

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

**CWP No.2939 of 1995 (O&M)  
Date of decision : October 05, 2016**

**Harminder Singh**

**..... Petitioner**

**Versus**

**State of Punjab and another**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:-** Mr. Harsha Aggarwal, Advocate for the petitioner.  
Mr. R.S. Pathania, DAG, Punjab.  
None for respondent No.2.

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

**KULDIP SINGH J. (ORAL)**

Petitioner was appointed as Accountant on 18.03.1983 in the Punjab State Handloom and Textiles Development Corporation at Chandigarh (in short 'the PUNTEX) in the pay scale of Rs.160-10-280-15-400/- with the basic pay of Rs.160/- plus usual allowances sanctioned from time to time. The pay of the petitioner was revised w.e.f. 01.01.1986, vide order dated 24.07.1991/01.08.1991. The PUNTEX-respondent No.2 was running in losses. Therefore, the petitioner was issued a letter dated 21.01.1992 (Annexure P-3), giving him three months' notice of termination of service. However, vide another letter dated 31.01.1992 (Annexure P-4), the petitioner was given an offer whether he is willing to accept alternative job/employment in the other Government Departments/Corporations, subject to the condition that he would not claim any retrenchment benefits and seniority in service. The petitioner availed the said option. Accordingly, the petitioner was appointed in Punjab Police Housing Corporation Limited vide letter dated 29.04.1992.

According to the petitioner, the Board of Directors of PUNTEX, vide Annexure P-5, dated 21.02.1992 decided that revised pay scale w.e.f. 01.01.1986 will not be given to the employees, who opted the alternative service.

Now, the petitioner claims:-

- (i) gratuity for nine years i.e. from 07.03.1983 to 30.04.1992.
- (ii) arrears of revised pay scale w.e.f. 01.01.1986 to 31.12.1991.
- (iii) leave encashment.

Respondent No.2-PUNTEX in the reply has taken the objection that the present writ petition is bad for misjoinder of necessary parties as the petitioner has not made the Punjab State Handloom and Textile Development Corporation Limited as party. Only the Managing Director, the PUNTEX has been sued. Further objection was taken that PUNTEX is not a State within the meaning of Article 12 of the Constitution of India. Further objection was also taken that earlier 27 employees of PUNTEX filed CWP No.16017 of 1991, titled as "Vijay K. Sharma and others vs State of Punjab etc.", which was dismissed as withdrawn. No commercial activity is being carried by the Corporation and it has no funds to release the salary of the staff and discharge other statutory liabilities. Respondent No.2 defended its decision.

So far as the payment of gratuity for the nine years for which the petitioner served respondent-PUNTEX and leave encashment is concerned, it comes out that the Punjab Police Housing Corporation, where the petitioner was re-employed has not been made party. After the re-employment of the petitioner, he could pray that his previous service should

be counted for the purpose of pensionary benefits, which would include the gratuity and leave encashment of the entire service. Therefore, in the absence of such prayer and non-joining of the Punjab Police Housing Corporation, necessary relief regarding the gratuity and leave encasment cannot be granted in the present petition.

Learned counsel for the petitioner seeks to withdraw the said prayer with liberty to file fresh petition, claiming said relief of gratuity and leave encashment.

The said liberty is, accordingly, granted to the petitioner.

Now, coming to the arrears of revised pay as per rules, it comes out that vide order dated 24.07.1991/01.08.1991 (Annexure P-2), the pay scales were revised. Once the pay scales is revised, the petitioner is entitled to revised pay w.e.f. 01.01.1986. The PUNTEX vide Annexure P-5 dated 21.02.1991 could not say that those employees, who have availed the option of re-employment in some other Department will not be entitled to revised pay scales. Hence, Annexure P-5 is patently illegal and is hereby quashed. The petitioner is entitled to arrears of revised pay w.e.f. 01.01.1986 to 31.12.1991, in terms of re-fixation of pay, vide order dated 24.07.1991/01.08.1991 (Annexure P-2). The arrears be, accordingly, released to him by respondent No.2-PUNTEX.

As such, the present petition is allowed to the abovenoted extent.

**(KULDIP SINGH)**  
**JUDGE**

**October 05, 2016**

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Whether speaking / reasoned Yes

Whether Reportable: No

