

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14068 of 2012 (O&M)

Date of decision: 21.09.2016

JAGDEV SINGH PANNU

.....Petitioner

versus

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr. R.K. Singla, Advocate for the petitioner
Mr. R.S. Pathania, DAG, Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ? Yes*
2. *To be referred to the Reporters or not ? Yes*
3. *Whether the judgment should be reported in the Digest? Yes*

Kuldip Singh, J.

Petitioner, who is a retired Horticulture Development Officer, seeks issuance of a writ of mandamus, directing the respondents to grant him the benefit of annual grade increments w.e.f. 1.1.1971 to 31.12.1990 and place him in the revised pay scale of Rs.3700-5300 w.e.f. 1.1.1991 and in the pay scale of Rs.12000-16350 w.e.f. 1.1.1996 alongwith all the consequential benefits in the form of arrears of pay with interest @ 9% per annum.

Brief facts of the case are that the petitioner was appointed as Agriculture Inspector in the pay scale of Rs.250-450 and he joined the duties on 29.1.1968. He is governed by the service rules called as Punjab Subordinate Agriculture Service Rules 1933 (in short, 1933 Rules). Petitioner was under probation and according to him, is deemed to have been confirmed on 29.1.1970. Petitioner was being paid salary in the pay scale of Rs.250-450 till 31.10.197 without granting any annual grade increments on

the ground that the petitioner has not passed the departmental examination. The pay scales were revised from 1.11.1977 and till 1.1.1978, the petitioner was placed in the pay scale of Rs.320-750. Petitioner used to get the basic pay of Rs.320/-. From 1.1.1978 to 31.12.1985, the petitioner was granted the pay scale of Rs.700-1200 and used to get the basic pay of Rs.700/-. From 1.1.1986 to 31.12.1990, petitioner was placed in the pay scale of Rs.2000-3500 and from 1.1.1991 to 31.12.1995, he was placed in the pay scale of Rs.2200-4000. During his entire service of 27 years, he was not given any annual grade increments. From 1.1.1996 to 31.12.1996, the petitioner was placed in the pay scale of Rs.7220-11660 and from 1.1.1997 till his retirement, he was given the pay scale of Rs.12000-16350. It is claimed that as per Rule 8 of 1933 Rules, no period is prescribed for passing the departmental examination. There is no mention that if the employee fails to pass the departmental examination, his annual grade increments shall be stopped temporarily or permanent. Petitioner passed the departmental examination with higher standard on 11.11.1996 vide Annexure RI/T. It is stated that similarly situated employee Hans Raj, Horticulture Inspector, had not passed the departmental examination and was not given the benefit of annual grade increments. He filed a Civil Suit No.164 of 1987, claiming annual increments w.e.f. 1.11.1979. His suit was decreed vide judgment and decree dated 22.6.1989. The appeal against the said judgment and decree dated 22.6.1989 was dismissed by the learned Additional District Judge, Hoshiarpur on 13.3.1990. Department accordingly revised his pay and granted pension, gratuity etc. on the said revised pay. Since, same relief was not granted to the petitioner, therefore he has filed the present writ petition.

In the reply, the department has not denied the appointment of

the petitioner. The plea was taken that the petitioner was required to pass the departmental examination in accounts within the period of probation of two years, as required under Rules 8 and 9 of 1933 Rules. The petitioner failed to pass the said examination, therefore, he was not entitled to annual grade increments. He passed the departmental examination only on 11.11.1996 and as per provisions of Rule 4.9 of Punjab Civil Services Rules Volume I Part I, he was granted the benefit of increments of pay from the date of his appointment except the payment of arrears of pay. He was also granted the benefit of fixation of pay in the revised scale from time to time and placed in the higher scale when he was found suitable on the basis of his service record. It was stated that the petitioner's case relates to the period from 29.1.1968 onwards. The petitioner retired on 31.7.2001. He did not challenge the action of the department till the year 2012 when he filed the present writ petition. Therefore, writ is barred by laches. Petitioner has tried to take undue benefit of Punjab Government notification dated 9.12.1998, which is applicable to the officers of Department of Agriculture, whose service conditions are governed by the Punjab Agriculture Service Rules, 1974, whereas service conditions of the petitioner are governed by 1933 Rules. It was further stated that since the petitioner failed to pass the departmental examination, therefore, vide order dated 8.9.1994, his probation period was extended upto 28.1.1995. As the petitioner qualified examination only on 11.11.1996, his probation was extended upto 10.11.1996 vide letter dated 26.2.1997. It was further stated that the service record of the petitioner was not clean. He was conveyed adverse remarks in the ACR for the years 1995-1996 and 1996-1997, against which, no representation was made. Therefore, he was found unsuitable for the

