

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

Civil Writ Petition No.21250 of 2015

Date of decision: 5.10.2015

Dr.Rakesh Sharma

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Arora, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The effect of the circular letter dated 24.1.2011 [P-6] is that the approval was granted by the Finance Department permitting the petitioners to change their options in implementation of the decisions rendered by this Court in CWP No.7664 of 2009 etc. decided on 25.2.2010 with the condition that their pay will be fixed on notional basis and they will not be paid any arrears. More importantly, it was also made clear that similar benefit regarding change of options may also be allowed in similar nature cases/matters.

2. Thereafter, a supplementary circular dated 25.10.2012 was issued where a generalized decision was taken to cover all the departments of the Government. The petitioner belongs to the Department of Health &

Family Welfare while the cases decided with lead case CWP No.7664 of 2009 dealt with the Department of Education. The petitioner's case has been rejected for change of option for the reason that she had applied under circular dated 24.1.2011 but not the subsequent circular dated 25.10.2012 on the same subject. When the circular said that the employees of the other departments are also permitted to change their options, this did not mean that a fresh option was a condition precedent for award of benefits and the options already exercised by persons like the petitioner, in the departments other than the Education Department would be deprived of this right merely because they did not respond specifically to the subsequent circular dated 25.10.2012 which made no material difference. All that the circular requires is that the administrative department will be entitled to certify such claims for change of option. It becomes the duty of every department in the Punjab Government under the circular to invite applications from those who have not already applied because in the considered view of this Court, circular dated 24.1.2011 cannot be read in isolation to include only the petitioners of the six petitions which comprised the bunch under lead case CWP No.7664 of 2009. This is for the reason that Article 14 mandates similar treatment to similarly-placed persons and the ground is covered by the Division Bench judgment in **Satbir Singh v. State of Haryana and others**; 2002 (2) SCT 354 where the principles have been evolved for grant of similar relief to be granted to all those who have rights in rem based on court orders and directions. Therefore, I would read the circular dated 24.1.2011 not in personam but in rem and the instructions dated 25.10.2012 do nothing more then to recognize the cherished principle against unfair discrimination

protected by Article 14 of the Constitution.

3. Notice of motion.

4. Mr.Harkesh Manuja, Additional Advocate General, Punjab accepts notice on behalf of the respondents and waives service on them.

5. In view of the nature of the order proposed to be passed, there is no need to call for the written statement of the State only for State to be seen guiding the Court on how Article 14 is to be operated, the principles of which in service law stands articulated by the Supreme Court in **State of Uttar Pradesh & others v. Arvind Kumar Srivastava & others** (2015) 1 SCC 347 where the law on grant of similar relief to similarly situated persons has been indicated. Those are reproduced : -

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them.

They would be treated as fence-sitters and laches and

delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see [K.C. Sharma & Ors. v. Union of India](#) (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

6. The Department would follow the decision of the Division Bench in Satbir Singh's case and of the Supreme Court in Arvind Kumar Srivastava's case [supra] and grant similar relief to the petitioner without insisting on a hyper-technical objection that the petitioner did not apply under the 2012 circular.

7. For the foregoing reasons, this writ petition is allowed. The impugned order is quashed by issuing a writ of certiorari. A mandamus is issued to the State/Department to forward the case to the appropriate quarter for acceptance of the option as per rules and in the light of the interpretation placed by this Court on the two circulars.

8. Let a fresh order be passed within two weeks from the date of receipt of a certified copy of this order. The consequential benefits flowing from the order be handed over to the petitioner within the next one month.

(RAJIV NARAIN RAINA)
JUDGE

October 5, 2015

Paritosh Kumar