

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

Civil Writ Petition No.23058 of 2012

Reserved on: 11.08.2017

Decided on : 30.08.2017

Dharambir Singh

... Petitioner

Versus

Chaudhary Charan Singh Haryana Agricultural University, Hisar and
others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Rohit Sharma, Advocate
for the petitioner.

Mr. Aman Pal, Advocate
for the respondents.

G.S. Sandhawalia, J.

The petitioner seeks quashing of the orders dated 01.02.2010 (Annexure P-9) and 03.09.2012 (Annexure P-14), whereby his request for stepping up the pay at par with his junior, namely, Sadhu Ram Agricultural Inspector was considered and denied on the ground that it was not covered under the instructions/existing rules.

Resultantly, a writ in the nature of mandamus was sought to consider the claim of the petitioner in the right perspective and to step up his pay from the due date i.e. 01.01.1996 when the applicant started drawing pay less than to his junior alongwith consequential benefits including arrears of pay and allowances with interest @ 24% from the date the amount became due till the date of actual payment.

It is the case of the petitioner that he is working as Technical Assistant with the respondent-University and had joined as an

Agricultural Inspector on 01.10.1983 by way of Direct Recruitment. He was promoted as a Technical Assistant on 01.06.2012 on which post he is working. One Sadhu Ram who is junior to the petitioner had joined as Agricultural Inspector w.e.f. 02.03.1985 as a promotee from the feeder cadre of a lower post i.e. Plant Observer. The seniority was claimed on the basis of the provisional seniority list of Agricultural Inspectors (Annexure P-1), wherein the petitioner's name figured at Sr. No.24 and name of the said respondent figured at Sr. No.40.

It is his claim that he continued to draw higher pay than that of Sadhu Ram till 01.01.1996 as per the table (Annexure P-2). On 01.01.1995 the pay of both the petitioner and his junior became equal. Whereas from 01.01.1996 there was a difference of ₹1,000/- as the petitioner was getting ₹4,000/- and the said junior was getting ₹5,000/-. It is his case that anomaly was caused on the implementation of ACP Scheme which has resulted in drawing higher pay. Reliance was placed upon the judgment of the Apex Court passed in '**Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others**' 2011 (15) SCC 772 to contend that instructions were issued on 23.11.2006 (Annexure P-3) to take action in concerned cases. Reference was also made to the decision dated 25.04.2007 (Annexure P-5) that the respondent-University has also considered implementing and adopting the said decisions. The instructions issued by the State Government were adopted by the respondent-University on 11.07.2008 (Annexure P-6). The petitioner had thereafter submitted his

representation on 01.08.1008 that after grant of ACP Scales his juniors were getting higher pay and he was entitled for step up at par with his juniors, in view of the instructions adopted by the respondent-University. It was his case that in similar cases stepping up was allowed and reference was made to the order dated 22.11.2008 (Annexure P-8), whereas petitioner's case was rejected vide order dated 01.02.2010 (Annexure P-9) Further instructions were issued on 21.06.2010 (Annexure P-10) by the respondent-University to grant the benefit of stepping up to senior employees at par with junior employees in ACP matters and, therefore, the petitioner re-submitted his claim vide request dated 23.08.2010, in which he has pleaded that a non-speaking order was passed on an earlier occasion which again met with the rejection on 03.09.2012 (Annexure P-14). Resultantly, the relief of equal pay had sought with prayer of the stepping up of the pay on the strength of the Division Bench judgment in '**Kishan Chand Bhardwaj Vs. State of Haryana 2002 (1) SCT 399** and '**Mrs. Krishna Goyal Vs. Hon'ble High Court of Punjab and Haryana 2006 (6) SLR 557**.

