

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 27573 of 2013
Date of decision : May 7, 2015

L. K. Sehdev and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Karan Bhardwaj, Advocate
for the petitioners.

Mr. Hitesh Pandit, Additional Advocate
General, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioners have approached this Court for issuance of appropriate directions to the respondents to re-fix their pay in the pay scale of ₹13500-17250 as per Haryana Civil Services (Revised Pay) Rules, 1998 instead of pay scale of ₹12,000-16500 as already fixed w.e.f. 1.1.1996 as per Haryana Civil Service Rules, 1998 and for grant of arrears of re-fixation of their pay in the aforementioned pay scale and consequently arrears of pensionary benefits in terms of the order passed in LPA No. 797 of 2013 titled as State of Haryana and others Vs. S. P. Gupta decided on 26.4.2013 and for quashing of the order dated 4.10.2013 (Annexure P-10)

whereby the representation of one of the petitioners has been rejected by holding that his case is not covered by the Finance Department notification dated 7.8.1998 and clarifactory letter dated 10.6.2011.

Mr. Karan Bhardwaj, learned counsel for the petitioners submits that petitioners joined the Irrigation Department in the year 1975-77 and all were placed in the pay scale of un-revised pay i.e. ₹4100-5300 w.e.f.1.5.1989 and have been placed in the pay scale of ₹12000-16500 w.e.f. 1.1.1996 whereas according to the revised Haryana Civil Services (revised) Rules 1998, the petitioners are entitled to pay scale of ₹13500-17250 corresponding to their own revised pay scale of ₹4100-5300. He further submitted that the State of Haryana issued a notification dated 2.6.1989 for re-fixation of pay of Executive Engineer/Assistant Engineer/Sub Divisional Officer/Sub Divisional Engineer in the Public Works Department in respect of employees who had put in regular service of 5 to 12 years and above and as per notification such officers were entitled to further higher pay scale of ₹3,000-4500 and ₹4100-5300 respectively. Thereafter notification dated 16.5.1990 was issued whereby the previous notification dated 2.6.1989 was modified by declaring the aforementioned officers entitling them revised pay scale of ₹4100-5300 after rendering 12 years of regular service provided he/she would come within 20% of cadre post, thus, all the petitioners continued to draw the revised pay scale of ₹4100-5300 w.e.f. 1.5.1989 till 31.12.1995. The copies of the aforementioned notifications have been annexed at Annexure P-1 and P-2.

In order to lend further support he has referred to Haryana Civil Service (Revised) Pay Rules 1998 notified on 7.1.1998 whereby the pay scale of the officers of all the categories in the State of Haryana w.e.f. 1.1.1996 were revised and as per the aforementioned Rule 1st Schedule and Part II vide item No.23 the corresponding revised pay scale to the pre-revised pay w.e.f. 1.1.1996/unrevised pay scale of ₹4100-5300 is ₹13500-17250 and despite that the State of Haryana did not discharge the statutory obligation, which insisted one of the Engineers namely S. P. Sood to file a writ petition bearing No. 5520 of 2003. This Court on 2.2.2009 allowed the writ petition and directed the State of Haryana to grant the pension as per pay scale ₹13500-17250 w.e.f. 1.1.1996 and payment of pension arrears with interest @ 8% per annum. Copy of the order is annexed at Annexure P-3. The said order was challenged by filing LPA No. 1008 of 2010. The same was dismissed. However, many other related Executive Engineers filed various writ petitions by relying upon the judgment rendered in **State of Haryana Vs. S. P. Sood** and others which were allowed in terms of **S. P. Sood's case (supra)** in LPA No. 1008 of 2010 but yet the State of Haryana challenged the said order by filing various LPAs and all the LPA have been dismissed. Copies of the orders are annexed as Annexures P-5 to P-7 respectively. Despite the aforementioned orders the petitioners were constrained to submit representation, however, same have been rejected in a most sketchy and mechanical manner vide order dated 4.10.2013 (Annexure P-10).

