IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 22469 of 2014
Date of Decision:- 20.12.2016

Surinder Pal Sharma ....Petitioner

vs.

State of Punjab and others ....Respondents

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CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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Present:- Mr. V.K. Shukla, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

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DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of Certiorari for quashing impugned memo. dated 28.3.2011 (Annexure P-7) whereby the claim of the petitioner for removal of anomaly in pay-fixation at par with his junior, namely, Ramesh Kumar Jindal, has been declined being contrary to instructions dated 21.6.1990, 21.6.2000 and 12.8.2010 (Annexure P-3, P-4 and P-5) respectively. A further prayer has also been made for issuance of a writ in the nature of Mandamus directing the respondents to remove the anomaly in the pay fixation of the petitioner vis.-a.-vis. his junior, namely, Ramesh Kumar Jindal and to pay all consequential benefits arising therefrom.

Briefly, the facts of the case, as made out in the present petition, are that initially the petitioner joined the respondent-Department on the post of Clerk. Thereafter he was promoted as Senior Assistant and subsequently as Treasury Officer and further as District Treasury Officer on 20.6.2005. Ultimately retired from service on attaining the age of superannuation on 31.3.2010. The petitioner and his junior were drawing pay at the basic pay of Rs. 10980/- in the pay scale of Rs. 7220-10980/- prior to 1.1.2006. After revision of pay-scale of Punjab Government employees w.e.f. 1.1.2006, their pay-scale was also fixed in the revised pay-scale of Rs.10300-34800/-. However, the petitioner was granted grade pay of Rs. 5000/- in the revised pay scale and his junior was granted grade pay of Rs. 4600/-. The petitioner was getting basic pay of Rs. 25430 w.e.f. 1.1.2006 whereas the pay of his junior was fixed at basic pay of Rs. 25030/-. Meaning thereby, the petitioner was drawing more pay than his junior on 1.1.2006.

As per case of the petitioner, he was promoted to the post of District Treasury Officer on 20.6.2005 whereas Ramesh Kumar Jindal was promoted as such on 29.8.2008, therefore, he was senior to said Ramesh Kumar Jindal. Subsequently the pay of the petitioner was fixed at the basic pay of Rs 26,200 w.e.f. 1.7.2006 and pay of his junior was fixed at the basic pay of Rs.25,790/-. The anomaly arose in the pay fixation w.e.f. 1.7.2007 when his pay was fixed at basic pay of Rs.26,990/- and his junior's pay was fixed at the basic pay of Rs.27,780/- and he started getting more pay than the petitioner. Said Ramesh Kumar Jindal, junior to the petitioner was also granted benefit of second and third higher pay scale under ACP Scheme on completion of 9/14 years of service but this benefit was not granted to the petitioner as he was already promoted as District Treasury Officer on 20.6.2005 whereas his junior was promoted as District Treasury Officer on 29.8.2008. The petitioner made various representations to grant him more pay than his junior and to remove the anomaly in the pay-scales but no action has been taken by the respondents.

Learned counsel for the petitioner submits that case of the petitioner is covered under instructions dated 21.6.1990 but the same has not been taken into consideration. Even at the time of granting higher scale under ACP scheme to his junior, this issue was not considered. Learned counsel also submits that impugned order has been passed without any application of mind and without considering the relevant instructions. At the end, learned counsel for the petitioner submits that the respondents have misinterpreted the instructions dated 21.6.2000 and 12.8.2010. The petitioner is entitled to get his pay fixed at par with his junior, namely, Ramesh Kumar Jindal by stepping up the same along with all consequential benefits by removing the pay-anomaly since 1.7.2007 as the same benefit has been granted to his junior. Learned counsel has relied upon judgment of the Hon'ble Apex Court rendered in case **Er. Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others,** 2009(1) SCT 623 as well as judgment of this Court passed in CWP No. 6602 of 2014 titled as **Hardev Singh vs. State of Punjab and others,** decided on 14.9.2016 in support of his contentions.

