

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24742 of 2014

Date of Decision: 10.02.2016

Harpreet Kanwar

... Petitioner

Versus

State of Punjab and another

... Respondents

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

Present: Mr. Paul S.Saini, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner has been faced with a grievance, as explained hereafter, regarding her service benefits with respect to pay protection after she was appointed by way of transfer/selection from the post of Clerk in the offices attached to the Sessions Division, Rupnagar to the post of Clerk in the Head Office, Industries Department, Punjab, at Chandigarh. She was one among many regular employees of the State Government working in its various departments who responded to a circular dated April 20, 2010 issued by the Department of Industries & Commerce, Punjab, Chandigarh calling applications from eligible in-service candidates for selection and appointment by way of transfer against posts lying vacant. The circular was brought to the notice of the Heads of Departments in the State Government, the Registrar, Punjab & Haryana, High Court and all the Deputy

Commissioners in the State of Punjab. The petitioner applied for the post of Clerk on April 21, 2010 and competed for the selection from the limited source of already serving employees showing interest in the offer. She was offered appointment vide letter dated May 24, 2010 with the following conditions:-

- “1) She has to submit an affidavit that she will not claim any seniority of the service earned by her in previous department and she has to be junior most in the cadre of Clerks.*
- 2) She has to follow all the rules & Regulations and guidelines applicable to the Punjab Government employees.*
- 3) This offer is valid for 20 days.*
- 4) She will be given all benefits as applicable under Punjab Civil Services Rules.”*

2. She accepted the offer and joined the new department on June 29, 2010 within the time allowed after being relieved from the previous post from where was had applied through proper channel. Abiding by the terms of the letter of appointment she submitted her affidavit dated February 25, 2011 waiving right to seniority in her previous office in terms of the offer of appointment. Her seniority in the new department would thus accrue from the date of joining. At the time of transition from one department to the other her substantive pay in the Pay Band 3200 was Rs.16,950/- basic pay as on April 1, 2009 with officiating pay (DA) of Rs.5933/- together with exchange compensation allowance of Rs.500/- and HRA of Rs.1695/-. Her total salary at the relevant juncture in the Sessions Division, Rupnagar was thus Rs.25,078/- as certified in the Revised Last Pay Certificate issued in the office of the Civil Judge (Senior Division) Rupnagar (Annex P-10). The

sixth recital in the LPC contains a note that the official concerned falls in

the category of Clerk in the pay scale of Rs.10300-34,800 + 3200 Grade Pay as she was not in the category of Junior Assistant but due to ACP she was granted the Grade Pay of Rs.3600/- with Grade Pay increment accruing annually in the month of April. This was the position on January 14, 2010 with reference to the conversion scale. In short, she was drawing Rs.12,850 + 3600 GP in the un-revised pay scale of Rs.5000-8100 which got converted to pay in the conversion scale as aforesaid.

3. On April 30, 2011 an office order was passed by the Director, Industries & Commerce, Punjab protecting the pay of the petitioner w.e.f. June 29, 2010 i.e. the date of joining in Head Office in the scale of Rs.5910 -20200 + 1900 GP. The pay was protected in terms of the Finance (Personnel- II) Branch letter dated November 15, 2000 which allowed protection of pay of employee appointed on account of transfer from another department. The pay protection order is at Annex P-11. The letter dated November 15, 2000 is at Annex P-12.

