

CWP No.20305 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.20305 of 2015
Date of Decision: 12.08.2016

MANJIT KAUR

... *Petitioner*

VS.

STATE OF HARYANA AND ORS

.. *Respondents*

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Nonish Kumar, Advocate,
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana

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.)

The short controversy in this case is that Manjit Kaur-petitioner was appointed as Clerk in Public Health Department, Haryana on 11.11.1968 and promoted to the post of Sub Division Clerk on 28.06.1978. She was further promoted to the post of Assistant (Accountant Clerk) on 15.05.1981 and then promoted to the posts of Deputy Superintendent and Superintendent on 01.10.2004 and 22.10.2008 respectively. On 31.10.2008, the petitioner retired from service and after her retirement, the impugned order dated 25.05.2009 (*Annexure P-4*) was passed whereby the higher pay scale given w.e.f. 01.01.1994 was withdrawn. Accordingly, her pay was re-fixed and recoveries were also ordered. The recoveries are stated to have been refunded. Now, the short question for consideration before this Court is as to whether the higher scale granted w.e.f. 01.01.1994 could be withdrawn or not?

I have heard learned counsel for both the parties.

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On behalf of the respondents, it is stated that the scale was to be given only in a case a person gets one promotion. Whereas, in the case of the petitioner, two promotions were granted to the petitioner i.e. promotion to the post of Sub Division Clerk on 28.06.1978 and to the post of Assistant (Accountant Clerk) on 15.05.1981.

However, the petitioner has taken the stand that promotion of Sub Division Clerk was wrongly given. In fact, it was not a promotional post and only 20/- extra was to be given. The said promotion has not been withdrawn.

Now, the question would arise as to whether after such a long delay of 15 years, such higher scale granted w.e.f. 01.01.1994 could be withdrawn arbitrarily.

The matter was considered by this Court in **CWP No. 17828 of 2012** (Annexure P-16) titled as **Hardayal Singh and another Vs. State of Haryana and others** decided on 13.10.2014 wherein the single bench of this Court has observed as under: -

“The aforesaid factors established that petitioner No. 1 and late husband of petitioner No. 2 were rightly granted next higher standard pay scale. However, the issue was sought to be re-opened after a long period referring to para 17 of the memo dated 29.12.1995, wherein reference was made to higher standard pay scale granted to Sub Divisional Clerk as compared to Clerk w.e.f. 1.1.1986. A perusal of the issue raised in the aforesaid communication clearly shows that before 1.1.1986, the posts of Clerk and Sub Divisional Clerk were in the same pay scale of ` 400-660 with only difference being that Sub Divisional Clerk was allowed special pay of ` 25/-. With effect from 1.1.1986, the Clerk was given replacement scale of ` 950-1500, whereas Sub Divisional Clerk was given pay scale of ` 1200-2040 and the special pay was abolished. Under these circumstances, the clarification was sought. The answer to that was that as higher pay scale had been given to the post of Sub Divisional Clerk w.e.f. 1.1.1986 and the same

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being a promotional post from Clerk, the promotion to the post of Sub Divisional Clerk will be considered as promotion.

In my opinion, the aforesaid clarification has been totally misread and misinterpreted by the authorities for withdrawing the benefit already granted to petitioner No. 1 and late husband of petitioner No. 2. In the case in hand, petitioner No. 1 and late husband of petitioner No. 2 never got the benefit of higher standard pay scale on the promotional post of Sub Divisional Clerk, which was effective from 1.1.1986, as they had been promoted as Sub Divisional Clerks on 5.5.1973 and 5.5.1978, respectively. Not only this, they had been promoted as Assistant also much prior to the implementation of the new pay scales w.e.f. 1.1.1986, as the dates of their promotion as Assistant was 28.6.1979 and 18.7.1981. It clearly establishes that in the case of petitioner No. 1 and late husband of petitioner No. 2, they never got the benefit of higher standard pay scale on being promoted as Sub Divisional Clerk from Clerk. The aforesaid situation was only with reference to the employees, who got higher standard pay scale as Sub Divisional Clerk on 1.1.1986 or thereafter. The position with reference to the employees, who had already been promoted even on the next higher post prior to that and did not get the benefit of higher standard pay scale prescribed for the promotional post of Sub Divisional Clerk would fall in a separate category, to which the petitioners belong.

In view of my aforesaid discussion, the impugned orders dated 8.12.2011 (Annexure P-3), 14.12.2011 (Annexures P-4 and P-5) and 27.6.2012 (Annexure P-7) are declared illegal. It is held that petitioner No. 1 and late husband of petitioner No. 2 had rightly been granted the benefit of next higher standard pay scale on their entitlement w.e.f. 1.1.1994.”

The present case is squarely covered by the said authority.

I am of the view that the promotion/scale of Sub Division Clerk was wrongly given to the petitioner, was not a promotion, therefore, the petitioner in fact got only one promotion though promotional scale given as Sub Division Clerk was never withdrawn. However, the fact remains that legally, there was only one promotion granted to the petitioner as per Rules.

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Therefore, applying the ratio of the said authority of *Hardyal Singh* (Supra), the present writ petition is allowed and the impugned order dated 25.05.2009 (*Annexure P-4*), re-fixing the pay of the petitioner alongwith the consequential effects flowing therefrom, is hereby set aside.

The petition is allowed accordingly.

August 12, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

	✓		
<i>Whether speaking / reasoned</i>	<i>Yes</i>	/	<i>No</i>
			✓
<i>Whether Reportable</i>	<i>Yes</i>	/	<i>No</i>