

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

**CWP No.14282 of 2003
Decided on :07.06.2016**

Madan Lal Verma

... Petitioner

Versus

The State of Punjab and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.K.S.Khehar, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks the benefit of revised pay scale of Rs.200-450 w.e.f. 26.06.1968 and Rs.225-500 w.e.f. 01.02.1971 on the strength of the judgment of the Division Bench in ***LPA No.848 of 1992 'Sawinder Singh and others Vs. State of Punjab and another'*** (Annexure P-5). The said judgment was implemented by the State vide order dated 07.03.2003 (Annexure P-6), whereby sanction was accorded to grant the abovesaid revised pay scale from the dates mentioned above on the basis of which the petitioner stakes his claim.

The benefit of the said scales is on the ground that as per the report of the pay commission dated 21.01.1969 grade of Rs.200-450 was granted. Similarly as per the recommendations of the pay commission 1971, the grade of Rs.225-500 is permissible w.e.f. 01.02.1971. The petitioner in this case has been granted the benefit from 16.07.1973 on which date he had completed five years period of service, since he had been appointed on 26.06.1968 on ad hoc basis.

The pleaded case of the petitioner is that he was appointed as English Stenography Instructor on ad hoc basis in the Industrial Training Institute, Ferozepur w.e.f. 26.06.1968. It is his own case that there was a requirement of five years experience as a Stenographer/Steno Typist for all the three languages including Punjabi and Hindi apart from English. On account of the Stenography Instructors being not available with requisite five years experience recruitment could not be made as they did not possess the five experience. Therefore, it is his case that the condition of five years was deemed to have been relaxed at the time of initial appointment of the petitioner. The pay scale that was granted to him was Rs.120-200, though the post carried the scale of Rs.160-330, which was granted to him on 20.06.1969 w.e.f. 26.06.1968. Thereafter, the revision took place.

It has been pleaded that in March, 1972 Hindi Stenography Instructors, namely, Sharda Devi and Ashok Kumar were appointed, though they did not also fulfill the five years experience, but were granted the benefit of scale of Rs.225-500 from the date of joining. Resultantly, the petitioner also filed representation regarding the grant of scale. He was informed on 07.03.1974 (Annexure P-1) that the same would only be considered after services were regularized. It is his case that he was regularized on the said post w.e.f. 01.01.1973 vide letter dated 24.08.1979 (However a perusal of the photocopy of the letter produced by the department would go on to show that he was appointed on the regular post and was on probation for a two years period).

Thereafter, the petitioner was granted the scale of Rs.225-500 w.e.f. 16.07.1973 by modifying the earlier date, whereby he had been given the benefit from 06.04.1976, vide office order dated 10.03.1981 (Annexure P-2).

It is the case of the petitioner that one Yashpal Singla, Hindi Stenography Instructor was also given the benefit of the higher grade of the revised pay scale w.e.f. date of his initial appointment, in pursuance of a decree dated 19.09.1990 passed by the Sub Judge First Class, Nabha, even though he did not possess the requisite experience of five years. Accordingly, it has been pleaded that on account of unified cadre for the Stenography Instructors and the juniors having been given this benefit, the petitioner is entitled for the same. In view of the identically situated persons given the benefit of revised pay scale of Rs.225-500 w.e.f. the initial date of appointment, the petitioner had filed representation dated 07.03.1993 (Annexure P-4).

Other Stenography Instructors had filed CWP No.3367 of 1991 claiming the revised scale, which was partly allowed by the learned Single Judge by directing the respondents to fix their pay in the scale of Rs.225-500 w.e.f. the date of completion of five years service. Letters Patent Appeal *Sawinder Singh and others (supra)* , however was allowed, on the basis of which the petitioner seeks the said claim. Resultantly, the petitioner also seeks the proficiency step up for a period of 8, 16, 24 and 32 years, which has not been granted to him, on account of his ad hoc appointment on 26.06.1968.