4. Pay of a Government servant in the matter of pay protection and fixation of pay is governed by the provisions of Rule 4.4 (b) of the Punjab Civil Service Rules, Volume-I, Part-1. The rule prescribes that if an employee has held a post in the same or identical time scale in some other department, his pay on appointment in Government service is to be fixed at the same level. However, cases arose where an employee before being selected for a post under the State Government was drawing pay in a higher pay scale/senior/selection pay scale to which they were no answers found in the existing provisions of proviso below Rule 4.4 (b) of the Punjab Civil Service Rules, Volume-I, Part-1 which did not permit protection of pay in

such cases. The Government decided in such cases that when a person already in service is selected for service under the Government through proper channel in another department, his past service should not be washed out as far as fixation of pay in the new post is concerned. Nevertheless, on appointment by transfer the employee would not take seniority which might disturb the legal rights of officials already senior in the transferred department. This was fair enough. However, experience in the previous service was made relevant. In finding solutions to the problem Government referred to the authority of the Supreme Court in **Dwijan Chandra Sarkar and another v. Union of India**, 1999 SLR 39 for help, where the following principle has been laid down:-

“The previous service of an employee appointed by transfer to another Department should count for the purpose of time bound promotions Shall be as a measure personal to them, such incumbents shall not take benefit of this time bound promotion towards seniority or for the issues related thereto, which in turn implies that such benefit shall not effect the normal seniority for those higher up.”

5. Paragraph 4 of the executive instructions dated November 15, 2000 (Supra) laid down the new principle which requires to be read into Rule 4.4 (b) of the Punjab Civil Service Rules, Volume-I, Part-1, 1970. The relevant part of the policy circular in paragraphs 4 & 5 reads as under:-

4. *“Apparently, in view of existing provisions of Rule 4.4 (b) ibid and the changing scenario where multi-stage pay scales are in operation, and where appointment to premier or other services, through selection including transfer by selection is attempted and is permitted in spite of the fact that the person concerned may already be drawing pay in a higher pay scale; it is not appropriate to ignore previous service for fixation of a pay or for time*

bound promotions in such cases will not create any right for the employees already senior, to claim equality in pay with a junior who receive higher pay by counting his previous service in the above circumstances.

5. *In view of the above it has been decided that:-*

i) *An employee who has previously held substantive or officiated in the same post, or a permanent or temporary post on the same time scale post, on the same time scale post, or a permanent or temporary position the same time scale or a post having identical three/four times pay scales or in which time bound placement/granted higher pay are provided as in the new post in a; Government department or a body corporate or not which is wholly or substantially owned by the Government shall in addition to the protection of pay actually drawn in the corresponding scale as per provisions of Rule 4.4(b) of Punjab Services Rules, Vol.1 Part-1 count is previous service for the purpose for time bound promotion/grant of higher scale in the new post/service. This protection will be as a measure personal to him. He shall not be entitled to benefit of this time bound promotion towards seniority and shall be placed lower to those already higher up in the seniority and shall be placed lower to those already higher up in the seniority list.*

ii) *Where as employee is already getting senior/higher pay scale or earns a senior/higher pay scale in the previous service where a percentage of senior/higher pay scale is prescribed after he has joined the new post/service, pay as fixed in the senior/higher scale in the old service shall also be protected a a measure personal to him in the initial scale of the new post and he shall be placed in the senior scale when his turn come for the same in the normal course.”* (underlining added for emphasis)

6. Later, the Government of Punjab in the Department of Finance issued a clarification by circular letter dated January 10, 2013 (Annex P-13) regarding fixation of pay in case of employees who are appointed to a lower post. The circular was made applicable retrospectively from January 01,

2006. A reading of the circular reveals that the clarification is with respect to the limited issue of protection of pay on appointment from higher post to lower post from one or the other department to another. In such cases, where the transfer is as a result of “personal request” the pay in the pay band of the Government servant holding a post on regular basis, shall be fixed at a stage equal to the pay in the pay band drawn by him in the higher post. However, grade pay of the lower post will be granted. If the maximum of the pay band in the time scale of lower post/scale is less than his substantive pay in respect of old/higher post, he will draw that maximum as initial pay.

