

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4756-1999 (O&M)
Date of decision: 25.04.2017

B.S.Danewalia (through LRs)

.....Petitioner(s)

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Bhavpreet Singh Dhatt, Advocate for the petitioner(s)
Mr.R.S.Pathania, DAG Punjab

- 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?*

Kuldip Singh, J.

Petitioner B.S.Danewalia, IPS, retired Inspector General of Police, Punjab, since deceased and now represented through legal heirs, had filed the present writ petition for issuing the writ in the nature of Mandamus for directing the respondents to release the pension of the petitioner after fixing the pay of the petitioner in the revised pay scale of Rs.7600-8000 w.e.f. 1.1.1986 as has been done in the case of other Inspector Generals of Police/ Director Generals of Police.

The short facts which are required to be noticed for the purpose of disposal of the present writ petition are that the petitioner was an IPS

officer and was working as Inspector General of Police w.e.f. 20.7.1977. At that time, there was only one post of Inspector General of Police and he was Head of the Police force in the State of Punjab. His pay scale was Rs.2500-2750 with special pay of Rs.250/- per month. On 20.2.1980, the Akali Government in the State of Punjab was dismissed and the petitioner was sought to be transferred from the post of Inspector General of Police to a non-cadre post. Therefore, to register his protest, the petitioner proceeded on leave preparatory to retirement and took premature retirement w.e.f. 5.6.1980. At that time, his pay scale was Rs.2500-2750 with special pay of Rs.250/- per month and dearness allowance of Rs.350/-making the total emoluments of Rs.3225/- per month. According to the petitioner, till retirement of the petitioner, other forces such as CBI, BSF etc. were headed by Director General of Police, whereas head of the State Police Force was called Inspector General of Police. In the year 1982 i.e. after the retirement of the petitioner, the post of Director General of Police-cum-Inspector General of Police was introduced vide notification dated 16.7.1982. One Mr.Birbal Nath of 1951 Batch IPS, who during service was junior to the petitioner, was designated as Director General of Police. Petitioner further claimed that had he continued in service, he would have reached the age of superannuation i.e. 58 years as on 3.8.1983 and would have been the first Director General of Police in the State of Punjab. W.e.f. 1.1.1986 the pay of the Director General of Police-cum-Inspector General of Police was revised to Rs.7600-8000 and further post of Inspector General of Police, which is subordinate to Director General of Police-cum-Inspector General of Police was in the pay scale of Rs.5900-6700. On 10.2.1988, the respondents revised the pension of the petitioner w.e.f. 1.1.1986 and fixed the pension of

the petitioner in the pay scale of Rs.5900-6700 considering the petitioner to be Inspector General of Police, whereas his pay should have been fixed to the corresponding pay scale of Rs.7600-8000 of the post of Director General of Police-cum-Inspector General of Police. Petitioner made the representation which has been rejected.

Stand of the respondents in the written statement is that it is incorrect that there was only one post of Inspector General of Police. Shri S.N.Mathur, IPS (Punjab 1948) (Retd.) and Shri D.S.Grewal, IPS (1948), (Retd.), were working as Director General of Police, Punjab Home Guards and Civil Defence, Punjab and Inspector General of Police, Punjab (Head of Police Department) respectively in the State of Punjab. Similarly, Shri Harjit Singh, IPS (Punjab 1949), who was in the rank of Inspector General of Police was on leave at that time. Before going on leave, he was working as Inspector General of Police/ Vigilance Bureau. The pre-mature retirement of the petitioner was admitted and it was stated that at the time when the petitioner was in the police force, the Head of the Police Force was called as Inspector General of Police. The introduction of post of Director General of Police-cum-Inspector General of Police in the pay scale of Rs.3000/- instead of Inspector General of Police vide notification dated 16.7.1982 (Annexure R2) was also admitted. The posting of Shri Birbal Nath, who was junior to the petitioner during service, as Director General of Police w.e.f. 10.9.1980 was also admitted vide Annexure R3. Shri S.N.Mathur, IPS and Shri Harjit Singh, who were senior to the petitioner were retired on 31.12.1982 and 30.11.1983 respectively. Therefore, one of these officers would have been designated as Director General of Police-cum-Inspector General of Police. Therefore, it was not necessary that the

