

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.17909 of 2000 (O&M)
Date of Decision: 04.11.2016**

Baljit Singh-II and others

... Petitioners

Versus

The State of Haryana and others

... Respondents

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

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Bhupinder Malik, Advocate,
for the petitioners.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This petition is by 148 employees of Municipal Council, Ambala Sadar. They have been given the benefit of revised pay scale w.e.f. April 01, 1999 in cash to their credit but notionally w.e.f. January 01, 1996. They claim arrears from January 01, 1996. Do they possess such a right?

2. An overview and the status of the petitioners has been explained by the Deputy Director, Urban Development, Haryana speaking on behalf of respondents No.1 to 3, who are either the State of Haryana or its senior officials i.e. The Financial Commissioner-cum-Secretary, Finance Department and The Director, Local Bodies, Haryana. It is maintained that their direct employer is the Municipal Council, Ambala Sadar is a necessary party but has not been impleaded as a party to the petition therefore the petition is defective since the burden of defence and the financial burden

rests on their shoulders, if it were allowed. The petition could well be dismissed on this short point. Therefore, the view of the municipality on the subject is not known. However, instead of dismissing this petition on this short ground where liberty would have to be granted to implead the Municipal Council, Ambala since it has to be heard before making any effective and binding order but since the view of the Government is on record I am satisfied that it contains all the key answers to refute the claim of the petitioners for payment of actual arrears of revised pay scales from January 01, 1996 to April 01, 1999, the date when the pay revision was made effective with immediate effect.

3. In the written statement filed by the Deputy Director, Urban Development, Haryana on behalf of respondents No.1 to 3 barring the Deputy Commissioner, Ambala, who has not filed a separate response, the case against the petitioners has been stated in the preliminary objections and I am satisfied that for those reasons this petition has to be dismissed. The preliminary objections are to the following effect:-

“1. That the municipalities in the States of Haryana are autonomous bodies and are governed by a separate legislation called the Haryana Municipal Act 1973 (hereinafter called the Act of 1973). Every municipality have its own Municipal Fund constituted under section 56 and application of Municipal Fund has been described under section 57 of the Act of 1973. It has been provided in sub section (2) of section 38 of the Act of 1973 that, “the establishment charges and the salary, allowances, provident fund, pension and gratuity of persons recruited to the municipal service and appointed in a municipality shall be payable from the municipal fund”. Therefore it is quite evident that the petitioners being the municipal employee have to be paid their scale etc. from the municipal fund from Municipal Council Jind.

2. That the services of the petitioners being the municipal employees are governed by Haryana Municipal Services (Integration, Recruitment and Condition of Service) Rules 1982. A perusal of these rules clearly exhibits the distinctive class of service of municipal employees. It also gives unfettered discretion to the Government to revise the pay scales of Municipal employees as it may deem proper from time to time. For the sake of clarity and convenience of this Court, rule 11 of these rules which provided for cadres and scales of pay, is reproduced below:-

“Rule 11 Cadres and Scales of pay:-1) The number of posts created for a service by a Government under clause (a) of sub section (3) of Section 38, shall be deemed to be the cadre of that service which shall be subject to variation as may be considered necessary by the Government.

(2) The scales of pay of the post of various Services shall be as given in Appendix A;

Provided that the Government may revise the scale of posts in a Service, as it may deem proper from time to time.

(3) The appointing authority may, for special reasons to be recorded in writing, sanction a start of higher pay than the minimum of the scale of first appointment to any person.

(4) The appointing authority may besides the two posts indicated in Appendix A for reasons to be recorded in writing, sanction a selection grade to a member of any category of a Service, who has completed at least eight years of continuous service as such on the basis of the seniority-cum-merit, against twenty per cent posts of the total sanctioned strength to the category.”