7. Quite apparently the clarification governs cases where employee comes from higher post to lower post. The petitioner did not come from higher post to lower post but on a corresponding post of Clerk in the Industries Department while she was a Clerk in the Sessions Division, Rupnagar. The petitioner's appointment order did not specify in which scale of pay/Grade Pay she was being appointed. In fact the order was silent on this aspect. She therefore understood that her previous pay would be protected. With the office order on pay protection, the petitioner was satisfied with para 3 of the letter dated April 30, 2011 based on instructions dated November 15, 2000 [referring to rule 4.4 (b)] having given up her rights in seniority of past service in the transferred department. However, para 4 of the order was self contradictory when it placed the petitioner in the scale Rs. 5900-20200+ 1900 GP. Even after the orders were passed of pay protection the petitioner was given her pay and allowances equal to her previous post in Sessions Division, Rupnagar till the impugned decisions were taken giving rise to this petition. It may be recorded that the petitioner

is a “Graduate Clerk” for purposes of pay revision rules.

8. While she was serving as a Clerk in the Sessions Division, Rupnagar the pay of the petitioner was fixed w.e.f. January 01, 2006 in the grade pay of Rs.3200/- and thereafter Grade Pay Rs. 3600 w.e.f. April 1, 2007, April 1, 2008 and April 1, 2009 respectively vide order dated April 15, 2010 [Annex P-5] issued by the learned Civil Judge (Sr. Division), Rupnagar. In terms of the Punjab Civil Services Assured Career Progression Rules, 2001 the benefit of 4 years of service for ACP was granted to the petitioner on completion of the period w.e.f. April 01, 2007 keeping her in the same Grade Pay of Rs.3600/- by the same order while serving in her previous post. The pay was re-fixed by the learned D&SJ, Rupnagar vide order dated August 31, 2009 whereby the petitioner drew total basic pay of Rs.16450/- as on April 01, 2009. After drawing annual increment her basic pay increased to Rs.16950/- as on April 01, 2010. This included pay in the Pay Band of Rs.13350/- + Grade Pay of Rs.3600/-. The prayer in the petition is for preservation of the same pay structure as of old in the transferred department of Industries, Punjab as was earned in Sessions Division, Rupnagar. The petitioner was granted the benefit of 4 years service prior to induction in the respondent department which placed her in Grade Pay 3600 from 3200 via ACP Scheme for 4 years of satisfactory service rendered in the offices of the subordinate judiciary. By the impugned actions the benefit of 4 years service has been washed away and brought to nought and worse still was lowered to 1900 GP. If this were allowed then the question of pay protection granted by the office order dated April 30, 2011 (Annex P-11) would be rendered illusory and

redundant. The petitioner has been put back to square one in the matter of pay as though she were a direct recruit and not an appointment by way of transfer. It is not permissible to the department to approbate and reprobate at the same time in the same order. The petitioner argues that the order Annex P-11 though mentioned Grade Pay 1900 but from April 30, 2011 till 2014 she was granted the pay protection as canvassed in this petition when all of a sudden the recovery order was passed which is one of the orders impugned in the petition.

9. The petitioner explains in para.11 of the petition that the revised Last Pay Certificate was issued under endorsement dated January 31, 2014 which corrected clerical mistake in the grade pay after which the petitioner had no grievance left since her total emoluments were correctly worked out entitling her to draw as on June 28, 2010 a salary of Rs.25,078/. On coming into the Industries Department her pay was protected as stated before by office order issued by the competent authority.

10. The grouse of the petitioner started when the dealing officials in the Directorate of Industries started to misinterpret the instructions dated January 10, 2013 (Annex P-13) and apply them adversely against her interest on a misconception that the instructions did not apply in her case. These was none other than the clarificatory circular referred to above on protection of pay on appointment from higher post to lower post. Accordingly, a note was put up by the officials of the department which was approved by the competent authority. The noting sheets leading to this decision have been obtained by the petitioner under the Right to Information Act, 2005 and placed at Annex P-14 collectively. This

impugned action of the department reduced the pay of the petitioner without giving her an opportunity of hearing. This is how the impugned order was passed on January 13, 2014 (Annex P-15), which was endorsed on January 20, 2014. Accordingly, her pay was revised downward and an order dated February 12, 2014 was issued re-fixing the pay of the petitioner vide Annex P-16. The consequential effect was that money said to be overpaid was to be recovered from the petitioner.

