

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

CWP No.4540 of 2001

Date of Decision: 08.11.2016

Dr. Gurcharan Singh and othersPetitioners

Versus

State of Punjab and anotherRespondents

CWP No.11430 of 2001

Dr. Vijay Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

CWP No.6527 of 2001

Dr. V.K. Bhatnagar and othersPetitioners

Versus

State of Punjab and anotherRespondents

CWP No.11039 of 2003

Dr. Jaswinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

CWP No.19003 of 2003

Dr. Sandeep Gupta and anotherPetitioners

Versus

State of Punjab and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rajiv Atma Ram, Sr. Advocate
with Mr. Ranjit S. Kalra, Advocate
for the petitioners
in ***CWP No.4540 of 2001.***

Mr. R.K. Girdhar, Advocate
for the petitioners
in ***CWP No.19003 of 2003.***

Mr. Sarwan Sehgal, Advocate
for the petitioners
in ***CWP Nos.6527 of 2001,
11430 of 2001 and 11039 of 2003.***

Mr. L.S. Virk, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of five Writ Petitions bearing Nos.***4540 of 2001, 11430 of 2001, 6527 of 2001, 11039 of 2003 and 19003 of 2003*** as the issue and law point involved in all these cases is the same. However, for the sake of convenience, the facts are being extracted from **Civil Writ Petition No.4540 of 2001.**

Petitioners have filed the present petition for quashing of instructions dated 17.04.2000 issued by the Department of Personnel, impugned order dated 17/23.01.2001 as well as order dated 06/21.07.2000, whereby, the refixation of pay has been denied. A further prayer has also been made for issuance of direction to the respondent-State not to reduce the salary of the petitioners.

Briefly, the facts of the case, as made out in the petition, are that the petitioners were initially appointed as Veterinary Officers on various dates. They were governed by the Rules called the 'Punjab Veterinary Assistant Surgeons State Service Rules, 1982. Promotion from the post of Veterinary Assistant Surgeon was to the post of Assistant Director in the Punjab Animal Husbandry Department which was governed

by the Rules called the 'Punjab Animal Husbandry (State Service Class II) Rules, 1981. The promotion was to be made to the post of Deputy Director, Manager (Indo Swiss Project), General Manager (Buffalo Breeding) etc. from the post of Assistant Director. Vide notification dated 02.02.1996, all the three sets of Rules i.e 'Punjab Animal Husbandry Class I Service Rules, 1980', 'The Punjab Veterinary Assistant Surgeons State Service Rules, 1982' and 'the Punjab Animal Husbandry (State Service Class II) Rules, 1981 were repealed by the Rules called the 'Punjab Animal Husbandry (Class I) Service Rules, 1996 (here-in-after called as the "1996 Rules"). As per said Rules of 1996, the Veterinary Officers were to be promoted to the post of Assistant Directors after having experience of eight years and from the post of Assistant Directors/Senior Veterinary Officers to the post of Deputy Directors after having experience of 18 years. All the appointments/promotions were to be made on the basis of seniority-cum-merit. The Veterinary Officers were to get the revised pay scale of Rs.940-1850/- on 01.01.1978 with a selection grade of 20% posts. This pay scale was revised with effect from 01.01.1986 into three running pay scales i.e Rs.2200-4000, Rs.3000-4500/- (after eight years of service) and Rs.3700-5700/- (after 18 years of service). All the petitioners were granted fitment in the revised pay scales by considering number of years served by them. As per said notification, the posts of Veterinary Officers, Assistant Directors and Deputy Directors were merged into one cadre and they were given three running pay scales. Thereafter, the pay scales were again revised by the respondent-State as notified on 16.01.1998. Thereafter the said rules were amended vide notification dated 19.05.1998. As per amended rules, four tier pay scales were provided instead of three tier pay scales. Pay scales of the

petitioners were also revised and arrears were also paid to them. The operation of the above pay scales was kept in abeyance vide letter dated 23.09.1998 pending issuance of guidelines/clarification. The respondents-State issued fresh instructions dated 17.04.2000 vide which certain clarification was given regarding implementation of the Fourth Pay Commission Recommendations. As per said instructions, the placement in the higher pay scale was to be made on the basis of work assessment and conduct of the employee. By relying upon the said instructions, the order for refixation of pay and recovery from the petitioners was passed.

