

209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.25533 of 2014 (O&M)
Date of decision : September 29, 2016

Charanjit Singh and another Petitioners

Versus

The State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sunny Singla, Advocate for the petitioner.

Mr. R.S. Pathania, DAG, Punjab.

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. (ORAL)

Petitioners seek issuance of writ in the nature of certiorari for quashing the order dated 12.01.2013 (Annexure P-11) passed by respondent No.3 i.e. the District Education Officer, (S.E.), Mansa, whereby the claim of the petitioners for change of option has been rejected. Petitioners also seek writ of mandamus directing the respondents to consider and grant to the petitioners, the benefit of change of option for the grant of revised pay scale in terms of Punjab Civil Services (Revised Pay) Rules, 1998 w.e.f. 31.12.1995 instead of earlier option 01.01.1996, in view of the changed circumstances and the Government Instructions.

Petitioners were working in the Education Department as Mathematics Teachers. The Government of Punjab, vide Notification dated 16.01.1998 notified the Punjab Civil Services (Revised Pay) Rules, 1998 (in short 'the Rules 1998'), accepting the recommendations of 4th Pay

Commission. The petitioners had earlier opted for the revised pay scale w.e.f. 01.01.1996, in terms of Rule 7 of the Rules of 1998 and their pay was, accordingly, fixed. There was a dispute regarding their previous pay fixation, in terms of the Revised Pay Rules, 1988, regarding their option under the said Rules w.e.f. 01.01.1992 instead of their earlier option w.e.f. 01.01.1988. They filed CWP No.10454 of 2010 and they were allowed to change the option w.e.f. 01.01.1992 and their pay was accordingly fixed.

In view of the re-fixation of the pay, the petitioners requested the authorities to permit them to change their earlier option for grant of benefit of Revised Pay Rules, 1998 w.e.f. 31.12.1995 instead of 01.01.1996, in terms of Note 1 below Rule 7 of Rules 1998.

Petitioners claimed that in CWP No.18380 of 1994, decided on 21.11.1995 titled as “Nand Lal Sharma and others vs State of Punjab and others”, the Division Bench of this Court had allowed to change of said option. Reliance has also been placed on some other decisions of this Court.

Petitioners further claimed that the Government vide Circular letter dated 01.01.1997 addressed to the D.P.I.(s) allowed similarly situated persons to change the option for the revision of pay scale in the light of said decision.

The earlier options opted by the petitioners w.e.f. 01.01.1996, caused a pecuniary loss to them. The petitioners filed CWP No.7921 of 2012, which was disposed of with a direction to respondent No.2 to dispose of the representation of the petitioners within three months. Now, the said representation has been disposed of vide impugned order dated 12.01.2013 (Annexure P-11).

Respondent Nos.1 to 3 in their reply have stated that the orders of the Court rendered in CWP No.18380 of 1994 were applicable for the revised pay Rules 1988 w.e.f. 01.01.1986. Thus, it is not applicable qua the Rules 1998. The respondents took the stand that the Department never allowed to change the option related with revised pay Rules 1998. The representation was rightly rejected.

I have heard learned counsel of the parties and have also carefully gone through the case file.

Petitioners claimed that earlier there was a dispute regarding change of option, in terms of revised Pay Rules 1988. They wanted to change the option w.e.f. 01.01.1992 instead of earlier option of 01.01.1988. Therefore, they filed CWP No.10454 of 2010. They were allowed to change the option.

It is stated that on account of change of option, their pay was re-fixed. Now, the petitioners want to change the earlier option from 31.12.1995 instead of 01.01.1996 qua pay Pay Rules of 1998.

I am of the view that when the petitioners had approached this Court in the year 2010 to change their option regarding revised pay Rules 1988 and if they felt that in consequence to change of the option, they will be required to change the option as per revised Pay Rules 1998 also, they could plead and pray for the same in the same very writ petition filed in the year 2010. However, it was not done despite the fact that said Rules of 1998 came into force 12 years before the filing of the aforesaid writ petition. In this way, the petitioners had split up their claims. They filed the first writ petition regarding the revised pay Rules 1988. Now, they want to change the

option in terms of revised Pay Rules 1998. This relief was available to them when they had earlier filed CWP No. 10454 of 2010. Therefore, on this short ground, the petitioners are not entitled to any relief.

Moreover, in the Punjab Civil Services Revised Pay Rules 1998, the employees were asked to give their options to draw increments in the existing pay scale or the revised pay scale. The petitioners are stated to have given the said option, immediately, after the Rules 1998 came into force. Earlier, regarding the Rules of 1988, they had given the option and after about more than 14 years, they realize that their option is not beneficial to them. Therefore, they moved this Court and got the relief. Now, they want to change their option given as per Punjab Civil Services Revised Pay Rules, 1998.

Now, the question would arise that when the Rules do not provide for change of option, can the court allow change of option at any time and thereby exercise the executive power of the Government?

I am of the view that the reply is in negative.

Petitioners have relied upon the Instructions dated 01.01.1997 (Annexure P-4), issued to implement the decision in CWP No.18380 of 1994. The said CWP did not pertain to the revised Pay Rule of 1998. Therefore, the said Instructions are not attracted in the present case.

Learned counsel for the petitioners has relied upon the authority of Single Bench of this Court passed in CWP No.18644 of 2015, titled as “Gurmit Singh and others vs State of Punjab and others”, decided on 11.03.2016, in which the petitioners have been directed to change the option qua the pay fixation w.e.f. 01.01.2006. He has also relied upon the

authority of “*Amar Singh and others vs The State of Punjab and others*”, passed in CWP No.6678 of 2014, decided on 08.07.2016.

I am of the view that in Amar Singh’s case (supra), the case is entirely different. Here the options were not invited from the employees of the Privately Managed Government Aided Schools, therefore, the same was allowed.

I am further of the view that once the Government fixed a cut off date to exercise the option by the employees, employees cannot claim the change of option at their own will. The option once exercised is final. Moreover, in the present case, the petitioners had earlier approached this Court for change of option in terms of Revised Pay Rules, 1988. At that time, they had given option as per revised Pay Rules 1998. Therefore, when they filed the writ petition in the year 2010, they should have also sought relief regarding the option of Rules 1998.

The direction to allow the change of option is always the executive decision of the Government and if despite the cut off date, the employees are permitted to change the option, then anarchy will prevail and the employees will keep changing their option from time to time as per their convenience. Thus, there is no ground to allow the petitioners to change the option and there are no merits in the present writ petition as well.

As such, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

September 29, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes