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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 7434 of 2015 (O/M)
Date of decision : 27.10.2016

Karan Singh

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Raman B. Garg and Ms. Geetanjali Chhabra, Advocates,
for the petitioner.

Mr. Gaurav Goel, Assistant A.G. Haryana.

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 ?

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KULDIP SINGH J. (ORAL)

The petitioner was working as a Work Munshi with the respondent department on work charge basis. On account of implementation of the Haryana Civil Services (Assured Career Progression) Rules, 1998 (in short 'ACP Rules of 1998'), the pay of the petitioner was fixed with effect from 1.1.1996 in the revised pay scale of Rs. 4000-6000. The date of increment of the petitioner was otherwise to fall due on 1st of May every year. Thereafter, he was granted first and second assured career progression (in short 'ACP') with effect from 1.1.1996 and 1.12.2003

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respectively on completion of 10 and 20 years of regular service. The petitioner retired from service on 31.12.2013. Thereafter, vide order dated 18.3.2014 (Annexure-P-2), the pay of the petitioner was re-fixed and reduced. Aggrieved by the said order, the petitioner approached this Court by way of filing CWP No. 11596 of 2014, wherein this Court passed the order dated 30.5.2014 (Annexure-P-3), vide which the impugned order dated 18.3.2014 (Annexure-P-2) was kept in abeyance and the respondents were directed to issue show cause notice to the petitioner and consider the same and pass a speaking order. Consequently, after issuing the show cause notice, the order dated 16.1.2015 (Annexure-P-9) was passed whereby the respondents justified the re-fixation of the pay on the ground that Rule 4.4 (C)(i) of Haryana Civil Services Rules, Volume-1, Part-1, is applicable to the case of the petitioner and his pay has been re-fixed and it was denied that Rule 16 of the Rules of 1998 is applicable to the present case.

In the written statement also, the similar stand was taken to justify the action.

I have heard the learned counsels for the parties and have also carefully gone through the file.

Rule 4.4 (C) (i) Haryana Civil Services Rules, Volume-1, Part-1, is reproduced as under :-

“Rule 4.4 (C) (i) Notwithstanding anything contained in these rules, where a Government employee holding a post in a temporary or officiating capacity promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of higher post shall be fixed at the stage next above

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his pay drawn by him in the lower post provided it is certified by the Head of the Department or Head of the Office where he is appointing authority in respect of Class III and IV Government employees in which the Government employee was holding the lower post that he would have continued to officiate in the lower post but for his promotion/appointment to the higher post.

Note-I When a Government employee is appointed to a higher post on the date on which his increment in the lower substantive post fall due, his substantive pay for the purpose of fixing his initial pay in the higher post shall be inclusive of his increment accruing on the date.”

Rule 16 of ACP Rules of 1998 is reproduced as under :-

“Rule 16.- Date of next increment in the First and Second ACP scale, as the case may be.- The next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of rule 15 shall be granted on the date he would have drawn his increment, had he continued in the present scale.

Provided that in cases where the pay of a Government servant is stepped up in terms of Note 7 to sub rule (1) and also second proviso to sub-rule (1) of rule 15, the next increment shall be granted on the completion of qualifying service of 12 months from the date of the stepping of the pay in the revised scale;

Provided further that in case other than those covered by the preceding proviso, the next increment of a Government servant, whose pay is fixed on the 1st day of January, 1996 or on any, subsequent date, at the same stage and in the same pay scale as the one fixed for another Government servant junior to him in the same cadre and drawing pay at the lower stage than his in the present scale, shall be granted on the same date as admissible to his junior, if the date of increment of junior happens to be earlier;

Provided also that in the case of persons who had

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been drawing maximum of the present scale for more than a year as on the 1st day of January, 1996, next increment in the revised scale shall be allowed on the first day of January, 1996.”

Rule 19 of the ACP Rules of 1998 provides for overriding effect of said ACP rules over the CSR and PFR so far as these are inconsistent with the said ACP Rules.

Now, if Rule 4.4 (C) (i) of Haryana Civil Services Rules, Volume-1, Part-1, is examined, it comes out that it is applicable to the cases where a Government employee is appointed to the higher post. In the present case, it is admitted case of the parties that the petitioner was working as a Work Supervisor and continued to work as such till the date of his retirement. What the respondents have done is that, vide the impugned order, his date of increment has been shifted to 1.5.1996, whereas it was due on 1.1.1996 and consequently, the pay of the petitioner has been reduced and re-fixed for the coming years till his retirement.

I am of the view that in this case when the pay of the petitioner was fixed with effect from 1.1.1996 in view of Rule 16 of the ACP Rules of 1998, the date of increment will not change. It is not a case where the petitioner was appointed to the higher post. Therefore, Rule 4.4 (C)(i) of Haryana Civil Services Rules, Volume-1, Part-1, was wrongly applied. Consequently, the impugned order dated 16.1.2015 (Annexure-P-9) is hereby quashed and the re-fixation done prior to the passing of the impugned order is restored. Consequently, the benefits including the pensionary benefits shall be released to the petitioner within two months from the date of receipt of certified copy of this order alongwith interest at the rate of 9% per annum. After the re-fixation, the consequential benefits

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shall also be released to the petitioner.

The present writ petition is allowed.

(KULDIP SINGH)
JUDGE

27.10.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No