Petitioners, by way of filing the present petition, have challenged the impugned instructions dated 17.04.2000 (Annexure P-6), impugned order dated 17/23.01.2001 of refixation of pay/recovery (Annexure P-7) and order dated 06/21.07.2000 (Annexure P-8) denying refixation of pay and similar other orders passed regarding refixation of pay/recovery by raising various grounds.

Learned counsel for the petitioners submits that the action of the respondents is violative of the principles of natural justice as the pay of the petitioners has been refixed as per Punjab Civil Services (Revised Pay) Rules, 1998 and arrears on that account were also paid to them. The order of recovery has been passed without giving any opportunity of hearing or without issuing any notice. Even no reason, whatsoever, has been mentioned in the order of recovery. Learned counsel also submits that the Rules cannot be amended or replaced by Executive instructions. The Rules, 1996 came into force with effect from 15.02.1990 and all promotions were to be made on the basis of seniority-cum-merit. The petitioners, on completion of 8/18 years of service, were granted pay scales as they were

found suitable but subsequently, a condition was imposed that work and conduct was to be found satisfactory. As per instructions relevant to the case, more than 50% of the Annual Confidential Reports, during entire service record, were to be considered as good. The Annual Confidential Reports were not conveyed to the petitioners as per earlier precedent but still the formula of good service record was adopted and the order of recovery was passed.

Learned counsel for the petitioners has relied upon the judgments of Hon'ble the Apex Court in cases *State of Rajasthan vs Fateh Chand Soni JT 1995(9) S.C. 523*, *State of Haryana vs Shamsher Jang Bahadur 1972(2) SCC 188*, *Sukhdev Singh vs Union of India and others 2013(9) SCC 566*, *Prabhu Dayal Khandelwal vs Chairman, U.P.S.C and others 2015(3) SCT 606*, *Abhijit Ghosh Dastidar vs Union of India and others 2009(16) SCC 146*, *P. Tulsi Das and others vs Govt. of A.P and others 2003(1) SCC 364*, *Uday Pratap Singh vs State of Bihar 1995(1) SCT 121*, *Rohitash Kumar and others vs Om Prakash Sharma and others 2013(1) SCT 537*, *Satheedevi vs Prasanna 2010(5) SCC 622* as well as judgments of this Court in cases *Dr. Rameshwar Chander and others vs The State of Punjab and others (CWP No.9023 of 2002, decided on 07.09.2010)*, *State of Punjab and others vs Amarjit Kaur Bhullar 2011(2) Law Herald 1392*, *Jalandhar Improvement Trust, Jalandhar through its Chairman vs Rachhpal Singh deceased through his LRs Jarnail Singh and others 2002(2) RCR (Civil) 702*, *Subhash Chander vs State of Haryana and others 2012(1) SCT 603*, *M.L. Chopra vs Union of India 1966 (Supp.) PLR 646*, *Northern Indian Glass Industries Limited vs State of Haryana and others 2008(2) RCR (Civil) 54* and *Pritam Singh and*

others vs State of Punjab and others 2008(3) SCT 557 in support of his contentions.

Learned counsel for the respondent-State by opposing the submissions made by learned counsel for the petitioners submits that the petitioners have wrongly mentioned that it was a case of promotion, whereas, it was only the case of placement. Moreover, for placement on higher pay scale, wherein, the over all good service record was the condition. Petitioners No.1, 5 and 6 did not fulfill two conditions as prescribed in the instructions applicable in the present case and hence, their claim was rejected by the competent authority.

Petitioner no.2-Dr. Ashwani Kumar was wrongly given the higher pay scale by the Deputy Director Animal Husbandry, whereas, he was not the competent authority. Learned counsel for the respondent-State also submits that even petitioner No.2 did not fulfill the requisite conditions as required under the instructions. His case was reviewed by the competent authority and on account of non-fulfillment of the requisite conditions and his claim was rejected and accordingly the order of recovery was passed.

Similarly, petitioner No.3 was granted the benefit by considering wrong date. His case was also reviewed by the competent authority as he was also not fulfilling the requisite conditions for granting higher pay scale on completion of nine years of regular service.

Petitioner no.4 was granted higher pay scale on completion of nine years of service with effect from 25.09.1996. His case was also reviewed as he did not fulfill the requisite conditions and his claim was also rejected after passing the order of recovery.

Petitioner no.7-Dr. Charanjit Lal had completed fourteen years

of service on 01.04.1998 and the benefit was to be given to him from the 1st day of January, whereas, he was entitled for the benefit from 01.01.1999 and the order of recovery was passed.