The State in its written statement has taken the defence the writ petition being time barred and suffering from the laches as the writ petition has been filed at a belated state after 36 years. It is admitted that the petitioner was appointed on 26.06.1968 in the pay scale of Rs.120-200 on ad hoc basis and his services were regularized w.e.f. 01.01.1973, after completing the requisite period of five years. Accordingly, pay scale was revised from Rs.160-400 to Rs.225-500 w.e.f. 16.07.1973. It has been clarified that the cadre was different and seniority of Punjabi, Hindi and English Stenography Instructors was merged into single cadre w.e.f. 16.01.1996. The demand of scale on the basis of merged seniority list was not admissible prior to 16.01.1996 and thus the persons mentioned were not juniors.

It has been further mentioned that relaxation was given to Punjabi and Hindi Stenography Instructors only for the purpose of regularization of their services and not for the purposes of revision of higher pay scale. It was admitted that as per the rules five years experience was thus for all the three languages. However for the post of Punjabi and Hindi Stenography Instructors the five years experience had been abolished for regularization. The recruitment for the post of Hindi and Punjabi Instructors were made in the year 1968 to 1971 and Punjabi language was declared as State language in April, 1968 and therefore, the candidates possessing five years experience could not be available during that period.

The Government vide letter dated 04.02.1975 (Annexure R-

3) had abolished the condition of experience for regularization. The petitioner belongs to English Stenography and could not claim relaxation in experience at par with Punjabi and Hindi Stenography Instructors. Smt. Sharda Devi and Sh. Ashok Kumar were appointed on regular basis and given the grade of Rs.200-450 w.e.f. 12.03.1970, the date of their appointment and, thereafter, on revision of pay scale Rs.225-500 w.e.f. 01.02.1971, the pay was refixed. The petitioner had been working on ad hoc basis and completed five years experience, and he was given the scale of Rs.225-500 w.e.f. 16.07.1973 and thus his case was different. Similarly as regard Sh. Yash Pal Singla his seniority was different with the petitioner and he was allowed the grade of Rs.225-500 from the date of appointment i.e. 18.11.1968 by the Sub Judge First Class, Nabha. The receipt of the representation dated 07.03.1993 has been denied. However, it has been admitted that another representation dated 29.03.1995 had been considered and rejected on 24.11.1995 (Annexure R-4). Similarly, the representation dated 21.04.2003 (Annexure P-7) had also not been received in the office. The benefit of 32 years of Assured Career Progression Scheme could not be granted as services were regularized on 01.01.1973 and he had not completed 32 years service, when he retired on 28.02.2003. The benefit of 8-18 years of service had been given on 01.07.1986 and 27.01.1991, respectively. The judgment of the Division Bench was distinguished as not being similar as it pertained to the cadre of Punjabi Stenography Instructors.

Counsel for the petitioner has accordingly submitted that the

petitioner was identical placed as the appellants in the LPA and, therefore, should also be given the benefit from the moment he joined on 26.06.1968 in the scale of Rs.200-450 and Rs.225-500 from 01.02.1971.

However, a perusal of the Division Bench judgment would go on to show that the reference was made to the letter dated 04.02.1975, wherein it was noticed that on account of the bifurcation of State of Punjab and Punjabi being declared official language, the availability of five years experience of Punjabi Stenography was not there. Therefore, it was decided to delete the condition of five year experience for those who had been appointed during the years 1968 to 1971. It was on this account, it was held that the Government should treat them as regularly appointed Stenography Instructors and a categorical decision had been taken in the case of other two languages. It has further been found that the factum of other similarly situated persons having been granted the benefit of revised scales, in spite of them not possessing five years experience had not been denied and on that account the benefit was given by the Division Bench.

The petitioner in the present case as noticed above was appointed on ad hoc basis on 26.06.1968 in the scale of Rs.160-330. He carried on working with the department and, thereafter, on 24.08.1979 he was appointed on regular basis w.e.f. 01.01.1973 in the revised scale of Rs.160-400, the moment he completed five years from the date of his appointment. The translated version of the relevant part of the letter dated 24.08.1979 reads as under:-

"Sub:- Regarding appointment.

