

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No. 11262 of 2014 (O&M)
Date of decision: February 20th, 2017

Dr. Anju Khurana

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Anil Chawla, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein is aggrieved against order dated 22.07.2008 (Annexure P/1) whereby the increments granted by respondent No. 1 on account of 4 years regular service which were given from 1.1.1996 has been re-fixed and made applicable with effect from 1.1.1997 and 9 years increment due from 1.1.2001 has been re-fixed and made applicable with effect from 1.1.2002 and increment due on completion of 14 years service has been re-fixed from 1.1.2006 to 1.1.2007 retrospectively.

2. In brief, the petitioner joined service as Doctor on a regular basis on 08.07.1991. She completed her post-graduation in MD (Pathology) on 26.09.1999. The petitioner was served with order dated 22.07.2008 whereby increments granted on account of completion of 4 years regular service given w.e.f. 01.01.1996 had been re-fixed to become effective from 01.01.1997 and subsequently increments due on 9 and 14 years service have

also been re-fixed. Against this order, the petitioner represented to the department concerned contending therein that the same could not be done retrospectively.

3. Mr. Anil Chawla, learned counsel appearing on behalf of the petitioner contends that once increments have been given the same cannot be withdrawn retrospectively or without issuance of any show cause notice. It is argued that the petitioner joined service in the year 1991, and on completion of 4 years service was given her 1st increment w.e.f. 01.01.1996, thereafter, on completion of 9 years service, increment was given on 1.1.2002. By impugned order, increment on completion of 14 years service due on 01.01.2006 has been re-fixed to be made applicable with effect from 1.1.2007. The impugned order also re-fixes the increments already given in 1996 and 2001 retrospectively to be made applicable w.e.f. 1997 and 2002.

4. Per contra, the learned counsel for the respondent submits that the case of the petitioner was scrutinized and it was found that her record was not satisfactory for the period 1992-1993, 1993-1994, 1996-1997, 1997-1998 and 1998-1999.

5. I have heard the counsel for the parties and have also gone through the record.

6. The law is well-settled in this regard. Any adverse entry in the annual confidential report of an employee cannot be acted upon to deny promotional opportunities, unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or give adequate reasons as to why his performance was not upto the mark in the particular year. Reliance can be placed upon judgments rendered by the

Hon'ble Supreme Court in **Gurdial Singh Fiji Versus State of Punjab reported in 1979 AIR (SC) 1622, Brij Nath Pandey Vs State of U.P reported in 2000 (4) S.C.T. 957** and also upon **Bahadur Singh versus Union of India 2003 (2) S.C.T.514.**

7. In the instant case, the petitioner joined the State as a Doctor in the year 1991 and thereafter was given increments w.e.f. 01.01.1996 on completion of 4 years of service, 2nd increment w.e.f. 01.01.2001 on completion of 9 years of service with the 3rd increment due on 01.01.2006. However, by the impugned order the increments have been delayed by a period of one year. The petitioner having been granted the said increments and allowed to cross the efficiency bar was served with the impugned order withdrawing the benefits that had already been given and that too without any show cause notice. Since the petitioner was never served with any adverse entries that were recorded in the ACR, the said entries which have been recorded as 'average' cannot be revisited at this juncture. The petitioner was given the benefit of the 1st and 2nd increments based on the entries that had been recorded for the years period 1992-1993, 1993-1994, 1996-1997, 1997-1998 and 1998-1999. These are the very same entries that are now being taken into consideration for postponing the increments by one year and that too retrospectively. There also seems to be no rational explanation forthcoming as to the necessity of revisiting the ACR after a decade. Once the petitioner had been allowed to cross the efficiency bar, the same cannot be now be withdrawn.

8. Therefore, the above noted writ petition is allowed and the

impugned order is hereby set aside.

February 20th, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No