11. Aggrieved by the process of reasoning adopted, the petitioner made a representation dated March 18, 2014 urging that the re-fixation of pay was an arbitrary act committed by misreading the clarification instructions dated January 10, 2013 on which the impugned decision turned and rested. She prayed that recovery of the difference of salary was an unlawful demand of money earned. Together with the representation, she preferred an application to the competent authority for stay of recovery meanwhile. The disputes and differences arose in this manner which could not be resolved in the office.

12. Feeling aggrieved, the petitioner has approached this Court in the above circumstances claiming directions for pay protection by correctly implementing the office order protecting her pay passed by the Director Industries Department, Punjab by a conscious decision while referring to the policy instructions of the year 2000. The further prayer is for setting aside the order dated February 12, 2014 arbitrarily re-fixing the pay of the petitioner and for quashing the notice of recovery dated October 29, 2014 whereby the petitioner has been issued show cause notice as to why a sum of Rs.65,464/- be not recovered from her salary being mistakenly paid. The

petitioner has replied to the notice in writing. She complains that pay re-fixation was done without notice or hearing offered to her. Therefore, the petitioner has been condemned unheard; the notice of recovery had been issued without deciding representation against orders of pay re-fixation. Apart from breach of principles of natural justice, the petitioner asserts on merits that the instructions dated January 10, 2013 are not applicable in her case as she has come from Clerk to Clerk. Those instructions are applicable in cases of those employees who opt to join a lower post from a higher post at their own request. The petitioner may have come to the post of Clerk which carried lower pay scale than the pay scale of Clerks in the establishment of the subordinate judiciary where pay of staff was revised in terms of the recommendations of the Shetty Commission accepted by the Government but that does not mean she can be disadvantaged in the matter of pay and allowances accrued and vested in her previous employment. Meaning thereby, the posts of Clerks in various departments of the Government carried lower pay than attached to the post of Clerks serving in the Sessions Divisions. However, she was invited to join by transfer in the Industries Department with open eyes and without forewarning that she would slip down in Grade Pay impacting adversely her salary in the new appointment.

13. In the representation against the adverse actions taken behind her back she asserted that she was appointed by transfer after 47 vacancies of Clerks and 17 of Steno-Typists Group-C lying unfilled in the Industry & Commerce Department were circulated to all the departments of the Government for eligible candidates to apply by way of transfer. She did not

come to the department on her own request which assumption is an inherent fallacy in the minds of the decision makers. Applying for a post and requesting appointment is natural fallout of the notice calling applications from amongst officials already working in various departments, which was a right of consideration given across board to those as might wish to apply. It can only be said that the petitioner was one amongst the applicants who took up the offer for consideration of appointment by transfer on merit. It was urged that the question of fixation of pay and pay protection were issues governed by the provisions of Rule 4.4 (b) of the Punjab Civil Service Rules, Volume-I, Part-1 read with the instructions dated November 15, 2000 which latter have not been considered at all by the respondents in the decision making process as they have needlessly harped on the clarification dated January 10, 2013 [covering cases from higher to lower post].

14. It is the petitioner's contention that even assuming that the clarification dated January 10, 2013 is applicable even then it could only be prospective in nature and that part of the clarification dated January 10, 2013 which records that the order takes effect on January 01, 2006 deserves to be either read down, read up and read out of consideration in her case. This circular makes no reference to the instructions dated November 15, 2000 not touches upon its subject matter since they occupy an entirely different and brand new field. Nor does the clarification seek to fill gaps in Rule 4.4 (b) of the Punjab Civil Service Rules, Volume-I, Part-1. The clarification dated January 10, 2013 Annex P-13 was issued following implementation of the revised pay structure introducing the concepts of