Ref:- Recommendations of the Screening Committee.

2. You are appointed on the post of Stenography Instructor (English) at Industrial Training Institute, Ferozepur on regular basis in the pay scale of 160-10-280/15-400(plus basic allowances) at monthly salary of 160/-w.e.f. 01/01/1973.

3. This post is totally temporary and no assurance is given for permanent job with this post. As a result thereof, your services may be terminated without any reason and without serving any notice on account of completion of services rendered by you on this post or on completion of any provision, meaning thereby; whichever gets completed at any stage. There will be a probationary period during the first two years of your services. If your work and conduct are not found satisfactory during this period, then your services may be terminated at any time without serving any notice and you may be relegated to your previous post. If you have any lien in any of the departments, you must have informed in this regard. If you are discharged from your duties or your services are dispensed with due to leave arrangement or some other reason or resignation is tendered by you, then a notice for a period of one month or one month salary with allowances in lieu of the notice will be required to be given by any of the parties."

As per the rules, he was given the benefit of revised scale of Rs.225-500 w.e.f. 16.07.1973 as prior to that he was not eligible. It is in such circumstances, the judgment of the Division Bench cannot be applied to the facts and circumstances of the present case and no decision was taken as such to do away with the five years experience in case of English Stenography Instructors, which was the requisite requirement as per the rules.

Resultantly, the petitioner as such can have no grievance regarding the fact that others have been granted this benefit, since they did not belong to the same cadre of English Stenography Instructors. The cadre was merged much later in the year 1996 and, therefore, the reliance

upon the seniority list is as such of no help to the petitioner. The date of regularization was taken to be 01.01.1973 on the petitioner attaining the requisite qualifications, the benefit of the proficiency step up as claimed would also not be admissible to the petitioner, on account of the fact that he had not completed the requisite period and he had retired on 28.02.2003 and, therefore, no relief can be granted on that account.

A perusal of communication dated 24.11.1995 (Annexure R-4) would go on to show that, the petitioner's request for the scale Rs.225-500 from the date of initial appointment was rejected. He chose not to agitate it till the date of his retirement. He claims that he had filed representation dated 21.04.2003 (Annexure P-7), but the same was not received by the respondents as per the written statement. No replication has been filed to controvert the said fact. The Division Bench judgment was dated 03.12.2001 and, thereafter, he filed the present writ petition seeking the claim on the basis of the said judgment, though his claim stood rejected 8 years earlier. In such circumstances, apparently he had given up his claim and only on the strength of the judgment being delivered, relief is claimed and on the basis of which he is not entitled as discussed above.

The Apex Court in the '***State of Uttar Pradesh Vs. Arvind Kumar Srivastava and others'*** 2015 (1) SCC 347 has held that those persons who do not challenge the wrongful action in their cases and acquiesced the same they can be treated as fence sitters and their writ petition can be dismissed on that account. The department is thus well

justified by submitting that the claim had been set up after long delay and the rejection on 24.11.1995 had never been challenged. The relevant part of the judgment reads as under:-

“23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(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.

Reliance placed upon the Division Bench judgment in **'Rattan Singh Vs. The State of Haryana' 1995 (1) SCT 711** would be of no assistance to the petitioners, in the facts and circumstances of the present case, as in the said case, the petitioner was claiming the benefit of revised scales on the basis of the higher qualifications, in view of the settled law of the Apex Court. The Division Bench had held that where the judgment pronounced by the Court was judgment in rem, the benefit should be given to all. The same view was followed by the Apex Court in the case of **Arvind Kumar Srivastava** (supra) wherein the principle of judgment in rem has been elaborated. The case in hand is not of a judgment in rem which had to be applied by the State, as discussed above.

In such circumstances, this Court is of the opinion that the relief is not admissible to the petitioner and has been rightly denied. Accordingly, finding no merit the present writ petition is dismissed.

JUNE 07, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE