

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

CWP No.6704 of 2014

Date of Decision:.17.08.2015

Sandhya Devi

...Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. M. K. Dogra, Advocate
for the petitioner.

Mr. Ranbir Singh Pathania, DAG, Punjab.

Mr. Rajiv Dhawan, Advocate for
Mr. Sumit Gupta, Advocate
for respondent No.5.

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

DEEPAK SIBAL, J. (Oral)

The husband of the petitioner served as an Electrician at Electrical Division, Ranjit Sagar Dam, Shahpur Kandi Township, Pathankot. As per policy of the State of Punjab dated 22.01.1993 due to hazardous working conditions as also for early completion of the project it was decided by the respondents to grant retrenchment increment and special increments to employees like the husband of the petitioner. Under the above policy the husband of the petitioner was granted the increments.

However, as a result of subsequent action the increments so granted were

sought to be withdrawn.

As the husband of the petitioner expired on 31.10.2014, the above action on the part of the respondents is challenged by the petitioner, as legal heir of her husband through the present petition.

Counsel for the parties are ad-idem that the issues raised before this Court in the present petition were also raised earlier by similarly situated employees. A learned Single Judge of this Court through Judgment rendered in CWP No.5568 of 2008 titled as Charan Dass and others Vs. State of Punjab and others, decided on 27.05.2009, held the petitioners therein entitled to the grant of retrenchment increment but declined the grant of special increments. It was further directed that no recovery could be made. The petitioners therein were also held entitled to interest on the delayed payment of pension/retiral benefits @ 6 per cent per annum.

The above referred judgment of the Learned Single Judge was taken up in an Intra Court Appeal being LPA 1161 of 2009, Tarlok Chand and others Vs. State of Punjab and others. A Division Bench of this Court, after considering the entire matter in detail modified the order of the Learned Single Judge to the following effect:-

“8.Having heard learned counsel for the parties and perusing the paper books we are of the considered view that there is merit in these appeals and the same deserves to be allowed. At the outset it would be relevant to read Rule 10.8 of the Departmental Financial Rules, which is as under:-

“10.8 To accord sanction to the creation of posts on work-charged establishments.

Note(1) When the rate prescribed by the Higher Authority for any particular class of establishment is a time scale of pay a Superintending Engineer or Executive Engineer can make an appointment, on a pay equal to any stage of the time scale, the maximum of which does not exceed Rs.400/- or Rs.200/- per mensem, respectively.

The grant of advance increment to the personnel borne on work charged establishment should be subject to confirmation by the Chief Engineer.

Note(2) The term “advance increment” used in Note I above includes the grant of advance increments on the initial appointment of a person against a post borne on work charged establishment as well as during the course of his service.”

9. *A bare perusal of Rule 10.8 makes it clear that the Chief Engineer has been clothed with the power to grant advance increments to the personnel borne on work-charged establishment, which could be granted even on initial appointment of the person against a post as well as during the course of his service. The Chief Engineer continues to enjoy this power till date. Therefore, we have no hesitation to hold that the benefit of special increments, which was extended to various work-charged employees like the petitioner-appellants, did not require any sanction from any authority before*

its release to work-charged employees because the Chief Engineer is fully competent. We further find that the circular dated 05.08.1968 issued by the State of Punjab converting grant of special increments to cash rewards to its employees could not have been made applicable to the petitioner-appellants because prior to 1996 the Punjab Civil Services Rules Volume-I Part-I were not applicable to them and they were to be governed by the Departmental Financial Rules. As stated above, under Rule 10.8 of the Departmental Financial Rules, the Chief Engineer was fully empowered to grant special increment to a person borne on work-charged establishment. It is also well settled principle of law that the executive instructions cannot override the powers of the authorities conferred upon them under the statutory Rules. Therefore, it is held that the Chief Engineer was competent to grant special increments under Rule 10.8 of the Departmental Financial Rules and the same could not have been withdrawn.

As a sequel to the above discussion, these appeals are allowed. The orders passed by the official respondents withdrawing the benefit of special increments are set aside. The orders passed by the learned Single Judges are also modified to that extent. The benefit of special increments is restored back to the petitioner-appellants.”

Thus, in addition to retrenchment increment, the similarly situated employees like the husband of the petitioner were held entitled to special increments also.

The State of Punjab challenged the above referred order passed by the Division Bench in LPA No.1161 of 2009 before the Apex Court. The Apex Court after converting the Special Leave Petitions into civil appeals, in the lead case being CA No.6540 of 2014 passed the following directions:-

Having heard learned counsel for the parties and on the scrutiny of the rule we find that the Chief Engineer had the authority to grant special increments. The learned Single Judge has appreciated the situation and found it was done selectively. At the time of fixation of pay scale, as we have been apprised it is fixed by the Chief Engineer. Many incumbents had worked prior to regularization for the period of 8 years and obtained 15 to 20 increments and that is why the Accountant General objected on the ground that there was no rationale in granting such premature/advance increments and, in fact, they had been granted in an arbitrary manner.

Be it stated, as far as the grant of retrenchment increment is concerned the same has attained finality and the employees shall be entitled to the same. As far as other regular increments are concerned every employee is definitely entitled to get

the annual increments. But, as far as special increments are concerned the learned Single Judge has opined that it has been done in an inappropriate manner. Initially in the course of arguments there was a debate whether such kind of increments could be granted on rational basis or not, but on hearing further arguments, we have thought it appropriate to put the controversy to rest from all spectrums and accordingly we direct that all the respondents shall get the annual increment for the years of service they have rendered prior to regularization and that apart four special increments for the period they have served prior to regularization. Be it clarified that the grant of retrenchment increment conveys that when they were out of service they would be granted by virtue of the order passed by the learned Single Judge. They have been granted that and hence, it would have come within the compartment of annual increment. Be it noted that if someone has got less than four increment he will not claim that he has right to get four increments. The grant of four special increments applies to those employees who have got more than four increments. At the cost of repetition let it be stated that the respondents shall get their annual increment plus four special increments and the same shall be computed for the purpose of pay fixation and

accordingly the increments received during the course of employment regular pay shall be fixed and on that foundation pension shall be re-fixed. Needless to say, there will be no recovery on any score.

With the aforesaid modification in the judgment of the Division Bench all the appeals stand disposed of without any order as to costs. [emphasis supplied]

A perusal of the above quoted order of the Apex Court leaves no room for doubt that similarly situated employees like the husband of the petitioner have been granted annual increments as also four special increments. In addition to the above, retrenchment increment has also been granted.

That being so, I find no reason in fact or in law to deny the same relief to the petitioner.

Accordingly, the present petition is disposed of while granting to the petitioner the same relief as granted by the Apex Court to the similarly situated employees through order dated 16.07.2014 passed in Civil Appeal No.6540 of 2014 titled as “State of Punjab & ors. Vs. Tarlok Chand & ors.”

No costs.

(DEEPAK SIBAL)
JUDGE

17.08.2015
rimpal