Learned counsel appearing on behalf of the State

submits that petitioner Nos. 1 to 2, 4 to 10 were working as Executive Engineers whereas petitioner Nos. 3, 11 and 12 were working as AEs/SDOs as on 1.1.1996 and were granted selection grade of ₹4100-5300 from different dates which was not the functional pay scale of the post of Xens/SDOs and therefore they were allowed second ACP scale of ₹12000-16500/- w.e.f. 1.1.1996 in terms of the notification dated 7.8.1998 and therefore their pay has been fixed in an appropriate ACP Scale under appropriate rules and the demand/claim of the petitioners for functional pay scale of ₹13500-17250 is actually meant for the post of Superintending Engineer. It is promotional to the post of Executive Engineer and all the petitioners were not working as Superintending Engineers as on 1.1.1996 though, they were granted higher pay scale i.e. selection grade from different dates.

He further submitted that the judgment rendered by this Court in various LPAs and the Civil Writ petitions pertained to the entitlement of pension after revision of pension w.e.f. 1.1.1996 and after examining the orders of the Court the whole issue was examined by the State Government and accordingly clarificatory instructions dated 10.6.2011 (Annexure R-2) were issued wherein it was clarified that if the pay scale of particular post or cadre has been further enhanced/improved or reduced at the time of revision of pay scale the said revision would not be applicable in the case of pensioners. He further submitted that against various orders in LPA No. 930 of 2010 and others the State Government filed a SLP which is pending adjudication before the Hon'ble Supreme Court.

Mr. Karan Bhardwaj, learned counsel for the petitioner in rebuttal submitted that many SLPs have been dismissed. Copy of the order dated 21.2.2014 has been handed over by him and the same is taken on record and extracted hereinbelow:-

“State of Haryana and another etc. Vs. M. L. Gupta and others

Dated 21.2.2014 These petitions were called on for hearing today.

Hon'ble Mrs. Justice Gyan Sudha Misra

Hon'ble Mr. Justice V. Gopala Gowda

For Petitioner(s) Ms. Anubha Agrawal, Adv.

For Respondent (s)

Upon hearing counsel the Court made the following order

Delay condone.

The Special leave petitions are dismissed.”

I have heard learned counsel for the parties and appraised the paper book.

There is merit in the contention of Mr. Karan Bhardwaj and the plea raised by the State falls flat on their face in view of the fact that the pay scale of government employees after revision w.e.f. 1.1.1996 as per Haryana Civil Service (Revised) Pay Rules, 1998 against the pre-revised pay scale of ₹4100-5300 as corresponding revised pay scale was granted under the new rules was/is ₹13500-17250 and since the petitioners have been denied the aforesaid revised scales only on the premise that pre-revised pay scale was functional of ₹4100-5300 for the post of Superintending Engineer and not for the post of Executive Engineer is wholly erroneous as the petitioners were denied the pay scale of ₹4100-

5300 after rendering 12 years of service, thus they are entitled to corresponding revised pay scales.

Once the rule making authority has chosen to revise the pay scale in a tabular form the employee cannot be denied the same unless limitations are expressly visible under those rules.

The stand of the respondents that by Haryana Civil Services (Revised) Pay Scale Rules, 1998 is applicable or not it is held that the same is applicable in the matter of revision of pay scales as they are only meant to address the satisfaction whether the employee is entitled and to be placed in the higher pay scale though he is not actually promoted to higher post. Since the revised pay scale prescribe different stages or time scale, whether described as 'selection grade' or 'super time grade' which is only granted to the employees eligible for grant of fulfillment of the eligibility condition and further revision of pay scale be entitled to corresponding revised pay scales.

I have also gone through the finding rendered by a learned Single Judge of this Court in CWP No. 8216 of 2012 and various other writ petitions dated 29.10.2013. Copy of which has been attached as Annexure P-8 and as well as orders of the LPA Bench. The case of the petitioners is squarely covered by the aforementioned judgment.

Accordingly the present writ petition is allowed. The impugned order Annexure P-10 is quashed. The direction is issued to the respondents to re-fix the pay or pension of the petitioners in terms of the aforementioned orders in CWP No. 8216 of 2012 by

giving them a benefit of pay scale of ₹13500-17250 from the due date.

Let this exercise be done within a period of two months from the date of receipt of copy of this order.

**(AMIT RAWAL)
JUDGE**

**May 7, 2015
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