

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24782 of 2015

Date of Decision: 28.11.2015

Sh. Gurmail Singh

... Petitioner

Versus

The State of Punjab and another

... 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.

1. Learned counsel *inter alia* contends that the equation has been created between the post of Veterinary Officer and Agricultural Officer/Horticulture Officers in CWP No.23138 of 2010 titled *Dr. Naresh Kumar Kataria and others vs. State of Punjab and others* decided on January 05, 2012 when the State before the Court accepted the parity but with the rider that the petitioners shall not be entitled to any arrears or pay of fixation of pay on the notional basis from the due date(s). The learned Single Judge while disposing of the matter held that withholding of arrears of revised pay was justified but not granting benefit of fixation of pay on notional basis from the due date(s) was unjustified and to this last extent, a direction was issued to re-fix pension etc. Similar orders have been passed in other cases. The petitioner is a party to previous CWP No.9936 of 2012 (P-6) which was disposed of in terms of the decision in CWP No.23138 of

2010 (P-5) supra. The State while conceding parity between Veterinary Officers and Horticulture Officers/Agriculture Officers (the petitioner is a Horticulture Officer) has denied the claim of the petitioner on the specious plea that the three tier pay-scale applicable to Veterinary Officers which is to be applied in the case of Agricultural Officers/Horticulture Officer at the stage of 4, 9 & 14 years cannot be granted to the present petitioner for the reason that the service record pertaining to ACRs of the officer has not been found good in terms of the criteria prescribed. This is stated in the order dated March 13, 2013. The order has been passed by the Director Horticulture, Punjab. Though there may be some delay in approaching the Court against the order dated March 13, 2013 but that does not mean the right to relief stands extinguished by bar of limitation as the cause of action is still within the active range of maintaining a civil suit, if brought for the same purpose. It has not been explained in the impugned order as to how ACRs can be linked with pay-scales which are applicable automatically on completion of requisite period of time and the stages fixed at 4, 9 & 14 years and there is nothing present in the Punjab Civil Services (Revised Pay) Rules, 1998 linking ACRs to denial of higher pay-scale.

2. It may be noted that Agricultural Officers/Horticulture Officers were entitled to different scales of pay at stages 8 & 16 years of service unlike the 4, 9 & 14 scheme.

3. Learned counsel for the petitioner submits that against the impugned order, the petitioner has filed representations to the State Government questioning for correction of the error in the fallacious assumption applied in denying the just claim of the petitioner but that has

met with a stony response. The petitioner is a retired person and may not have had the agility, energy or the financial means to approach this Court for the vindication of his rights which in this day and age involve considerable expense often out of the reach of the common man. In any case, he remains within the range of maintainability of, remedy against the impugned order in the action brought in 2015 to vindicate the grievance. The legal position seems to be clear enough on binding authority and the impugned order prima facie appears to reflect an error of reasoning which does not deserve to be left to stand for it to continue deprivation of right of the petitioner, the cause of action being recurring monetarily.

4. Notice of motion.

5. Mr. Harkesh Manuja, Addl. AG, Punjab on the asking of the Court accepts notice on behalf of the respondents and waives service on them. Reply is not found necessary.

6. It is past cavil that the dispute is covered by the decision of this Court when it equates the post of Veterinary Officer and Agricultural Officer/Horticulture Officer in the matter of award of pay-scales with reference to the more beneficial pay-scales available to Veterinary Officers are germane to the present cause brought on behalf of a Horticulture Officer who enjoys parity with an Veterinary Officer. The petitioner was himself a party to the previous litigation which was disposed of in his favour in terms of the decision in CWP No.23138 of 2010. The basis of the orders were dependent on reconsideration of the issue by the State itself and the production of the order dated December 21, 2011 accepting parity amongst the two counter-part posts in the same Administrative Department

functioning under the Financial Commissioner (Development), Punjab. It would seem to be a sheer waste of time to go through the formal motions of summons issued to the State and to receive reply from them only to be told the same thing in the future and, therefore, in order to save time in a covered matter this writ petition is allowed. The impugned order dated March 13, 2013 (P-7) is set aside. It may be noted that the petitioner retired from service on September 30, 2002 and no arrears of pay and allowances are to be paid to him and in view of the liberty granted, there will be a notional re-fixation of pay and allowances and consequently, the last pay drawn will be revisited but the monetary benefits would be restricted to 36 months from the date of the this petition. This is in view of the order passed in *Dr. Naresh Kumar Kataria's* case (supra) on the basis of which CWP No.9936 of 2012 filed by Sukhdev Singh Sandhu and four others was decided on May 23, 2012 by the learned Single Judge of this Court. In that petition, the petitioners have sought a mandamus directing the respondents to equate the posts and grant them the same revised pay-scale(s) as have been granted to their counter-parts in the Animal Husbandry Department, Punjab.

7. A writ of mandamus is thus issued to the respondents to re-fix the pay and pension of the petitioner in the light of the decision in *Dr. Naresh Kumar Kataria's* case (Supra) read with the decision in which the petitioner was a party. This would be done notionally w.e.f. January 01, 1996 within a period of three months from the date of receipt of certified copy of this order and irrespective of the ACRs of the petitioner which have no material bearing on the issue of pay-scales attached to posts/ equated posts since the mix up has resulted from a misreading of the rules as though

the authority who passed the impugned order was dealing with the benefits under the Assured Career Progression Scheme. This fallacy is removed from the impugned order. The monetary benefits and arrears of pay and pension etc. will be computed and the outstanding dues will be paid to the petitioner restricted to 36 months from the date of filing of the present petition i.e. November 26, 2015.

8. Order dasti.

(RAJIV NARAIN RAINA)
JUDGE

28.11.2015
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