grade pay and running pay bands w.e.f. January 01, 2006 for the first time. The instructions seek to cover gray area of protection of pay when appointment is made from higher post to lower post, from higher pay scale to lower pay scale; then what is saved is to be strictly interpreted of the view of the Government in the anomalous situation created by transfer from one to the other department. It was only in such circumstances that Government decided that the grade pay of the lower post will be granted and that too if maximum of the pay band in the time scale of lower post/scale is less than the substantive pay in respect of old/higher post, the employee then will draw the maximum as initial pay. There is however an exception carved out where appointment to a lower post is made subject to certain terms and conditions, then pay may be fixed according to such terms and conditions but this exception has no application to the instant case where transferee did not descend from higher post to lower post but came horizontally from Level-I to Level-I. She nevertheless came from higher pay scale to lower pay scale which was an inevitable circumstance resulting from acceptance of the pay scales/pay bands and grade pay devised by the Shetty Commission for court staff. The petitioner cannot be disadvantaged or punished only because she came from the ministerial offices attached to the Sessions Division which resulted in more pay than admissible to corresponding posts of Clerks in the departments of the Government. In both the departments she served the Government of Punjab. The situation presented in this case may have no parallel and none has been cited before this Court or brought to its notice where such a thing may have happened and how the Government dealt with it. There is neither administrative nor

judicial precedent brought to bear and thus the decision must rest on first principles.

15. On notice, the respondents have appeared and have filed a written statement contesting the case. All that is said in the reply is that no legal right of the petitioner has been infringed which may entitle her to invoke the extraordinary writ jurisdiction. Paras.2 to 12 of the petition have been answered in one line averring that the contents of the corresponding paragraphs of the petition are a matter of record and accordingly have to be taken as admitted without specific denial. Moreover, parties are not disputing facts.

16. In para.13 of the written statement the contents of the corresponding paragraph of the petition are explained to say that instructions dated January 10, 2013 were issued; it is said that the circular dated January 10, 2013 deals with both the situations where person comes from lower post or lower pay scale carrying lower grade pay then the grade pay of the lower post will be granted but the State has not explained whether the petitioner's entry into the Industries Department can be treated as an appointment on one's "own request" or an appointment by way of transfer in limited competition among Clerks and Steno-Typists working in the various departments of the Government applying for the posts circulated. There is no gainsaying that Clerks working in Sessions Divisions constitute officials who work in the department of the Government. The Judicial Officers do not hold posts under the State but in the affairs of the State. But this is not true of the employees of the subordinate Judiciary working on ministerial posts. That part of the Sessions Division is a

department of the Government, salaries paid by the State. There may be no running away from the fact that the petitioner applied for the post but it cannot be said that she was appointed on her request in the face of the circular issued by the Industries Department calling names from eligible candidates working on regular basis in the various departments of the Government of Punjab an cases considered on merits being a process akin to selection. The State has placed the application made by the petitioner through proper channel dated April 21, 2010 at Annex R-2 but she did not make the request to curry favour of the Industries Department as a special case and far from it she had only responded to the circular dated April 20, 2010 (Annex P-7) circulated by the department inviting applications to fill up a large number of posts in both the categories lying unfilled which was a right available to a class of persons and not the individual. The view taken by the department with respect to the nature of appointment of the petitioner as one of request independent of the circular (Annex P-7) is myopic, coloured and a clear misreading of the instructions and applying them to the sequence of events transcending from circulation of vacancies to appointments by way of transfer of which post one was offered to the petitioner which she accepted. It was only incidental that petitioner was in receipt of higher pay in the previous department, a fact presumed to be known to the Industries Department while considering cases of eligible candidates by way of transfer. It is also not the case of the department that the appointment by way of transfer had no element of selection or that the competent authority committed a patent wrong in advertising the vacancies for appointment by way of transfer from other departments. The validity of the appointment by

way of transfer is not doubted.