In view of the submissions made above it is amply clear that it is the prerogative of the Government to fix the pay scale of the Municipal Employees as it deem proper. Accordingly after carefully weighing the pros and cons the Government has granted the revised pay scales to the employees of Municipal Corporation Faridabad, Municipal Councils/Committees as per the recommendation of Fifth Central Pay Commission w.e.f. 1.4.99 vide order dated 10.5.99, subject to the condition

that extra expenditure/liabilities on account of the revision of pay scale will be borne by the respective Corporation/Council/Committee from their own resources and there shall be no responsibility of the Government to bear such expenditure and no grant-in-aid shall be given by the Government to meet the additional liability on account of revision of pay scales. In continuation of this order the Government after careful consideration decided vide order dated 7.1.2000 that the pay of municipal employee in the revised scale/ACP scales may be fixed notionally w.e.f. 1.1.96 and actually w.e.f. 1.4.99. It was also made clear that no arrear/benefit on account of notional fixation of pay in the revised scales/ACP scales from 1.1.96 to 31.3.99 will be given to these employees. Copy of the order dated 10.5.99 and 7.1.2000 is annexed as Annexure P-6 and P-8 with the writ petition. Hence this writ petition deserves to be dismissed on this ground alone.

(3) That civil writ petition 4282 of 2001-Jarnail Singh and others Versus State of Haryana and others was filed by 345 municipal employees of Municipal Council Yamunanagar for quashing the order of the Government vide which the benefit of the revised pay scale was granted w.e.f. 1.1.96 notionally and w.e.f. 1.4.99 in cash. This writ petition was disposed off on 29.11.2001 by this Court and passed the following orders:-

“Learned counsel for the parties agreed that the petitioner's representation would be taken and decided in the light of the judgement Annexure P-6 and other related judgement within a period of four months from the date of receipt of a certified copy of this order. We order accordingly.

Writ petition is disposed of accordingly.”

In compliance of the orders of the Court the representation of the petitioners was decided by Respondent No.1 on 17.4.2002 by passing a speaking order and claim of the petitioners was rejected. As per the best of the knowledge of the answering respondent the order dated 17.4.2002 passed by Respondent no.1 has not been challenged so far in any Court of law. Copy of the order dated 17.4.2002 is annexed as Annexure R-1.”

4. The facts pleaded in the written statement have gone un rebutted as no replication has been filed thereto and therefore the same is accepted when not denied. What is not denied in pleadings is accepted.

5. The case relied upon by Mr. Malik, learned Senior counsel in the ruling in case Haryana State Minor Irrigation Tubewells Corporation and others v. G.S. Uppal and others, (2008) 7 SCC 375 is distinguishable on facts. More pointedly, learned Senior counsel dwells on para.24 of the judgment in his support. The case as I read is distinguishable mainly for the reason that the Bench was not dealing with the right to arrears of pay revision prior to the date notifying revised pay scales w.e.f. April 01, 1999 under the Haryana Civil Service (Revised Pay) Rules, 1998. These rules are deemed to come into effect from January 01, 1996 but that does not mean that the date of acceptance is immaterial or arbitrary and the right would always be read retrospectively. It may be noted that some of the petitioners had already retired on dates ranging from 1997 to 2000 while the others were in service on the date of the petition.

6. In para.4 of the petition it is pleaded that employees of Municipal Council are Government employees. This is an incorrect statement of law as they are Municipal employees who do not enjoy status as Government servants engaged in the affairs of the State or serving under it.

7. I accept the above reasoning as being the correct legal position which is sound in law and in fact. The financial parameters revealed in the reply and the relationship between the State of Haryana and the Municipal Council, Ambala do not justify a direction to pay the arrears of pay revision w.e.f. January 01, 1996 to April 01, 1999.

8. Accordingly, the petition being devoid of merit fails and is ordered to stand dismissed without costs.

(RAJIV NARAIN RAINA)
JUDGE

04.11.2016
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Whether speaking/reasoned *Yes*

Whether reportable *No*