

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

**CWP-18909-2014 (O&M)
Date of decision: 23.03.2017**

Rattan Chand

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sanjeev Sharma, Advocate for the petitioner
Ms.Vandana Malhotra, Additional A.G. Punjab
Mr.Amit Singh Sethi, Advocate for respondent No.2

- 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. (Oral)

Petitioner seeks writ of certiorari quashing order dated 7.4.2014 (Annexure P10), vide which, respondents declined to release the annual grade increments and other terminal dues. Writ of mandamus is also sought for release of annual grade increments and other retiral dues as per revised pay scales in accordance with recommendations of the Pay Commission, with interest.

History of the case is that the petitioner was initially recruited on work charge on 1.12.1982. He was given notice dated 25.9.1987 for retrenchment of service w.e.f. 30.10.1987. Petitioner being aggrieved by the said notice, filed a Civil Suit before Sub Judge 1st Class, Amritsar on 31.10.1987. Vide judgment dated 27.9.1990 (Annexure P1), the suit was decreed and retrenchment notice dated 25.9.1987 was held to be illegal void, inoperative, arbitrary and unconstitutional. Aggrieved by the said

order, the respondent-department preferred an appeal before learned Additional Sessions Judge, Amritsar, which was allowed on 19.3.1998, whereby the judgment and decree passed by the lower Court was set aside vide Annexure P2.

It comes out that present petitioner preferred a Regular Second Appeal No.1382 of 1998 before this Court, which is lying admitted. Vide an interim order dated 19.1.1999 (Annexure P3), while admitting the said appeal, order of the learned Court below was stayed. As a result of the stay, it comes out that the petitioner was allowed to rejoin w.e.f. 5.2.1999 subject to the decision of Court as per entry in the service book (Annexure P7). It comes out that thereafter, the petitioner continued in service. The Regular Second Appeal No.1382 of 1998 has not been decided so far. In the meanwhile, petitioner retired from service on 31.8.2013 on attaining the age of superannuation vide retirement order dated 29.8.2013. It also comes out that due to pendency of the RSA, regular increments were not granted to the petitioner as is clear from (Annexure P6). Petitioner thereafter, approached this Court by way of CWP No.18880 of 2013, which was disposed of by this Court on 29.8.2013 directing the respondents to consider the representation of the petitioner and pass a speaking order. Accordingly, a speaking order dated 7.4.2014 (Annexure P10) was passed denying the annual grade increments till the final outcome of the RSA pending in this Court.

In the short reply, the respondents have taken the stand that services of the petitioner were retrenched w.e.f. 31.10.1987 after complying with the requirement of the law. While referring to the decision dated 27.9.1990 of learned Sub Judge, 1st Class, Amritsar in Civil Suit and

decision dated 19.3.1998 of appellate Court Civil Appeal, it was reiterated that RSA is pending before this Court and has not been finally decided so far. If ultimately, in RSA the retrenchment order is upheld, then services of the petitioner shall be deemed to have been validly retrenched w.e.f. 31.10.1987. Therefore, till the decision of the RSA, the requisite relief cannot be granted.

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

Admittedly, when the petitioner was allowed to rejoin w.e.f. 5.2.1999, he was placed in the same position i.e. work charge employee, on which he was posted before retrenchment.

Now the question would arise as to what salary was being paid to the petitioner as work charge employee?

Copy of the office order (Annexure P6) will make the things clear. Copy of the order dated 16.9.1998 (Annexure P6) shows that petitioner was given existing pay scale of Rs.770-1350 which was revised to Rs.2520-4120 with a minimum start of Rs.2620/-. He was also paid DA and additional basic pay. It also comes out that he was also granted regular increments on 1.1.1996, 1.1.1997 and 1.1.1998 and w.e.f. 19.3.1998, the next increment was not allowed on the ground of retrenchment.

It being so, the next increments cannot be denied simply on the ground that Regular Second Appeal No.1382 of 1998 is still pending. Petitioner has already retired from service. Whatever may be the result of RSA, the service rendered by the petitioner after he rejoined on account of stay granted by this Court cannot be washed away. Once, the petitioner has worked, he is entitled to salary and the same is being released to him

regularly. Therefore, he shall also be entitled to regular increments as admissible to the petitioner as per his scale along with the revised pay scales. Needless to say that the retiral benefits are also to be accordingly released, since, the petitioner superannuated on 31.8.2013. However, it shall always be open to the department to plead in the Regular Second Appeal No.1382 of 1998 that as a result of the order of the Court the petitioner served and superannuated and make a prayer for appropriate orders regarding said period. In that case, if any orders are passed, this order will be subject to the orders that may be passed in RSA. However, if no specific order is passed in the RSA regarding the increments and retiral benefits, this order shall continue to remain in force.

Let the respondents pass necessary orders and release the benefits within three months from the date of receipt of a certified copy of this order. Since, the petitioner approached this Court in this case in the year 2014, he will not be entitled to any interest on the arrears.

Petition stands allowed accordingly.

23.03.2017
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes/
No