In response to notice of motion, reply has been filed which is on record.

Learned State counsel submits that claim of the petitioner is not covered under the instructions as relied upon by him and he is not entitled for the benefit of stepping up of his pay at par with his junior Sh. Ramesh Kumar Jindal. Learned State counsel also submits that benefit of stepping up of pay is admissible only if the senior employee is drawing equal or more pay than his junior from the date of promotion. In the present case, the petitioner was promoted as District Treasury Officer on 20.6.2005 and joined on promotional post on 30.6.2005. He was drawing pay @ Rs. 10300/-+5150/- D.P. in the pay scale of Rs. 7220-11660 (unrevised) as on 29.6.2005 whereas his junior Ramesh Kumar Jindal was drawing pay of Rs. 10640/- +5320/- D.P. as Treasury Officer in the pay scale of Rs. 7220-11660 (un-revised) as on 1.7.2004. Therefore, the petitioner was not drawing equal or more pay than his junior and as such he is not entitled to the benefit of stepping up of pay as his case was not covered under the instructions relied upon by learned counsel for the petitioner. Learned State counsel submits that as per provisions in para-2(c) of instructions dated 12.08.2010, in case the pay of junior is fixed at a level higher than the pay of senior, then senior's pay can be re-fixed subject to resultant financial adjustment as if he had exercised the option under the same clause of Rule 11 of the Punjab Civil Services (Revised Pay) Rules, 2009. The benefit of stepping up of pay is only admissible if the senior employee is drawing equal or more pay than his junior from the date of promotion but in the present case, petitioner was promoted as District Treasury Officer on 20.6.2005 and joined on promotional post on 30.6.2005. The petitioner was drawing pay of Rs. 10300/-+5150/- DP as Treasury Officer in the pay scale of Rs. 7220-11660 (un-revised) as on 29.6.2005 whereas his junior Ramesh Kumar Jindal was drawing pay of Rs.10640/-+5320/- DP as Treasury Officer in the pay scale of Rs. 7220-11660 (un-revised) as on 1.7.2004 and it is clear that the petitioner was not drawing equal or more pay than his junior.

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

In the present case, the grievance of the petitioner is that an anomaly is there in the pay of the petitioner vis.-a-vis. his junior Ramesh Kumar Jindal since 1.7.2007. The issue for consideration before this Court is as to whether the petitioner is entitled for removal of anomaly in his pay-fixation vis.-a-vis. his junior and as to whether the impugned memo. dated 28.3.2011 has been passed without appreciating the instructions dated 21.6.1990, 21.6.2000 and 12.8.2010 (Annexure P-3, P-4 and P-5) respectively.

The word "Anomaly" has been defined in Webster's New Twentieth Century Dictionary to mean "abnormality; irregularity; deviation from the regular arrangement, general rule or the usual method". This definition is not precise with reference to the pay-scale and pay revision. It is only to draw up a reasonable definition of what would constitute of an anomaly. It has been discussed in judgment of this Court passed in CWP No. 12483 of 1990 titled as **S.K. Bishnoi and others vs. State,** reported as 1993 (4) SCT 127 wherein it has been mentioned in detail to disclose as to how it was not a case of anomaly in the following manner:-

> "Where there is a loss of emoluments in the case of an employee on account of revision of pay scales, it would be in order to precisely define what would constitute an anomaly in the matter of pay scales. It can

reasonably stated that an anomaly would be said to have occurred:

a. When the pay scale are revised by the Government through a general pay revision notification for all its employees and the revised scales are not prescribed in respect of some posts/departments on account of inadvertent omission.

b. When the functional pay scale prescribed for a promotion post is lower than the functional pay scale of feeder post.

c. When there is a loss of pay in the case of an employee on account of revision of pay scales.

d. Where, on promotion, an employee draws lower emoluments than that he was drawing prior to his promotion.

e. Where the pay of senior employee gets fixed at a lower stage, as a consequence of pay revision qua a similar situated junior employee."