petitioner would have been the first Director General of Police-cum-Inspector General of Police in Punjab. Petitioner retired from service on 5.6.1980. Therefore, he was not in service when Shri Birbal Nath was posted as Director General of Police-cum-Inspector General of Police on 10.9.1980. The revision of pay scale of Director General of Police was not disputed. It was stated that the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Pensioners Welfare, New Delhi vide their letter dated 10.2.1998 had directed that the pension of all pre-1986 retirees may be updated by notional fixation of pay as on 1.1.1986 by adopting the same formula as for the serving employees. Notional pay of pre-1986 retirees may be fixed on notional basis in the revised scale of pay for the post held by the pensioner at the time of his retirement. Since, the petitioner retired as Inspector General of Police on 5.6.1980 in the pay scale of Rs.2500-125/2-2750, his pay was notionally fixed as on 1.1.1986 @ Rs.6100/- in the pay scale of Rs.5900-200-6700, which was conversion of pay scale of Rs.2500-125-2-2750 vide order of the Director General of Police, Punjab dated 30.6.1980. It was stated that the pay has been rightly fixed and therefore, prayer is made for dismissal of the writ petition.

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

Admittedly, when the petitioner got pre-mature retirement w.e.f. 5.6.1980, the Head of Punjab Police was of rank of Inspector General of Police. There was only one cadre post of Inspector General of Police. It comes out from the record that there were two other non-cadre posts of Inspector General of Police. Petitioner himself has stated that he sought the

pre-mature retirement in protest as he was sought to be posted on non-cadre post. Therefore, there was more than one non-cadre post also, where the petitioner could be posted. After the retirement of the petitioner, the Government of India issued a notification dated 16.7.1982, whereby Indian Police Service (Pay) Third Amendment Rules, 1982 were enforced from the date of publication of the said Rules. In the said Rules, one cadre post of Inspector General of Police in the pay scale of Rs.2500-125/2-2750 was substituted by the post of Director General of Police-cum-Inspector General of Police in the pay scale of Rs.3000/-.

The plea of learned counsel for the petitioner is that since after the retirement of the petitioner, the equivalent post of Inspector General of Police held by him at the time of retirement was Director General of Police in the pay scale of Rs.3000/-. Therefore, his pay should have been revised w.e.f. 1.1.1986 as in the rank of Director General of Police by equating the post of Inspector General of Police with the post of Director General of Police. It is further claimed that had the petitioner continued in service, he would have become the first Director General of Police. The notification further shows that only one cadre post of Director General of Police was created by the Central Government. It also comes out that later on two ex-cadre posts of Director General of Police-cum-Inspector General of Police in the pay scale of Rs.3000/- were created vide order dated 10.12.1986 (Annexure P12).

However, this Court is to see as to whether the post of the petitioner held by him in the rank of Inspector General of Police is to be equated with the post of Director General of Police for the purpose of re-fixation of pay and pension w.e.f. 1.1.1986?

Learned counsel for the petitioner has argued that since head of the police at the time of retirement of the petitioner was called as Inspector General of Police and later on one cadre post of Director General of Police-cum-Inspector General of Police was created on 16.7.1982, therefore, his post was equivalent to Director General of Police. The post of Director General of Police was not created by way of promotion but was replacement of the post of Inspector General of Police.

I am of the view that the post of the petitioner held by him in the rank of Inspector General of Police at the time of his retirement on 5.6.1980 cannot be equated for the purpose of grant of re-fixation of pay and pension to the post of Director General of Police, which was created in place of Inspector General of Police by the Government of India vide notification dated 16.7.1982 (Annexure P1). It also comes out that the petitioner was not the only Inspector General of Police at the time of retirement and there were two ex-cadre post also. The petitioner was in fact sought to be posted on non ex-cadre post when he sought pre-mature retirement in protest. Therefore, it is not necessary that the petitioner must have been holding the cadre post of Director General of Police when the same was substituted for Inspector General of Police on 16.7.1982. He could have also been posted on the post of Inspector General of Police on non-cadre post. Therefore, the plea of learned counsel for the petitioner that he being head of the police should be equated to the post of Director General of Police is not acceptable. It also comes out that some posts of Inspector General of Police were created later on in the year 1986. However, for the purpose of fixation of pay and pension, the post held by the petitioner at the time of retirement is to be seen along with his grade and

the equivalent grade w.e.f. 1.1.1986 is to be given which has been correctly given in the present case. Therefore, the petitioner is not entitled to fixation of pay in the grade of Director General of Police w.e.f. 1.1.1986 as claimed by him.

Consequently, the present writ petition is found to be without any merits and the same is dismissed accordingly.

25.04.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
Yes