17. The State goes on to explain in paragraph 15 of the written statement that the department sought prior advice from the Finance Department on November 19, 2013 as to the effect of instructions dated November 15, 2000 and January 10, 2013. The Finance Department, Punjab advised the department in the following words:-

“That the consent is given to protect the Pay of Miss. Harpreet Kanwar w.e.f. 29.6.2010 to Rs.13500+1900=15250 according to the instructions issued by the Finance Department dated 15.11.2000 and 10.1.2013 from her date of appointment in this department as Clerk.”

18. The pay has been protected w.e.f. June 29, 2010 at Rs.13500 + 1900 = 15250 in terms of the two instructions. It is pointed out that notice of motion was issued in the present case on December 03, 2014 and in the meantime recovery from petitioner was stayed by interim orders. Opportunity of hearing was offered to the petitioner on December 02, 2014 and again on December 04, 2014 and then on December 08, 2014 and the petitioner appeared on this last date but by then the instant petition had been entertained on December 03, 2014. This is in sum total of the stand of the State and its defence.

19. On October 21, 2015 this Court passed a detailed interim order calling for an affidavit explaining the position obtaining from new formula of revision of pay and pay scale for the consideration of the Court with respect to matters set out in the order calling answers on the queries arising during the debate at the bar. The order reads:-

“Mr.Manuja, learned counsel for the State has produced a copy of the Punjab Civil Services (Revised Pay)

Rules, 2009 notified on 27th May, 2009 where the expressions “Existing Emoluments”, “Pay in the Pay Band”, “Grade Pay”, “Basic Pay”, “Revised Emoluments” and “Schedule” have been defined. The objects and reasons for introducing the concept of Grade Pay and Pay Band is not discernible from the quoted concepts within the definition of the expressions, and therefore, Mr.Manuja, learned counsel for the State would file an additional affidavit sworn by an official well versed with the pay rules from the Finance Department in General Administration or [whoever the State Government thinks best] to explain in simple words these concepts introduced for the first time a decade ago. It is expected that the official swearing the affidavit would understand the policy underlying these changes made in the financial arrangements of the Government. The deponent should be present in Court to explain in the simplest words as to what these expressions mean. And to clarify the meaning of the expressions in the context of pay scale with more than one Grade Pay and multiple pay bands in the same Master Pay Scale. The affidavit would also explain what Rule 4.4 (b) of the Punjab Civil Services Rules Vol.1 Part 1 means when it talks of protection of pay scale and whether Grade Pay is protected as well. The affidavit would also disclose as to how the instructions dated 10.1.2013 can be applied, retrospectively in transactions concluded before that when pay of employee has been protected by the orders of the Government. The affidavit be filed within two weeks.

List on 26.11.2015.

Copy of this order be handed over to the learned counsel for the State duly authenticated by the Bench Secretary of this Court.”

20. In response, the State has filed an affidavit of the Under Secretary, Department of Finance, Punjab Civil Secretariat, Chandigarh trying to explain the concepts of pay band and grade pay. It is stated that these concepts were introduced by the 5th Punjab Pay Commission in its

recommendations contained in para.4.10 and 4.11 of the report which are as under:-

“4.10 The Revised Basic Pay of an employee would, therefore, consist of two components, one as Pay in the Pay Band and the other as Grade Pay attached to the post of an employee. An employee would earn his annual increment of 3% on this revised basic pay.

4.11 As already mentioned, Grade Pay of every post is linked to its status. The Commission feels that henceforth the Group classification of employees should be based on the Grade Pay. The pre-revised and the revised classification of employees together with the number of employees in each category is depicted in the table below:...”

21. The Government of Punjab accepted the recommendations and notified them on May 27, 2009 introducing the concepts of pay band and grade pay in the pay revision rules. The expressions pay band and grade pay have been defined to mean as follows:-

“3 (f) “pay in the pay band” means the pay drawn in the running pay bands specified in column 6 of the Schedule.

3 (g) “Grade Pay” means the fixed amount corresponding to the pre-revised pay scales or post specified in column 7 of the Schedule.”