The issues relating to pay revision matters are extremely complex. It has been repeatedly held by Hon'ble the Apex Court that these cases can be best examined and considered by the expert bodies, such as, Pay Commission and issues, such as equality of work, nature of duties and responsibility of various posts require in-depth analysis. This principle was also discussed by Hon'ble the Apex Court in case **State of U.P. VS. J.P. Chaurasia, (1989) 1 SCC 121** and also in **Secretary, Finance Department**

vs. West Bengal Registration Services Association, 1992(2) SCT 301. Even when Expert Committee like Pay Commission goes through this exercise and gives its recommendations, while implementing those recommendations and giving fitment to various categories of employees, anomalies do take place. The State Government constitutes pay anomaly commission for his purpose.

Same issue was there before this Court in case **Dharam Pal and others vs. State of Punjab and others, 1994 (2) SCT 336 (P&H) CWP No. 10506 of 1989 decided on 15.12.1993.** In that case, the Instructors working in various institutes in the State of Punjab were imparting training in various trades and some of them were getting higher pay in comparison to others. Resultantly, some of the Instructors junior to the petitioners in that case starting getting more pay. It was held in that case that the grievance of the petitioners is legitimate and disparity cannot be allowed to be continued for the reason that the qualifications for appointment to all the posts of Instructors were the same and they were governed by the same service conditions. There was a joint seniority list of all the Instructors and their seniority was depending on the date of appointment irrespective of their pay drawn. Senior persons were held entitled to all those benefits which their juniors were getting i.e. the pay of a senior cannot be less than that of a junior. Said writ petition along with other connected matters was allowed with a direction to respondents that pay of the petitioners be stepped up equal to the one being drawn by other Masters and Mistresses immediately junior to them.

In the present case, the issue is as to whether a person holding higher post can get the pay less than his junior. The reply is in negative. Whatever may be the reasons, a person holding promotional post within the feeder cadre cannot be given lower salary than his juniors. In the present case, the claim of the petitioner in getting less salary vis.-a-vis. his junior has been justified by the respondent-State on the ground that claim of the petitioner is not covered under the instructions and he is not entitled to the benefit of stepping up of his pay to his junior Ramesh Kumar Jindal. It has been stated by learned State counsel that benefit of stepping up of pay is only admissible, if the senior employee is drawing equal or more pay than his junior from the date of promotion, whereas, the petitioner was promoted as District Treasury Officer on 20.6.2005 and joined on promotional post on 30.6.2005. The claim has been denied only on the ground that petitioner was not drawing equal or more pay than his junior and, as such, he is not entitled to the benefit of stepping up of his pay being not covered under the instructions applicable to the case of the petitioner. It has been held in judgment of Hon'ble the Apex Court in **Er. Gurcharan Singh Grewal's case (supra),** that senior officer in the same cadre cannot be paid less salary than his junior even if anomaly in the pay of the senior is due to difference of incremental benefits. In that case, directions were issued by Hon'ble the Apex Court to step up the pay of such officer with reference to higher pay of junior officer.

Same view has been taken in Division Bench judgment of this Court rendered in CWP No. 6778 of 1993 titled as **Baghirath Ram and others vs. State of Punjab and another,** decided on 26.7.1994 and also in **Om Parkash Malik and others vs. The State of Haryana, 1991 (3) SCT**

630 (P&H).

In the present case, the petitioner is admittedly senior to Ramesh Kumar Jindal, who is getting more salary than the petitioner. Accordingly, this petition is allowed and the respondents are directed to consider the claim of the petitioner by re-fixing the salary and pensionary benefits at par with his junior Ramesh Kumar Jindal. The necessary exercise be done within a period of three months from the date of receipt of certified copy of the order. The arrears, to which the petitioner is held entitled to, be paid to him within a period of two months thereafter.

December 20, 2016 **(DAYA CHAUDHARY)**
poonam **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**