

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.24789 of 2013
Date of Decision: 20.10.2016

Shamsher Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

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

Present: Mr.Ramesh Goyat, Advocate for the petitioner

Mr.Hitesh Pandit, Addl.A.G., Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. The question which falls for consideration is whether the petitioner is entitled to service benefits w.e.f. 13th September,1995 i.e. from the date when his junior Dharam Vir was promoted as Assistant. The chequered history of the case is that numerous writ petitions have been filed, but it may not be necessary to detail them since the Department has promoted the petitioner w.e.f. 13th September 1995, but granted the benefit of pay fixation notionally with effect from the retrospective date, but not in terms of actual payment of arrears of difference of salary and increments etc. One similarly situated person, namely, Vijay Pal who is junior to the petitioner and is one step below in the seniority list of the cadre of Clerks/Typists/Store Keepers was granted retrospective benefits but restricted to 38 months prior to the filing of his writ petition. Similarly, one Tilak Raj was also promoted to the post of Assistant vide order dated 2nd December, 2008 w.e.f. 13th September, 1995.

2. The dispute started when Dharam Vir, Clerk who is junior to the petitioner was promoted as Assistant on 13th September, 1995. This had

brought Tilak Raj to file CWP No.18333 of 2002 which was allowed on 16th August, 2005. Special leave Petition was dismissed on 23rd July, 2008. Finally, Tilak Raj was promoted from the date as mentioned above. The petitioner and other similarly situated employees filed CWP No.3940 of 2010 which was disposed of on 8th March, 2010 with the direction to the respondents to consider the claim of the petitioners for promotion etc. and it was in compliance of this order that the respondents passed the order dated 27th August, 2010 promoting the petitioner as Assistant w.e.f. 16th July, 2010, while his claim was based since 13th September, 1995.

3. In this mesh of litigation and in its aftermath, the petitioner once again approached this Court by filing CWP No.16159 of 2010 seeking modification of the order dated 27th August, 2010. However, in the meantime, the State filed Review Application in CWP No.18333 of 2002 filed by Tilak Raj. In these circumstances, the petitioner withdrew his petition on 28th July, 2011 with liberty to file a fresh one after the decision of the review application. The review application was dismissed on 22nd August, 2012. After which the petitioner made representation for ante-dated benefits w.e.f. 13th September, 1995. Ultimately, the petitioner was promoted to the post of Assistant w.e.f. 13th September, 1995 vide order dated 28th March, 2013. However, the petitioner has been granted only the notional pay fixation w.e.f. 13th September, 1995.

4. The petitioner is before this Court claiming parity with Vijay Pal with a prayer to release at least 38 months arrears of salary etc. to him as was ordered by this Court in CWP No.22834 of 2010 filed by Vijay Pal.

5. The petitioner claims relief on the basis of a Division Bench judgment of this Court in Satbir Singh vs. State of Haryana, 2002 (3) RSJ

similarly situated persons should be granted the same relief without compelling them to approach this Court.

6. The State has put in its written statement. The facts are not disputed, neither is the successive litigations. The only question that falls for determination is as to whether the petitioner is entitled to grant of notional or actual benefits on the promoted post of Assistant and in parity with relief granted to Tilak Raj and Vijay Pal etc. The only defence of the State is that in the case of the petitioner, there are no court orders granting 38 months arrears from the date when the writ petition was filed. Therefore, the petitioner cannot claim these arrears as he has no fundamental right.

7. I have heard learned counsel for the parties at some length and gone through the paper-book with their assistance.

8. The stand of the State, to say the least, is not tenable. The right may not be fundamental but it is constitutional or at least civil. The writ court is concerned with all three rights, plus the armour of equity. The petitioner has a clear right to equal treatment with Tilak Raj and Vijay Pal, if the equality principles in Article 14 are to be obeyed and not to be breached. He has most definitely a right to arrears of salary restricted to 38 months prior to the filing of the writ petition which I dare say is not the present one, but the earlier one filed by the petitioner claiming the same relief. Since he has agitated his rights in CWP No.3940 of 2010 in which he was a co-petitioner, his rights cannot be made dependent on the date of filing of the present petition only on account of the fact that the earlier petition was disposed of by this court on 8th March, 2010 with the direction to the respondents to consider and decide on the claim of the

should not be read against him, and therefore, he has at least the right to payment of actual arrears of difference of salary including increments retrospective to 38 months prior to 8th March, 2010, when that petition was presented and obviously the difference of salary accruing thereafter would become due and payable. It is so ordered to serve the ends of justice and to uphold the rights of the petitioner presented in this petition.

9. As a result, this writ petition is allowed. The amount of arrears be calculated and paid to the petitioner within two months from the date of receipt of a certified copy of this order, failing which the amount determined as principal will carry interest at the rate of 12% per annum till payment.

20.10.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No