Learned counsel for the respondent-State also submits that the case of the petitioners was reviewed by the competent authority as they were not fulfilling the conditions of notification. Thereafter, the orders of recovery were passed.

Learned counsel for the respondent-State has relied upon the judgment of Hon'ble the Apex Court in ***State of Punjab vs Ram Lubhaya Bagga 1998(4) SCC 117*** as well as judgments of this Court in cases ***Dr. Jaspal Singh and others vs State of Punjab and others 2009(4) SCT 773*** and ***Dr. Rameshwar Chander and others vs The State of Punjab and others (CWP No.9023 of 2002, decided on 07.09.2010)***.

Heard the arguments of learned counsel for the parties and have also perused the impugned orders as well as other documents available on the file.

Facts relating to appointment of the petitioners on the post of Veterinary Officers and thereafter, promotion to the higher post, are not disputed. It is also an admitted fact that the department Service Rules, namely, Punjab Animal Husbandry Class I Service Rules, 1980, Punjab Animal Husbandry (State Service Class II) Rules of 1981 and Punjab Veterinary Assistant Surgeon State Service Rules 1982 were repealed by Punjab Animal Husbandry (Class-I) Service Rules 1996. It is also not disputed that the petitioners are governed by Rules 1996. Under these rules, the petitioners were to be kept in the higher pay scale on completion of 8 years and 18 years of service subject to availability of posts.

As per stand of the petitioners, it was a case of promotion, whereas, as per stand of the respondent-State, the posts were not promotional posts but it was only placements, which were to be made on the basis of number of years and good service record. As per instructions dated 23.09.1998 (Annexure P-5) issued by the respondent-State to all Head of Departments and other authorities to stop finalization of further cases of pay fixation involving placement in higher pay scale till the issuance of guidelines/clarification. Subsequently, the respondent-State issued instructions in respect of granting higher pay scales on completion of 4, 9 and 14 years of service vide letter dated 17.04.2000. Under said instructions, it was provided that the placement in higher scale was to be allowed only to those employees whose over-all service record was satisfactory and were suitable for promotion otherwise, "Good" service record was clarified to mean more than 50% Annual Confidential Reports as good and out of last three years, at least two should be "Good". For the remaining years, the bench mark may be 'Average'. It has also been mentioned that all placements in higher scale were to be given with effect from the 1st day of January of the year next to the year in which an employee completes the span of service required for placement in the higher pay scale.

As per written statement and arguments advanced by learned counsel for the respondent-State, petitioners No.1, 5 and 6 did not fulfill two conditions as prescribed in the instructions and their claims of higher scale was rejected by the competent authority.

Petitioner no.2-Dr. Ashwani Kumar was wrongly given higher scale by the Deputy Director Animal Husbandry Department as he did not

fulfill the conditions as prescribed in the instructions. His case was also reviewed by the competent authority and the same was rejected on account of non-fulfillment of requisite conditions.

Similarly, petitioner No.3 was granted higher scale on completion of nine years and fourteen years of regular service by recording the wrong dates i.e 01.01.1996 and 02.04.1998. His claim was rejected for grant of higher scale on completion of nine years of regular service as he did not fulfill the requisite conditions and for grant of higher pay scale after 14 years of regular service, it was found that he fulfilled the requisite conditions as on 31.03.1999. The benefit was rightly allowed to him with effect from 01.01.2000 which followed some recoveries. Similarly, petitioner No.7-Dr. Charanjit Lal was granted benefit of 14 years of service as on 01.01.1999.

The instructions dated 17.04.2000, which have been challenged in the present case, were issued by the respondent-Department, whereby, certain conditions were required to be fulfilled. Said instructions were applicable uniformly throughout the State. The policy guidelines regulating placement and assessment suitability for placing in higher grade were notified by the Department of Finance and Department of Personnel. It cannot be said that said instructions amounted to amendment or changing of Rules. As per the guidelines, an officer/official is entitled for an advancement in career in case the service record is satisfactory. The relevant portion of instructions dated 17.04.2000 is reproduced as under :-

“ The placement in higher scale shall be allowed only to those employees whose overall service record during the span of satisfactory service, is adjudged as 'Good' and the employee is otherwise

suitable for promotion 'Good' record shall mean that more than 50% annual confidential reports are good and out of last three years atleast two should be 'Good'. For all the remaining years, the bench mark may be 'Average'.

It has been held by Hon'ble the Apex Court in ***Ram Lubhaya Bagga's*** case (supra) that the State has a right to change its policy from time to time in case, the changing circumstances are there. It has not been pointed out during arguments that any discrimination has been done to the petitioner. The scope of interference in the matter of policy has been considered by Hon'ble Apex Court in number of judgments.

Hon'ble the Apex Court in the abovesaid judgment has held as under :-

“ So far so questioning the validity of Govt. Policy is concerned, in our view, it is not normally within domain of any Court to weight and pros and cons of policy or scrutinize it and test the degree of its beneficial or suitable disposition for the purpose of varying, modifying or annulling it based on, however, sound and good reasoning except where it is arbitrary or violating of any constitutional, statutory or any others provision of law. When Govt. forms any policy it is based on number of circumstances, facts, law including constraints based on availability of its resources. It is also based on expert opinion , it would be dangerous, if Court is asked to test the utility, beneficial effect of the policy or its appraised based on facts set out in affidavits. The Court would dismiss itself from entering into this realm which belongs to the executive.”

Similar view has been expressed in ***Balco Employees Union v.***

Union of India and Ors. 2002 (2) SCC 333:

“ Applying the analogy, just as the court does not sit over the policy of Parliament in enacting the law, similarly, it is not for this Court to examine whether the policy of this disinvestment is desirable or not. Dealing with the powers of the Court while considering the validity of the decision taken in the sale of certain plants and equipment of the Sindri Fertilizer Factory, which was owned by a public sector undertaking, to the highest tenderer, this Court in *Fertilizer Corpn. Kamgar Union (Regd.) vs. Union of India*, SCC 1981(1) 568 at P. 584 while upholding the decision to sell, observed as follows:-

“ We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a superauditor, take the board of directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.

In *State of M.P. v. Nandlal Jaiswal, 1986(4) SCC 566*, the change of the policy decision taken by the State of Madhya Pradesh to grant licence for construction of distilleries for manufacture and supply of country liquor to existing contractors was challenged. Dealing with the power of the Court in considering the validity of policy decision relating to economic matters, it was observed as follows:-

“ 34. But, while considering the applicability of Article

14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Govt. for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State govt. in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Govt. has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg v. Union of India*. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter J. in *Morey v. Doud*:

In case of *Peerless General Finance and Investment Co. Ltd.*

v. Reserve Bank of India, 1992 AIR SCW 854, it has been observed as under:-

“ The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgement over matters of economic

policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.”

In ***Premium Granites v. State of T.N.*** while considering the Court's powers in interfering with the policy decision, it was observed as under:-

“ It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.”

It is apparent that the petitioners were granted higher pay scale on completion of their service as required under the Rules. Subsequently, their pay was refixed and the orders of recovery were passed. The service record of the petitioners was considered and in some of the cases, it was found that they were not fulfilling the condition of bench mark and the orders of recovery were passed. It is not disputed that the orders of recovery were passed without issuing any notice or without giving any opportunity of hearing, whereas, the petitioners were entitled to be heard before passing any order which is against their interest. They were to be given sufficient and adequate opportunity to show cause as to why they were being deprived of the same benefit, which is the requirement of principles of natural justice. Even they were not conveyed the average Annual Confidential Reports and they were not given opportunity to make representation against the adverse remarks if any recorded in the Annual Confidential Reports. Had they been conveyed the Annual Confidential Reports, which were graded as Average,

they could have made representation.

It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that once certain protection or benefit was granted to the petitioners then before withdrawal of said benefit, they were to be heard or given sufficient and adequate opportunity to show cause as to why they were being deprived of the benefit which was granted earlier. This is the requirement of law to confirm the 'principles of natural justice' as provided under Article 14 of the Constitution of India. Although, the respondent-State has absolute power to formulate a policy or to take any decision, which has been applied uniformly but the petitioners are entitled to be given opportunity as neither there was mis-representation on the part of the petitioners nor any concealment thereof.

Accordingly, I am of the considered opinion that the impugned order of recovery should have been passed after giving opportunity to the petitioners even if instructions dated 17.04.2000 were issued.

Accordingly, the above said petitions are disposed of with a direction to the respondents to reconsider the cases of the petitioners and pass order afresh after giving them the opportunity of hearing.

It is also directed that no recovery be effected till the decision is taken.

08.11.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes