

**210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.13838 of 2015 (O&M)
Date of decision : May 08, 2017**

Harnaib Singh

..... Petitioner

Versus

Punjab School Education Board and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Gurcharan Dass, Advocate for the petitioner.

Mr. Suvir Kumar, Advocate for respondent No.1.

Mr. Nikhil Chopra, Addl. A.G., Punjab.

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 ?

KULDIP SINGH J. (ORAL)

The petitioner was working as Senior Assistant with the Punjab School Education Board in the pay scale of ₹1800-3200/-. He was getting basic pay of ₹2270/-. The petitioner having passed S.A.S. Examination, was appointed as Section Officer in the pay scale of ₹2000-3500/- + ₹100/- as special pay, vide appointment letter dated 09.12.1994 (Annexure P-1). The petitioner claims that his pay should have been fixed at the next stage i.e. ₹2340/- + ₹100/- as special pay and consequential increments should have been granted thereafter on the basis of Rule 4.4(c) of the Punjab Civil Services Rules Vol.I.

In the written statement filed on behalf of respondent No.1, the service of the petitioner is not denied. It is stated that he was promoted as Senior Assistant on 07.10.1993 and later on, on passing of SAS examination, conducting by the Finance Department, he was appointed as

Section Officer (Accounts) in the pay scale of ₹2000-3500 + ₹100/- (special pay) on 09.12.1994 (Annexure R-1). It is also stated that the post of Section Officer is not the post held by him in his initial pay in the time scale of the higher post. His pay has been fixed under the rules. Only previous pay was to be protected and additional increment was not to be given.

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

Rule 4.4(c) of the Punjab Civil Services Rules, Volume-I is reproduced as under:

“(c) (i) Notwithstanding anything contained in these rules, where a Government employee holding a post in a temporary or officiating capacity is promoted 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 the higher post shall be fixed at the stage next above his pay drawn by him in the lower post provided it is certified by the Head of the Department 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 higher post.”

It comes out that the petitioner was previously working as Senior Assistant in the Punjab School Education Board. After passing of S.A.S. Examination, he was appointed as Section Officer. It is nothing but promotion, though technically the respondents have issued a fresh appointment letter dated 09.12.1994 (Annexure P-1). Under Rule 4.4. (c) of the rules *ibid*, his initial pay in the time scale of the higher post is fixed to

the next stage drawn by him on the lower post.

The time pay scale is defined as under:

“2.60. (a) Time-scale pay means pay which, subject to any conditions prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay previously known as progressive.

(b) time scales are said to be identical if the minimum, the maximum, the period of increment and the rate of increment of time scales are identical.

(c) A post is said to be on the same time-scale as another post on a time-scale if the two time-scales are identical and the posts fall within a cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility in a service or establishment or group of establishments, so that the pay of the holder of any particular post is determined by his position in the cadre or class, and not by the facts he holds that post.

Note – Two time scales of pay should be treated as identical within the meaning of Rules 2.60(b) even though the scales may differ in the matter of provision of efficiency bars.”

The pay scale of Section Officer was ₹2000-3500/-+₹100 (special pay), whereas the pay scale of Sr. Assistant was ₹1800-3200/-. The petitioner was getting the basic pay of ₹2270/- in the said pay scale of Sr. Assistant. Therefore, at the first instance, appointment of Section Officer amounts to promotion and secondly, even if it is appointment on the higher post, the pay was to be fixed on the next step of ₹2270/- in the pay scale of ₹2000-3500/-.

The respondents have wrongly declined the said pay vide impugned orders dated 13.08.2014 and dated 15.09.2014 (Annexures P-4 and P-6). As such, the impugned order Annexures P-4 and P-6 are hereby quashed. The respondents are directed to fix the pay of the petitioner on the next step of ₹2270/- in the pay scale of ₹2000-3500/-. Thereafter, accordingly, grant him increments w.e.f. the date of his promotion.

Previously the petitioner had approached this Court by way of filing CWP No.16913 of 2013, titled as “*Smt. Swaran Lata and others v Punjab School Education Board and others*”, which was decided on 05.08.2013 (Annexure P-2) with a direction to the respondents to decide the legal notice (Annexure P-5) of the petitioners, by passing a speaking order within two months. Thereafter, the impugned orders dated 13.08.2014 and dated 15.09.2014 (Annexures P-4 and P-6) were passed.

Therefore, the petitioner is entitled to the arrears of pension of 36 months before the decision of the passing of the previous writ petition i.e. 05.08.2013 along with interest @ 9% per annum. Regarding secretariat allowance, the petitioner will represent to the respondents, who will consider his representation and pass the order, in accordance with law.

Since the petitioner has already retired from service, therefore, his pension shall also be refixed, accordingly with consequential benefits.

In view of the above, the present petition is allowed.

(KULDIP SINGH)
JUDGE

May 08, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No