> 3. These instructions may please be brought to the notice of all concerned for strict compliance."

6. The respondents have not denied that the petitioners applied for re-exercise of option within three months from the date of issuance of the orders of re-fixation of their pay. In fact, they even had a legal notice served upon the respondents on 04.06.2012, which fact has not been denied in the reply, which simply states that repeated representations do not create a right in favour of the representationists who otherwise delayed effective action for their rights by not approaching the Court on time.

This stand of the respondents is also wholly untenable for the reasons already stated and further because the respondents did not care even to follow the instructions issued by their own Finance Department (Annexure P-8).

7. In reply to the contention of the petitioners placing reliance upon the aforesaid instructions, the reply given by the respondents, in para no.12 of the written statement, is that the petitioners were not aggrieved employees in the year 2004 and as such they cannot "get the fruits of this memo".

I find this to be a very strange stand, as it is not the case of the respondents that the aforesaid instructions dated 14.06.2004 have been withdrawn at any time. The instructions simply lay down a principle that once an employees' pay is refixed from a retrospective date, it should be clearly mentioned in the order that if the employee wants to re-exercise his option, he can do so within a period of three months from the date of such orders.

Hence, the stand of the respondents is contrary to their own instructions.

8. Further, a similar controversy also arose before a Division Bench in CWP No.18380 of 1994 wherein, the following directions were given by the Court while disposing of the matter on 21.11.1995:-

> "Keeping in view the fact that there may be many other similarly situated persons, we deem it proper to direct the respondents in general and respondent no.2 in particular to give similar opportunity to exercise revised option to other persons so that they may not be compelled to approach this Court and thereby unnecessarily add to the ever increasing number of cases. Such a course would also be in a large public interest and would save public exchequer from the expenses etc. which are required to incurred for defending the cases in the Court."

9. Consequently, this writ petition is allowed and the respondents are directed to allow the petitioners to change their option in the revised pay

scales w.e.f. 01.01.1987 rather than from 01.01.1986.

However, since undoubtedly the grant of higher pay to the petitioners, on refixation thereof in the year 2012, is the result of protracted litigation by persons other than present petitioners, the arrears of the benefit of change of option shall be restricted to a period of 38 months prior to the date of issuance of the representation made by the petitioners, after their pays were refixed in the year 2012.

Keeping in view the fact that the respondents have chosen to ignore their own instructions on a completely frivolous ground which is actually non-existent, the respondents would also pay costs of Rs.10,000/-, which may be recovered from the person(s) responsible for not allowing the petitioners to exercise their option, despite notice having been served upon them, in the face of instructions dated 14.06.2004.

The respondents would give effect to the change of option exercised by the petitioners within a period of two months from the date of receipt of a certified copy of this order.

(AMOL RATTAN SINGH)
JUDGE

05.02.2015
Shivani Kaushik/Dinesh