The claim has been defended by the respondent-University on the ground that Sadhu Ram junior to the petitioner was appointed on the post of Plant Observer w.e.f. 10.04.1974 in the pay scale of ₹80-120 (pre revised) and promoted as Field Assistant (merged with that of Agriculture Inspector) on 02.03.1985 out of the cadre of Plant Observer. His total length of service was more than that of petitioner as he had joined on 01.10.1983. The comparative statement showing the pay of the

petitioner and his junior has been appended as Annexure R-1, which is similar to the one, the petitioner has annexed as Annexure P-2. Distinction was sought to be made on the ground that he was granted ACP scale of ₹5000-7850 w.e.f. 01.01.1996 on qualifying the length of service of 20 years of his feeder post. The petitioner who has initially appointed as Agricultural Inspector on 01.10.1983 was granted first ACP scale of ₹1200-2040 w.e.f. 01.01.1994 and he was further granted pay scale of ₹4000-6000 w.e.f. 01.01.1996 due to revision of pay scales. The ACP Rules, 1998 provided certain conditions at point (a), (b) and (c) of Sr. No.15 of Note-7. The petitioner was due for the grant of 2nd ACP w.e.f. 01.10.2003 which was not granted to him owing to his poor service record and, therefore, he was drawing less pay than that of Sadhu Ram. Earlier CWP No.66 of 2005 filed by the petitioner regarding expunction of adverse remarks and for granting of 2nd ACP scale has been disposed of vide order dated 16.11.2006 (Annexure R-2) and the order dated 02.06.2007 passed by the Directorate of Research, CCSHAU, Hisar has been appended as Annexure R-3.

The ACP Rules of 1998 have been relied upon to submit that the petitioner is not entitled for the benefit of stepping, since the junior is in higher pay scale due to carrying his post from the feeder post and was drawing higher pay. Resultantly, the claim of pay parity was objected to. Reliance has been placed upon Rule 9 which reads as under:-

“9. That non admissibility of stepping up in certain cases:-

If the service rules provides or circumstances warrant direct recruitment at the level of promotional post, in addition

to the filling up of such posts through promotion, no benefit of pay up-gradation to the Senior Government servant who happens to be a direct recruitee to a post other than the post on which the junior government servant is a direct recruitee, on the plea that the junior promotee is drawing more salary based on the benefit of ACP up-gradation shall be admissible.”

Resultantly, it has been pleaded that respondent-University has implemented the scheme as per the rules and instructions and reliance was placed upon the observations of the Apex Court in **Ram Sarup Ganda (supra)** with reference to Rule 9. Accordingly, it was pleaded that the petitioner was not entitled for the benefit of stepping up with reference to instructions dated 23.06.2009. The instructions dated 25.04.2007 were not applicable since it pertained to employees who were promoted from Group D to Group C and similar was averment qua the adoption of the instructions dated 06.02.2007 vide order dated 11.07.2008. Regarding the stepping up of the pay of similar situated Nahar Singh, it was averred that the orders were withdrawn on 12.10.2009 (Annexure R-7). The letter dated 01.06.2010 issued by the Comptroller was stated to be advisory in nature and did not cover the case of the petitioner and resultantly it was held out that the comparison of pay could not be made as the juniors were to come from different feeder post and the claim of the petitioner of pay parity with his junior has been denied rightly.

Replication came to be filed in which reliance was placed upon the judgment '**Punjab State Electricity Board Vs. Gurmail Singh' 2008 (3) SCT 18** to submit that pay anomaly which has occurred was to

be corrected by the respondents. Reliance was placed upon final seniority list of Agricultural Inspectors issued by the respondent-University on 25.04.2014 (Annexure P-16) wherein the petitioner was shown at Sr. No.24 and Sadhu Ram was shown at Sr. No.39. It was clarified that the benefit of 2nd ACP scale was not relevant to in the year 1996 as the applicant was due for the same w.e.f. 2003 and the orders passed were not relevant for the said decision. The petitioner was not seeking the benefit of the present ACP at par with his junior and the instructions relied upon were fully applicable.

Counsel for the petitioner has thus argued there is no justifiable reason as such that the junior would be entitled to draw higher pay than the petitioner and resultantly it is submitted that the Apex Court had taken into consideration Rule 9 which is relied upon and held that if there was anomaly to the effect of receiving lesser pay by the juniors and even if on account of having entered the service from a different source of recruitment, senior Government employees were entitled to stepping up of their pay at par which has been received by the juniors, which is a common practice.

Counsel for the respondent-University has tried to justify the decision on the ground that the petitioner's performance was not upto the mark and, therefore, he was denied the 2nd ACP.

