

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1734 of 2000 (O&M)

Date of Decision: 11.11.2016

Mrs. Sudesh Malhotra

... Petitioner

Versus

Punjab and Haryana High Court,
Chandigarh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.C. Jain, Advocate,
for the petitioner.

Mr. Karminder Singh, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.

1. The petitioner's husband was an Advocate in this Court. He died as a result of an injury sustained in an accident in 1973. On compassionate grounds, Hon'ble the then Chief Justice was pleased to appoint the petitioner as Clerk on the establishment by order dated November 09, 1973. The order was partially modified on April 06, 1974 and instead of then lower post of Clerk the petitioner was appointed as an Assistant. She was placed in the pay scale of ₹ 800-1400 w.e.f. February 04, 1982. Accordingly, on the material date i.e. December 31, 1985 at the point where the dispute started she was placed in the pay scale of Assistant. On the recommendations of the 3rd Pay Commission, the Punjab Government vide its circular dated October 08, 1992 allowed the initial start of ₹ 1920/- in the running scale of ₹ 1800-3200 admissible to Senior Assistants who were in the unrevised scale of ₹ 800-1400 on December 31, 1985. No

dispute that the recommendations of the Pay Commission were adopted by Hon'ble the Chief Justice from October 29, 1992 vide letter dated July 28, 1993.

2. Feeling aggrieved by denied her salary due, she filed a representation to the High Court on November 12, 1998 claiming that her pay should be re-fixed in accordance with the order dated October 29, 1992 with the initial start of ₹ 1920/- may be made available to her along with the special pay of ₹ 120/- w.e.f. January 01, 1986 and delay, if any, in exercise of option may be condoned and she be slotted in the pay scale of ₹ 1800-3200 w.e.f. January 01, 1986 on which denial of relief claimed in opposition by the respondents she allegedly violated the instructions and rules to do herself a favour.

3. In the written statement put in by the High Court it stands admitted that the petitioner was earlier granted senior scale of ₹ 800-1400 w.e.f. February 04, 1982 vide letter dated September 18, 1982. However, subsequently vide office order dated August 08, 1989, the beneficial dates were recast and the petitioner was placed in the pay scale of ₹ 800-1400 w.e.f. September 13, 1982. It was not disputed that the petitioner was in the scale of ₹ 800-1400 on December 31, 1985. There was also no dispute that the petitioner was promoted as Superintendent Grade-II (redesignated Deputy Superintendent) w.e.f. July 07, 1993. It was admitted that the factual position was correct inasmuch as the Punjab Government vide letter dated July 28, 1993 had granted to its employees the benefit of additional pay of ₹ 120/- per month in the pay scale of ₹ 1800-3200 w.e.f. January 01, 1986 to

those Senior Assistants and Senior Scale Stenographers who were in the unrevised pay scale of ₹ 800-1400 on December 31, 1985 and whose pay in the revised pay scale of ₹ 1800-3200 had been fixed at more than ₹ 1920/- on January 01, 1986. A clarification was also asked for and received from the Government of Punjab in this behalf vide their letter dated May 29, 1995 (Annexure R-3), in response to this Court's letter dated April 24, 1995 (Annex R-4), that the entitlement of grant of additional pay of ₹ 120/- P.M, to Senior Assistants and Senior Scale Stenographers was to be assessed on the basis of revised pay as on January 01, 1986 and not from the date of option exercised for grant of the revised pay scale. It is pertinent to mention here that the petitioner had given option for the revised pay scale w.e.f. April 01, 1987 and her revised pay was fixed accordingly at ₹ 2050/- w.e.f. the said appointed date. Since she had opted for the revised pay scale at a later date, viz., April 01, 1987, therefore, her revised pay as on January 01, 1986 had to be assessed notionally or so the government thought fit paying due regard to the petitioner's pay fixed in the old un-revised pay scale was ₹ 910/- as on January 01, 1986 and not with actual money. As such, according to the fitment table/ready reckoner annexed to the Punjab Government Notification dated September 09, 1988 containing the Punjab Government Services (Revised Pay) Rules, 1988, her notional pay in the revised pay scale comes to ₹ 1880/- as on January 01, 1986. In other words, her revised pay as on January 01, 1986 was less, and not more, than Rs.1920/-. Therefore, the petitioning left out person she stated that her case is not covered by the instructions of the Punjab Government as the pay of an employee in the revised pay scale should have been fixed at more than ₹

1920/- P.M. On January 01, 1986 in order to determine whether the petitioner, an ex employee, be entitled to the additional pay of ₹ 120/- P.M. Her request for the grant of additional pay was thus rightly declined by Hon'ble the Chief Justice vide his Lordship's order dated July 07, 1999 and the petitioner was informed accordingly vide this Court's memo dated September 13, 1999.

4. This is the broad outline of the case. The dispute is confined to release of additional benefit of ₹ 120/- in the pay scale of ₹ 1800-3200 w.e.f. January 01, 1986.

5. The claim has been rejected by order dated September 13, 1999 vide Annex P-4. The order reads as follows:-

*“Re: Grant of benefit of Rs.120/- P.M. as additional pay
w.e.f. 1.1.1986.*

.....

Ref. : Your application dated 12.11.1998.

MEMO:

It is to inform you that after considering your request contained in your application, referred to above, Hon'ble the Chief Justice has been pleased to decline your request for the grant of benefit of Rs.120/- P.M. as additional pay w.e.f. 1.1.1986 in the scale of Rs.1800-3200/-.

*Sd/- Assistant Registrar (E),
for Registrar”*

6. The order to say the least is non-speaking and assigns no reason on the face of the order. The real question is as to whether the defence taken in the written statement can be attributed the characteristics of a speaking order passed by the competent authority. It is well known that judicial review is not normally directed against the stand of the respondent/s in the

written statement in defence of an action since writ of certiorari goes to the record, the reflection of which is the order passed on the administrative side. The reasons contained in the written statement in defence of the action are not enough to be examined to sustain an impugned order which is *prima facie* cryptic and non-speaking and only conveys only the result of the consideration by Hon'ble the Chief Justice without disclosing the process of decision making and reasons for the conclusion arrived at. The necessity of recording reasons in an order made in writing and the necessity of disclosing the reasons which weighed in the mind of the authority to the issue presented for consideration is an essential part of the rule of law as indicated in the Constitution Bench decision in S .N. Mukherjee v. Union of India, AIR 1990 SC 1984. Applying these tests, the impugned order does not satisfy the requirements to facilitate judicial review of administrative action. An order of the kind passed and conveyed to the petitioner as the impugned order dated September 13, 1999 ought not be maintained as it is bereft of reasons for rejection of the case of the petitioner. This Court thus has no hesitation to set aside the order and remand the case to the authority for fresh consideration and if passed by the High Court on its administrative side is equally open to criticism for not complying with the principles of natural justice of which assigning reasons is an integral part. The High Court on its judicial side can make hardly any distinction between orders passed by the High Court on its executive side in relation to its staff resulting in adverse civil consequences to them and the orders passed by the State Government in relation to its employees in the departments, the State governs.

7. Accordingly, the impugned order is set aside by allowing the petition with a direction to the respondents to pass a fresh order which is speaking and contains reasons as to how the conclusion has been reached.

8. The writ petition is partially allowed with directions to pass a fresh order in accordance with law within three months from the date of receipt of certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

11.11.2016
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Whether speaking/reasoned	Yes
Whether reportable	No