

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 8789 of 2013

Date of decision : February 11, 2016

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Nafe Singh

.....Petitioner

Versus

Haryana State Federation of Consumers
Coop. Wholesale Stores Ltd.

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Ms. Aman Sibia, Advocate for the petitioner.

Mr. Amit Jaiswal, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner has filed the present writ petition for quashing the impugned order dated 11.10.2012 (Annexure P-10), whereby his claim for the grant of the revised pay scales as per Vth & VIth pay Commission and IInd ACP was rejected.

The petitioner joined as Salesman on 8.6.1981. His services were terminated on 22.9.1994. The petitioner approached the Industrial Tribunal-cum-Labour Court, Hisar for the redressal of his grievance. The Labour Court vide the award dated 1.2.2007

(Annexure P-1) answered the reference in favour of the petitioner holding therein that termination of his services was not proper and valid. He was held entitled to reinstatement with continuity of service and all other consequential service benefits including 50% back wages from the date of issuance of demand notice (20.12.1994) till the publication of Award and full wages thereafter till reinstatement.

The respondent filed CWP No. 8716 of 2007 challenging the award dated 1.2.2007 before this Court, which was dismissed vide judgment dated 30.5.2007 (Annexure P-2). After passing of the judgment dated 30.5.2007, the petitioner was reinstated with immediate effect and posted at CONFED District Office, Karnal vide order dated 26.10.2007 (Annexure P-3). Though the petitioner was reinstated in service w.e.f 27.10.2007, however neither his pay and other allowances were fixed as per recommendations of the Fourth, Fifth and Sixth Pay Commission which were applicable to the employees of the CONFED nor 50% pay and other allowances were paid to the petitioner from the date of issue of Demand Notice i.e 20.11.1997 till publication of the Award in the Gazette i.e 1.3.2007 and full pay and other allowances onwards till reinstatement and subsequently pay and other allowances w.e.f 27.10.2007 as per his entitlement. Petitioner also made representation in this regard. Thereafter the petitioner filed a CWP No. 8672 of 2011 which was disposed of vide order dated 17.5.2011 (Annexure P-8) with a direction to the respondents to decide the representation filed by the petitioner for release of arrears and also for release of his pension

and pensionary benefits. In compliance of the order dated 17.5.2011 of this Court, the respondent vide order dated 11.10.2012 (Annexure P-10) implemented award of the labour Court by granting regular pay scale w.e.f. 8.6.1981 and standard pay scale w.e.f. 28.9.1995. As per IVth pay Commission, 50% back wages were calculated amounting to Rs.2,54,013/- which was paid vide cheque No. 228312 dated 9.12.2011. The retiral benefits i.e. gratuity and leave encashment of Rs.90640/- and Rs.52,370/- were paid vide letter dated 2.1.2012. However, the benefit of the recommendation of Vth and VIth Pay Commission and ACP were declined to him as he was junior to the salesmen who were not granted the above pay commission being surplus.

The petitioner has made a reference to the case of one Prithvi Singh who was junior to the petitioner and was appointed as salesman vide appointment letter dated 30.7.1981. He was extended the benefit of the revised pay scale in terms of the Vth pay commission w.e.f. 1.1.1996 as per order dated 14.6.2002 (Annexure P-12). Prithvi Singh was terminated vide orders dated 23.6.1992 and the labour Court vide its award dated 16.3.1999 had reinstated him with continuity of service. CWP No.12134 of 1999 filed by the respondents was dismissed on 30.7.2009. Services of the employee were retrenched w.e.f. 13.12.2000.

On notice, a reply has been filed by the respondents and a clarification has been given in paragraph 13 that Prithvi Singh was junior to the petitioner, however, he was reinstated by the respondent

vide order dated 21.10.1999. The tentative seniority list of salesmen was circulated only on 30.11.2000 and the recommendations of 5th pay commission had already been implemented in the year 1998 itself. On reinstatement Prithvi Singh became entitled to the recommendations of 5th pay commission and he was declared surplus only vide seniority list dated 30.11.2000. As per the Government Instructions dated 12.10.1998 the pay scale of such employees, who have been declared surplus, should not be revised. Since, the employees who were senior to the petitioner were declared surplus and were not granted benefit of Vth Pay Commission, therefore, the petitioner was not granted the benefit of recommendations of Vth Pay Commission and IInd ACP. Pursuant to the Award of the labour Court dated 1.2.2007, the petitioner was reinstated vide order dated 27.10.2007. Vide order dated 26.5.2009 (Annexure R-1), the petitioner was granted the benefit of recommendations of IVth pay commission and his pay was refixed equivalent to his next junior salesman Sh. Chand Singh, who joined CONFED on 8.6.1981. The petitioner was further granted higher standard pay scale w.e.f 28.9.1995 vide order dated 9.3.2011 (Annexure R-2). The petitioner cannot claim parity with Prithvi Singh as Prithvi Singh was reinstated by the Department on 21.10.1999 and as per the Govt. Instructions dated 12.10.1998, the employees who had been declared surplus, the pay scales of such employees should not be revised as per the recommendations of Vth Pay Commission. Prithvi Singh was junior to the petitioner and as per the

seniority list dated 30.11.2000

As per the written statement, employees senior to the petitioner were declared surplus and were not granted the benefit of Vth pay Commission and hence the petitioner as per the order (Annexure R-1) has not been extended the benefit of Vth pay Commission. The petitioner vide order dated 9.3.2011 (R-2) has been granted the benefit of higher standard pay scale of Rs.1200-2040 w.e.f 28.9.1995 on completion of 10 years or more and 20 years of regular satisfactory service.

After hearing counsel for the parties and going through the contents of the written statement and the writ petition, no case for grant of revision of pay scale as per the recommendation of Vth Pay Commission is made out. The order dated 11.10.2012 (Annexure P-10) declining the claim of the petitioner is rightly passed in view of the Instructions of the Finance Department dated 12.10.1998 which stipulates that the employees who have been declared surplus, their pay scales should not be revised.

Having regard to the aforesaid, the present petition is dismissed.

February 11, 2016
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(**RITU BAHRI**)
JUDGE