22. In the affidavit in para.7 the operative part of the instructions dated January 10, 2013 (Annex P-13) have been quoted stating that they are applicable in the entire State of Punjab and the pay of the petitioner has to be fixed in accordance with instructions dated January 10, 2013. The affidavit is silent as to the previous instructions dated November 15, 2000 which have been brushed under the carpet. Even the advice of the Finance Department where both the instructions dated November 15, 2000 and January 10, 2013 are mentioned in the quoted part (supra) there are no

reasons forthcoming on the ticklish issues raised in this petition and how they are to be answered on the strength of those executive instructions. The situation arising from Clerk to Clerk is not taken care of directly by any of the instructions of the Punjab Government presented for consideration of the Court and the case has then to be decided, as I said before, purely on first principles of law. It has not been argued before me that the appointment of the petitioner by way of transfer to the Industries Department and to repeat, suffered from legal infirmity or that it was a favour done to the petitioner which might vitiate the appointment by transfer itself. It is also not the case of the department that the office order dated April 30, 2011 was an illegal order passed by the Director, Industries & Commerce, Punjab on irrelevant considerations when he protected pay in the scale of Rs.5910-20200 + 1900 G.P. which has been reduced as per the advise of the Finance Department to Rs.13350 + 1900 GP = 15250/-. It is also not the case presented before the Court in pleadings or at the hearing that the Director, Industries & Commerce, Punjab misapplied the circular dated November 15, 2000 in his office order protecting pay. Conversely, it is also not the case that the Director, Industries & Commerce, Punjab failed to apply the instructions dated January 10, 2013 which was fatal to the consideration in protecting pay. The office order dated April 30, 2011 based specifically on the instructions dated November 15, 2000 has not to that extent been rescinded, varied or modified by another office order passed by the competent authority or by any superior authority. If the pay protection order is not unsound in law and it bears the stamp of a conscious decision of the competent authority based on the policy of November 15, 2000, then a

conscious decision taken by the predecessor-in-interest on the basis of the applicable law and facts after paying due regard to the Government instructions dated November 15, 2000 on protection of pay, then it is impermissible to a successor-in-interest to take a different decision, unless the order was per se illegal, unwarranted and unconstitutional and thus deserved to be rectified and the mistake cured to maintain purity of record and financial discipline.

23. To the mind of this Court, there has been a grave misreading of the circular dated January 10, 2013 which instructions deal with an altogether different situation which should not be read into the situation the petitioner is placed with her grievance. Even if the circular dated January 10, 2013 is retrospective in operation, even then it does not fit the bill to throw out her claim for full pay protection, while on the other hand, Government of Punjab took a conscious decision to fill in lacunas and gaps found in Rule 4.4 (b) of the Punjab Civil Service Rules, Volume-I Part-1 by issuing instructions dated November 15, 2000 which were applied in office order of pay protection dated April 30, 2011.

24. The statutory definitions of 'grade pay', 'pay in the pay band', 'basic pay' and 'existing emoluments', 'revised emoluments' and 'Schedule' are expressions which to the mind of the Court form a basket containing pay package representing the total salary that employee will take home or in compulsory investments. I should think that when pay is protected all incidents which go into the basket or package are to be protected to avoid and prevent sudden loss of pay. The Industries Department must have been conscious when it appointed the petitioner by way of transfer that she was

