

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

CWP No. 15281 of 2015

Date of decision: 17.03.2017

Smt. Niwashi

... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ramesh Goyat, Advocate for the petitioner.
Mr. Naveen Sheoran, Deputy Advocate General 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 ?

KULDIP SINGH, J. (ORAL)

The petitioner filed the petition under Articles 226/227 of the Constitution on India for quashing the impugned order/letter No. 3512/ECV dated 19.05.2015 (Annexure-P5) whereby the benefit of technical scale already granted to the husband of the petitioner has been wrongly stopped/withdrawn and for directing the respondents to restore back the benefit of technical scale already granted to the petitioner.

The deceased-Rajroop (husband of the petitioner) was appointed as helper (Class IV) with the respondent-Department (Haryana Roadways) on 07.02.1989 in the pay scale of Rs.750-940. He was having matric along with ITI certificate as minimum prescribed qualification. Then he was promoted to the post of Assistant Fitter vide

order dated 27.03.1995 in the pay scale of Rs. 950-1400. Later on, he was promoted to the post of Fitter vide order dated 31.07.1998 in the pay scale of Rs. 4000-6000/-. Then he was promoted to the post of Mechanic vide order dated 26.02.2010 in the grade pay of Rs. 5,200-20200 + 2400 GP. He died in harness during the service on 30.09.2012. Government issued instructions dated 23.08.1990 (Annexure-P1) regarding revision of pay-scales which included the revision of pay scale regarding technical post in various departments for which minimum qualification prescribed is matric with ITI certificate or Polytechnic. These instructions were modified vide dated 09.08.2010 (Annexure P2) vide which for the technical post qualification of ITI was removed.

After the death of the husband of the petitioner, she moved to the Department for grant of technical pay-scale for her deceased husband and for refixation of his pay notionally and grant of consequential benefits. Accordingly, respondents vide office order dated 30.09.2013 (Annexure-P3) have granted the technical pay scale of Rs. 1200-2040 to the husband of the petitioner w.e.f. 07.05.1990. It was further ordered that the dependants of the deceased-Rajroop shall be entitled for pension arrears of 38 months prior to the date of passing of the order in terms of Haryana Government instructions dated 09.08.2010 (Annexure-P2) and letter dated 31.12.2012.

It comes out that later on same was not paid on dated

10.12.2013(Annexure-P4) Haryana Government issued an ordinance whereby the said technical pay-scales were withdrawn. The notification was effected from 01.02.1981 i.e. retrospectively. Clause-4 deals with the technical pay-scale under which the deceased husband of the petitioner was granted the technical pay-scale. Clause 4 reads as under:

“4.The entry at serial number 3 under ‘common category posts’ in the annexure to instructions bearing No. 1/54/2PR(FD)-82 dated 30.03.1982 at serial number 40 in annexure A to instructions bearing No. 6/23/3PR(FD)-88 dated 23.08.1990, No. 6/23/3PR (FD)-88 dated 26.07.1991 and No. 6/83/2009-3PR (FD) dated 09.08.2010 are hereby withdrawn and shall be deemed to have been withdrawn with effect from the date of their coming into force:

Provided that all those persons who had been granted the upgraded pre-revised pay scale under the aforesaid instructions or by virtue of any order of the Court before coming into force of this Ordinance, shall continue to draw these pay scales.”

The provisions of Clause-4 itself makes it clear that the person who have already been granted the benefit as per the revised pay-scales under the aforesaid instructions or by virtue of the order of the court before coming into force the ordinance shall continue to draw this pay-scale. It further comes out that despite the said clear provision,

vide letter dated 19.05.2015 (Annexure-P5), the benefit of technical pay-scale granted to the deceased husband of the petitioner has been stopped/withdrawn. The above noted provision of the ordinance makes it clear in view of the Clause-4 referred above, those employees who have already granted upgraded revised technical pay-scales the same cannot be withdrawn. Hence, Annexure-P5 is found to be illegal and is hereby quashed.

Needless to say that the petitioner shall continue to be paid the pension in terms of the technical pay scale.

Learned counsel for the petitioner has informed that even arrears of 38 months as per Order dated 30.09.2013 (Annexure P3) were not paid. It being so, the said arrears be now paid along with interest @ 9% from the date they were granted till the date of payment.

In view of the above, present petition is allowed.

(KULDIP SINGH)
JUDGE

17.03.2017

kv

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No