

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

**CWP No. 26666 of 2013
Date of Decision:- 27.10.2016**

Rajinder Parshad

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.K. Arora, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, D.A.G., Punjab,
for respondent No.1.

Mr. Parminder Singh, Advocate,
for respondents No. 2 to 4.

DAYA CHAUDHARY, J. (Oral)

This petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of order dated 3.1.2013 (Annexure P-7) to the extent that benefit of arrears has been denied to the petitioner.

In response to notice of motion, reply has been filed. Thereafter a short affidavit was filed by the Principal Secretary, Government of Punjab, Department of Finance on behalf of respondent No. 5. Para nos. 2 and 3 of the said affidavit are reproduced as under:-

“2. That in response to the above noted question pointed out by this Hon'ble Court in the order dated 17.8.2015, it is submitted that Government issued

instructions vide letter No.10/34/2010-1FPII/518, dated 25.10.2012, in compliance with the orders of this Hon'ble High Court in some writ petitions wherein the employees of the State Government were allowed to change their option within two months in connection with the scales of pay prescribed in the Punjab Civil Services (Revised Pay) Rules, 1988 as the master scales prescribed in the said rules were further modified vide Government notification No. 1/155/92-FPI/8186, dated 24.12.1992. In para 2 of the aforesaid instructions dated 25.10.2012, it was also stipulated that no arrears shall be paid before the date of application for change of option. However, in the instant case, the petitioner had opted for the 4, 9 and 14 years' Assured Career Progression Scheme issued by the Government in preference to the 8, 16, 24 and 32 years' Assured Career Progression Scheme issued by the respondent No.2 resulting in loss of pay to the petitioner and not for pay revision as per instructions dated 25.10.2012 (Annexure R-1). Hence it is clarified that instructions dated 25.10.2012 (Annexure R-1) are not applicable to the cases of Assured Career Progression Scheme.

3. It is further submitted that as clearly provided in para 2 of the aforesaid 4, 9 and 14 years Assured Career

Progression Scheme issued by the Department of Personnel vide their letter No. 7/60/2006-5PPI/15963, dated 3.11.2006 (Annexure P/2) that this scheme is optional and an existing employee will have the option either to continue in the existing Assured Career Progression Scheme (i.e. 8,16,24,32) years or to opt 4, 9 and 14 years Scheme. It is further provided therein that an employee who wants to opt this scheme will have to exercise an option within two months from the date of issue of this letter along with an undertaking in the prescribed proforma through a sworn affidavit that he wants to accept this scheme effective from 1.11.2006 and will not claim any arrears. In the instant case, the petitioner, of his free will opted for the 4, 9 and 14 scheme. Accordingly, he had no right to ask for the change or withdrawal of option already given by him. The right of an employee to change his option within a stipulated period clearly debars him to change his option. Once an option has been exercised by an employee, it is treated as final. Hence, in this case, the petitioner had no right to change his option which he was though allowed by the employer i.e. respondent no.2 but instructions dated 25.10.2012 have been wrongly mentioned in the order (Annexure P-7). It was clarified in the last para of

the order dated 3.1.2013 that the pay is fixed on notional basis and no arrears shall be allowed to him. Therefore, by allowing the petitioner to change his option, the respondent No.2 has already done a favour to him. Hence the petitioner cannot claim the arrears in this regard as a matter of right.”

It is apparent from the aforesaid paras reproduced here-in-above that impugned order has been passed by relying upon instructions dated 25.10.2012 (Annexure R-1) but subsequently it has been noticed that the said instructions are not applicable in case of ACP scheme and reasons have been mentioned in para no. 3 of said affidavit. Petitioner himself had given option for this Scheme and thereafter, a request was made by him for change/withdrawal of the option given by him but he was not having any right to change the option already exercised by him. Claim of the petitioner has been rejected on the ground that once an option has been exercised by him, it has become final. The affidavit filed after filing of written statement clearly reflects that instructions dated 25.10.2012 have wrongly been relied upon and the mistake has been clarified in the affidavit.

Accordingly, the impugned order dated 3.1.2013 (Annexure P-7) passed in pursuance of instructions dated 25.10.2012 does not survive and is hereby set aside with regard to declining of arrears to the petitioner. However, respondents are directed to reconsider the case of the petitioner afresh in accordance with law. The necessary exercise be done

within a period of three months from the date of receipt of certified copy of this order.

The present petition stands disposed of.

October 27, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned Yes

Whether reportable Yes