placement in the senior scale of Rs.12000-16350 on 11.11.1996 and he was placed in the said scale after one year i.e. w.e.f. 11.11.1997 when he was found suitable for the same vide office order dated 7.12.1999.

I have heard learned counsel for the parties and have also carefully gone through the file.

Undoubtedly, the petitioner had joined the service on 29.1.1968 and retired on 31.7.2001. He filed the present writ petition in the year 2012 i.e. after 11 years of his retirement. Petitioner after his appointment in 1968, could not qualify the departmental examination and qualified the departmental examination only on 1.11.1996. Now, the prayer of the petitioner is for grant of annual grade increments from 1971 onwards when he claims to have completed the probation period of two years. Admittedly, service of the petitioner is governed by Punjab Subordinate Agriculture Service Rules 1933. (Copy of which has been placed as Annexure P1 on the file). Under the 1933 Rules, the petitioner was required to pass the departmental examination unless he is exempted to do so. Rule 9 of the 1933 Rules provides for period of probation, which is reproduced as under:-

9. *Probation of Members of the service – (i) Members of the service who are appointed permanent vacancies shall, on appointment to any post specified in the Appendix, remain on probation for a period of two years in the case of persons holding non-ministerial posts and those recruited direct to ministerial posts. Person recruited otherwise to ministerial posts shall be on probation for one year. Provided that in the case of Agricultural Assistants, 'A' Class, who are, on appointment to the post, deputed to undergo a regular course of*

post graduate research the period of two years' probation shall commence from the date of satisfactory completion of the course.

(Explanation.- Officiating service shall be reckoned as a period spent on probation but no person who is officiating in any appointment, shall on the completion of the probationary period prescribed above be eligible for confirmation until he is appointed against a permanent vacancy.)

(ii) On the completion of the period of probation of any member, the appointing authority prescribed by rule 4 may confirm (in the case of heads of offices with the approval of the Director of Agriculture) such member of his appointment, or if his work or conduct has, in the opinion of the appointing authority, not been satisfactory, or the member has not passed, within the probationary period, the examinations prescribed by rule 8 for the class appointment to which belongs, the appointing authority may dispense with his services or revert him to his former post, if he has been appointed otherwise than by direct recruitment, or may extend the period of probation and thereafter pass such orders on the expiry of the period of probation as it would have passed at the expiry of the first period of probation.”

Perusal of Sub-rule 2 of Rule 9 of 1933 Rules shows that if an employee fails to pass the departmental examination within the probation period as prescribed under Rule 8, the appointing authority may dispense his service or revert him to his former post and if he has been appointed by direct recruitment may extend the period of his probation and pass such order after the expiry of the period of probation as would have passed after

the expiry of period of first probation which means that under Rule 9 if the petitioner fails to clear the departmental examination, his probation period could be extended. The department/ appointing authority also has right to dispense with the service. In this case, the department had already taken a lenient view and did not dispense with the service of the petitioner. Since the petitioner failed to pass the departmental examination, he was not given annual increments. He passed the examination on 11.11.1996 only. This Court is surprised that when the performance of an officer is such poor that from 21.9.1968 to 11.11.1996 i.e. for 28 years, the petitioner could not pass even the department examination, why he was kept in service. The department was more than magnanimous in retaining the petitioner in service and extending the period of his probation firstly vide letter dated 8.9.1994 upto 28.1.1995 and later vide letter dated 26.2.1997 upto 10.11.1996 as the petitioner has cleared the departmental examination only on 11.11.1996. Apparently, petitioner has not sought any relief, as claimed in the present petition during the entire service, as he knew that department has right to dispense with his services.