coming from higher pay to lower pay and therefore they must accept the petitioner with a right to preservation of all her conditions of service including pay in the previous department protected except for seniority which right she surrendered to take up the appointment in the Industries Department. Had she been informed in the beginning of the situation she might have to face as she now does she may have had second thoughts in accepting the offer. It is too late now to alter conditions to her disadvantage on the feeble advice of the Finance Department which appears to this Court an incorrect construction/interpretation of the instructions dated January 10, 2013 blowing it out of proportion with a set mind to defeat the claim for wholesome pay protection. When the premise on which the Government action is based [Finance Department advise] is gravely suspect and bereft of reasons, the orders passed on misinterpretation of the circular instructions and wrong advise tendered, the impugned decision/s become/s flawed and open to severe criticism. By this process the Grade Pay of the petitioner stands reduced to Rs. 1900 from Rs. 3600. Even a plain reading of the instructions dated January 10, 2013 would bear this out that all that the Government resolved while issuing clarification on the issue or protection of pay on appointment was to take care of problematic situations and exigencies arising from appointments from higher post to lower post. It was only in that context as contemplated had the Government after careful consideration decided that on appointment to the lower post/scale carrying lower grade pay on one's own request, the pay in the pay band shall be fixed at the stage equal to the pay in the pay band drawn by him in the higher post.

However, grade pay of the lower post will be granted. Much of the dispute

in this case has revolved around grade pay and what that means. There are no instructions direct on the point shedding clear light on the subject matter to be guided by. If there is a gap somewhere in the scheme of things then I fail to see how it can be filled by the 2013 instructions.

25. The nature and character of the petitioner's appointment by way of transfer as Clerk in the department of migration can only be viewed as a case of "transfer by selection" which the instructions dated November 15, 2000 speak directly on, when they deal with the subject of protection of pay, which is what this case is about. There are no other crutches for the State to stand on and support its stance to non-suit the petitioner. There is no clear and precise administrative law covering the point. Thus Court cannot approve action taken under the instructions applied against the petitioner capriciously and instead the November 15, 2000 instructions appear to provide clues to answer the peculiar situation arising in this case which have not even been remotely addressed and understood or answered either by the Industries department or by the Finance department of the Punjab Government advising the opinion-seeker [Industries Department] and deflecting them to apply wrong reasoning to deny the claim, for Court to be persuaded to uphold the decisions impugned. All that this court is prepared to hold is that the superstructure of the impugned decision resting on the cornerstone of the edifice of the instructions dated January 10, 2013 is built on terribly weak foundations which cannot support the construction canvassed by the respondents on Grade Pay and salary. The decision making process is found bad being based on irrelevant considerations playing their part by misconstruction of the aforesaid instructions applied

which calls for interference on judicial review. By act of Industries department in appointing the petitioner through a process akin to selection by transfer she becomes a protected pay island among the Clerical cadre in the transferred department in the matter of salary in all the constituent units that make for the full basket/package of emoluments as came from previous service in the Punjab Government in the offices of the subordinate judiciary as personal pay with corresponding rights in future pay revisions. What has been protected is pay in the pay band but not grade pay which petitioner was drawing in previous service thereby reducing substantially the pay drawn earlier, that is, prior to June 29, 2010 when she joined the respondent department. The State has rested its entire defence only on the basis of the January 10, 2013 instructions which do not even remotely apply to the facts of this case while they deal with a situation not encountered herein. It may be recorded that the Court has not been called upon to examine the issue of pay protection from any other angle by the State other than its pleaded defence to the writ petition and the arguments addressed by the learned law officer for the State and in the additional affidavit.

26. I would therefore, for the variety of reasons recorded above, allow this petition; set aside the orders dated January 13, 2014 [Annex P-15], February 12, 2014 [Annex P-16] and para. 4 of the office order dated April 30, 2011 (Annex P-11) [the last one on the principle that one cannot give and take away a benefit of pay protection at the same time for the same thing as it would then cease to be a pay protection order] and consequently quash the demand for recovery of money by setting aside the show cause notice dated October, 29, 2014 [Annex P-18] demanding the sum named

therein. As a corollary, the notings on the file leading to the impugned decisions reducing pay, grade pay etc. are set aside by issuing a writ of certiorari. To bring relief to the petitioner, a writ of mandamus is issued to the respondents to restore the status quo ante by protecting Grade Pay earned in previous employment under the State, as discussed and held on the reasoning recorded in foregoing paragraphs.

(RAJIV NARAIN RAINA)
JUDGE

10.02.2016
manju