

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28582 of 2013 (O&M)

Date of Decision: 3.10.2016

Jagmohan Lal

.... Petitioner

vs.

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.K.L. Dhingra, Advocate for the petitioner
Mr. Naveen Sheoran, DAG, Haryana
Mr. Sachin Gupta, Advocate for respondent No.4

Kuldip Singh J.(Oral)

Petitioner has challenged the order dated 6.11.2013 (Annexure P-12) vide which his claim was rejected by the respondent-Deputy Commissioner, Kurukshetra.

Briefly stated, petitioner was appointed as an Octroi-Moharrir/Clerk in the office of Municipal Committee, Thanesar on 25.11.1971. He was given the pay scale of I00-4-I20-8-I40. Petitioner claims that the pay scale of other employee in the Municipality of Kurukshetra, District was 110-225. Therefore, vide order No.1340/LFA dated 10.2.1979, the pay scale of the petitioner was also revised to 110-225 but w.e.f. the date of passing of the order i.e. 2/1979.

Petitioner retired from service on 31.1.2009. Petitioner preferred a civil writ petition No.322 of 2013 i.e. after 34 years of the passing of the said order in the year 1979 and four years after his retirement. The writ petition was dismissed in limine on the ground of delay and laches.

Aggrieved by the said order, petitioner preferred Letters Patent Appeal. The Division Bench vide order dated 20.5.2013 passed in LPA

No.365 of 2013, partly allowed the same and took a view that since the anomaly in the pay has allegedly led to recurring loss to the employee, therefore, a direction was issued to the Deputy Commissioner, Kurukshetra, to look into grievance of the applicant and if it is found that it was a case of pay anomaly, let the same be removed prospectively only without paying of any arrears or other monetary benefits for the past pension. Accordingly, the Deputy Commissioner, Kurukshetra passed the impugned order dated 6.11.2013 (Annexure P-12) in which following reasoning is given-:

“ The petitioner during the course of hearing, stated that the pay scale of 110-225 as granted by the MC Pehowa to its employee/Octroi Moharrir may also be granted to him. He stated that the Municipal committee, Thanesar has already passed resolution no.416B dated 5-5-1978 vide which this pay scale of Rs.110-225 was agreed to be granted to the Octroi Moharrir w.e.f. 1-4-1978 and the said decision was taken by the MC Thanesar after consideration of the pay scale of the other committees like MC Pehowa etc. He also claimed that as per Haryana Municipal Rules, 1982, the pay scale granted to the Haryana Govt. employees is also applicable to the employees of the Municipal Committee, thanesar, hence he is entitled to the pay scale of clerk as the post of clerk and Octroi Moharrir are the same.

On the other hand the Executive officer, M.C. Thanesar intimated that the petitioner was appointed as Octroi Moharrir on 25.11.1971 in the pay scale of 100-4-120/5-140 and the pay scale of M.C. employees were proposed to be revised w.e.f. 1.4.1978 vide resolution no. 416B dated 5.5.1978 by the then Administrator, M.C., Thanesar subject to approval of D.C. Kurukshetra. But the Deputy Commissioner, Kurukshetra while approving the said resolution vide memo no. 1340/LFA dated 12.7.1979 granted permission to revise the pay scale of MC, Thanesar employees w.e.f. 1-4-1979 and not

from 1-4-1978.

As evident from the service book of another employee worked as Octroi Moharrir namely Shri Jagmail Singh, the pay scale of Octroi Moharrir of MC, Thanesar was revised to Rs.110-225 w.e.f. 1-4-1979 and not before the said date. The EO MC Thanesar informed that the service rules of M.C. Employees were framed in 1982 and prior to this the services of employees were governed by the rules, instructions and pay scales of Haryana Govt. employees after adopting the same by the concerned committee. But there is not such record that the said pay scale of Rs.110-225 was ever adopted before 1-4-1979 by the MC Thanesar. Moreover, the Rules 1982, on the basis of which the petitioner is taking the plea that Haryana Govt. rules were applicable in the MC, Thanesar, were came in the existence prospectively i.e. in 1982 hence, it cannot be presumed that these rules were also applicable in 1971 since when the applicant is seeking the revision of his starting pay scale. The EO, MC, Thanesar, further submitted that the pay scale of Octroi Moharrir of Municipal Committee Assandh, Thanesar and Pehowa were rupees 90, 100 and 110 respectively and hence were not at par with each other.”

While concluding, the Deputy Commissioner, enumerated the following reasoning to hold that it is not a case of pay of anomaly :-

- 1. “ The claim of higher pay scale against the starting pay scale granted to the applicant/petitioner at the time of his appointment does not cover under the definition of pay anomaly as per letter dated 20-4-2001.*
- 2. As the Haryana Municipal Rules, 1982 which came into existence with prospective effect in 1982 cannot be presumed applicable in the present case (as claimed by the applicant) nor there any proof that the Haryana Govt. Rules, specially with regard to the pay scale of Rs.110-225 for the post of Octroi Moharrir were adopted by the Municipal Committee, Thanesar in 1971. Hence, the pay scales of*

employees of MC, Thanesar were neither at par with Haryana Govt. employee nor with the employees of other municipal committees like MC, Pehowa etc. The pay scale of Octroi Moharrir granted by various committees were entirely different and the same varies from committee to committee.

3. *There is no record that any other Octroi Moharrir of this committee was benefited with the pay scale of Rs. 110-225 prior to 1-4-1979, the date on which this pay scale was granted to the petitioner. The pay scale of MC Pehowa, on the basis of which the applicant seeks his claim, was not applicable to the employees of MC Thanesar in 1971.*

Accordingly, keeping in view of the discussion made above and after consideration of the whole record of this case, I Nikhil Gajraj, Deputy Commissioner/Collector, Kurukshetra hold that the grievance of the petitioner does not cover under the definition of 'pay anomaly', hence the claim is rejected. All concerned be intimated accordingly."

After considering the order of Deputy Commissioner, Kurukshetra considering the facts and circumstances, I tend to agree with the reasoning given by Deputy Commissioner, Kurukshetra.

Here, the pay was given to the petitioner but with effect from a particular date and the petitioner claimed it from different date, so therefore, it is not a case of pay anomaly. Petitioner did not challenge the order dated 10.2.1979 for complete 34 years. Therefore, his claim was rightly rejected by the Deputy Commissioner, Kurukshetra.

Resultantly, the present petition is dismissed.

3.10.2016

gk

(Kuldip Singh)
Judge

Whether speaking / reasoned
Whether reportable

Yes
No