Learned counsel for the petitioner has argued that orders dated 8.9.1994 and 26.2.1997 could not be passed after the period of probation had lapsed in the year 1971 and on the expiry of such period, he is deemed to have been confirmed.

I am of the view that in view of Rule 9 of 1933 Rules, he is not deemed to have been confirmed unless he passed the departmental examination. Such clause is invoked only when one clears the departmental examination. Orders dated 8.9.1994 and 26.2.1997, whereby his probation period was extended, were never challenged by the petitioner till the year

2012 when he filed the present writ petition. Therefore, now, after a lapse of about 18 and 15 years respectively, the challenge to the said orders dated 8.9.1994 and 26.2.1997 extending the period of probation is barred by laches. The petitioner was not only incompetent to pass the departmental examination for a period of 28 years but was also not serious even in pursuing his claim. He did not file writ petition till 11 years after his retirement and suddenly woke up from slumber claiming that he should have been granted annual grade increments. Therefore, on the ground of delay and laches in not challenging the orders dated 8.9.1994 and 26.2.1997 extending the period of probation, no benefit can be granted to him in this writ petition. Cause of action in this case is not recurring. In this case, specific orders were passed in on 8.9.1994 and 26.2.1997 on account of which his period of probation was extended and annual increments were denied. Untill these orders are set aside, the petitioner is not entitled to annual grade increments. Rules 4.9 of Punjab Civil Services Rules Volume I Part I provides that on the completion of probation period, he is entitled to retrospective increments but the arrears could be denied. Aforesaid Rule 4.9 is reproduced as under:-

“If a probationer is confirmed at the end of a period of probation exceeding twelve months, he is entitled to claim retrospectively the increments, which but for his probation he would have received in the ordinary course. This provision is applicable only to cases, where the normal probationary period itself is more than twelve months and not to the type of cases where the normal probationary period of a probationer is extended on account of his failure to pass the departmental

examination within the time limit prescribed for the purpose. In other words, in cases where the normal probationary period is itself more than twelve months, on confirmation, the officer may be given the increments which he would have drawn but for his probation and arrears in this regard may also be allowed to the officer. On the other hand, in case where the period of probation is extended on account of failure to pass the departmental examination, while there is no objection to the pay and increments being regulated on confirmation at the end of the extended probationary period on the basis of what the officer would have drawn but for his probation, no arrears on this account should be allowed to him for the period prior to the date of confirmation. This would mean that the increment of the officer is withheld without cumulative effect for failure to pass the departmental examination and cannot be considered as a penalty within the meaning of Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970”.

Order deferring his placement in the senior scale w.e.f. 11.11.1996 Annexure R3/T was passed on 7.12.1999. The said order was also never challenged by the petitioner. The petitioner cannot claim the benefit of the decision in the case filed by a co-employee Hans Raj, since the judgment passed qua Hans Raj, is judgment *in personam* and not judgment *in rem* directing the department to deal with all such cases in similar manner. Petitioner is not entitled to relief on another ground also. It comes out that petitioner alongwith some other employees had earlier filed CWP No.7181 of 2012, claiming the revised pay scale w.e.f. 1.1.1996/ 1.1.2006 and

1.12.2011. In the said writ petition, the petitioner did not make any such claim as made in the present petition. The said writ petition is prior in time and therefore, the petitioner is not allowed to split up the claims and make one claim in one writ petition and other claim in another writ petition. Therefore, on the said ground also, the petitioner is not entitled to relief claimed by him.

In view of the matter, I find no merit in the present writ petition and the same is accordingly dismissed.

21.09.2016*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned: Yes

Whether Reportable: Yes