After hearing counsel for the parties, this Court is of the opinion that no specific reasons as such have been assigned in the impugned order as to why the the petitioner was not entitled for the said

benefits. The reasoning given in the impugned order dated 01.02.2010 (Annexure P-9) reads as under:-

“This is to information you that your request for stepping up of Pay in comparison to junior Shri Sadhu Ram, Agri. Inspector has been considered by the Director Research CCS, HAU, Hisar who has passed the following orders:-

“The request of Sh. Dharambir Singh, A.I. for stepping up of his pay in comparison to his junior Sh. Sadhu Ram, A.I. does not cover under the instructions exists. Hence, may inform the applicant accordingly please.”

This is for your kind information please.”

Similarly, on a subsequent occasion, the reasoning given on 03.09.2012 (Annexure P-14) reads as under:-

“Reference to your representation dated 12.5.2011 regarding stepping up the pay in comparison with Sh. Sadhu Ram, A.I. Your case has been received back with the remarks that the case does not cover in the existing rule. This is for your information please.”

Thus, from the above it is not possible to make out as to on what account the petitioner has been denied the said benefits and what is the pay scale as such which the junior is drawing and what is the pay scale of the petitioner.

Reliance has also been placed upon the table (Annexure P-2) to submit that the petitioner was getting ₹4000/- on 01.01.1996 and junior to him was getting ₹5,000/- and similarly the respondents in their reply have also mentioned that the pay drawn by the petitioner is ₹4,000/- and the pay drawn by one junior is ₹5,150/- as per table (Annexure P-1)

Firstly the impugned orders passed do not show any

application of mind as to under which provisions and reasons and on what ground the relief has been denied to the petitioner and are non-speaking orders and are liable to be set aside on this sole ground. It is settled principle that the orders which affect the civil rights of the parties, even though administrative in nature are supposed to spell out reasons. Reliance can be placed upon the judgment of the Apex Court in **'Kranti Associates Pvt. Ltd. and another Vs. Masood Ahmed Khan and others' (2010) 9 SCC 496**. The relevant part reads as under:-

“51. Summarising the above discussion, this Court holds :

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. A quasi-judicial authority must record reasons in support of its conclusions.*
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- g. Reasons facilitate the process of judicial review by superior Courts.*
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually*

the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

*n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and **Anya v. University of Oxford**, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".*

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the

decision is of the essence and is virtually a part of "Due Process".

It is also settled principle that if the orders do not speak of the reasons, the same cannot be done, subsequently, by filing an affidavit to that extent, as has now been done, to improve the case. Reliance can be placed upon the judgment passed by the Apex Court in '**Mohinder Singh Gill Vs. Chief Election Commissioner**' (1978) 1 SCC 405, wherein it has been held that reasons have to be mentioned in the order itself. Relevant portion of the judgment reads as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.”

The said view was followed recently by the Apex Court in

'Dipak Babaria and another vs. State of Gujarat and others' 2014 (3)

SCC 502, 'State of Punjab Vs. M/s Bandeep Singh & others' 2016 (1) SCC 724 and 'T.P.Sen Kumar, IPS Vs. Union of India & others' 2017 (6) SCC 801, wherein it was held that the State cannot be allowed to supplement or improve its stand by way of filing affidavits.

Resultantly, this Court is of the opinion that the defence which has been taken by the respondent-University cannot supplement its stand for the first time and its case cannot be improved by filing the reply and taking the defence. The reasoning was to follow in the impugned orders whereby the request has been declined.

Accordingly, the present writ petition is allowed. The orders dated 01.02.2010 (Annexure P-9) and 03.09.2012 (Annexure P-14) are quashed. Respondent No.2 shall take a decision on the said representations of the petitioner for the stepping up of his pay and decide the same within a period of one month from the receipt of the certified copy of this order. In case, the relief is to be denied the detailed reasons be given to justify the said stand, so that they can stand the test of judicial scrutiny.

AUGUST 30, 2017

Naveen

Whether speaking/reasoned:

Whether Reportable:

**(G.S. SANDHAWALIA)
JUDGE**

Yes/No

Yes/No