

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19217 of 2014 (O&M)
Date of decision : February 13, 2017

Jagdev Singh Pannu

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Arora, Advocate for the petitioner.

Mr. Nikhil Chopra, DAG, 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)

Petitioner, who has retired as Horticulture Development Officer, has impugned the order dated 01.03.2013 (Annexure P-7) and order dated 29.04.2013 (Annexure P-9), whereby the claim of the petitioner for granting him revised pay scale of ₹14,330-18,150/- was declined after considering the claim made in terms of the directions issued in CWP No.7181 of 2012 (Annexure P-6), decided on 20.04.2012 titled as “*Krishan Gopal Sharma and others v State of Punjab and others*”. A mandamus has also been sought for granting him the benefit of higher pay-scale of ₹14,300-18850/- on completion of his 14 years of service as per decision dated 21.12.2011 (Annexure P-4) modified in CWP No.23138 of 2010 (Annexure P-5). Petitioner also seeks quashing of clause 2 of the circular dated 21.12.2011 (Annexure P-4), to the extent, whereby it has been

prescribed that the grant of revised pay scale shall be subject to the condition laid down in ACP Scheme issued by the Department of Personnel vide letter dated 17.04.2000 (Annexure P-10).

Petitioner was initially appointed as Horticulture Inspector on 29.01.1968. The said post was later on re-designated as Horticulture Development Officer w.e.f. 01.01.1991. Vide Notification dated 18.09.1992 (Annexure P-1), the posts of Horticulture Development Officer, Assistant Director Horticulture and Deputy Director were formed as one cadre with Class-I status. Later on, vide memo dated 21.06.1993 (Annexure P-2), the Government of Punjab, Department of Animal Husbandry also granted re-designation and revision of pay scale to the Sub Inspectors of the Department of Animal Husbandry as Agriculture Department Officers (Fodder) and Fodder Development Officers. The petitioner qualified the departmental accounts examination on 11.11.1996 and was confirmed as such, vide order dated 26.02.1997. He retired from service on 31.07.2001.

The petitioner claims that the pay-scale of the Agriculture/Horticulture Development Officers/Fodder Development Officers were revised w.e.f. 01.01.1996. There was an entry scale on completion of 8 and 16 years of service for the Agriculture Development Officer, whereas for Veterinary Officers, the entry scale was given on completion of 4, 9 and 14 years of service. The said anomaly was challenged by way of filing CWP No.16928 of 2004. In the meanwhile, the petitioner retired from service on 31.07.2001.

The State vide order dated 21.12.2011 accepted the claim of pay parity raised by the similarly situated employees with a rider that they

shall not be entitled to any arrears of fixation of their pay on notional basis from the due date(s). This Court after hearing the parties modified the said order dated 21.12.2011 to the extent that “the petitioners are held entitled to notional fixation of pay from the due dates”; that “the petitioners shall be at liberty to represent for the grant of arrears of pay for a period of 38 months immediate prior to the filing of the writ petition. The said writ petition was CWP No.23138 of 2010 titled as **“Dr. Naresh Kumar Kataria and others v State of Punjab and others”**, decided on 05.01.2012.

A similar writ petition bearing CWP No.16928 of 2004, titled as **“Vipan Chander v State of Punjab and others”**, decided on 23.03.2012 was also disposed of in the same terms. The petitioner and others had also filed CWP No.7181 of 2012 (Annexure P-6), titled as **“Krishan Gopal Sharma and others v State of Punjab and others”**, decided on 20.04.2012, in terms of the decision taken in CWP No.23138 of 2010, titled as **“Dr. Naresh Kumar Kataria and others v State of Punjab and others”**.

Thereafter, respondent No.2 passed the impugned order dated 01.03.2013 (Annexure P-7), whereby the claim of the petitioner for granting pay-scale of ₹14,300-18,150/- on completion of 14 years of his service w.e.f. 01.01.1997 was declined on the ground that on 01.01.1997 in the service record pertaining to ACR, the petitioner was not found to have good service record in terms of criterion prescribed under the Government letter dated 17.04.2000 (Annexure P-10). Petitioner claims that he was granted higher pay-scale of ₹12,000-16,350/- on completion of 16 years of service w.e.f. 11.11.1997, vide order dated 07.12.1999. Thereafter, another order dated 29.04.2013 was passed, whereby the said pay-scale was

declined on the ground that the petitioner was not having good service from the period 01.01.1997 to 01.01.12001. The petitioner claims that these orders are illegal. It is claimed that the pay-scales were given without considering the service record; that the Instructions dated 21.12.2011 (Annexure P-4); and that the grant of revised pay-scale is subject to the condition laid down in ACP Scheme, is illegal.

The State in its reply has not denied the date of joining of the service of the petitioner. It is stated that vide letter dated 17.04.2000 (Annexure P-10), there were pre-requirements for grant of higher pay scale on completion of 4, 9 and 14 years of regular service. The procedure for assessing the work and conduct for placement in the higher pay-scale was the same as in case of promotion. It was further stated that the placement of the higher pay scale was allowed only to those employees, whose overall service record during the span of satisfactory service is adjudged as 'Good' and the employee is otherwise suitable for promotion. Good record shall mean that more than 50% Annual Confidential Reports are good and out of last three years reports, at-least two should be 'Good'. For the remaining years the benchmark may be 'average'. The petitioner was found unsuitable for the grant of higher pay-scale. The State has given the details of the ACR of the petitioner, which are produced as under:

<i>Sr. No.</i>	<i>Year</i>	<i>Overall Assessment</i>	<i>Remarks</i>
1	1991-92	Average	
2	1992-93	Average	
3	1993-94	Average	
4	1994-95	Average	
5	1995-96	Average	Adverse remarks were recorded in this ACR which were conveyed to the petitioner. No representation against the adverse remarks was made by the petitioner.

<i>Sr. No.</i>	<i>Year</i>	<i>Overall Assessment</i>	<i>Remarks</i>
6	1996-97	Average	Adverse remarks were recorded in this ACR which were conveyed to the petitioner. No representation against the adverse remarks was made by the petitioner.
7	1997-98	Average	--
8	1998-99	Good	--
9	1999-2000	Average	Adverse remarks were recorded in this ACR which were conveyed to the petitioner. No representation against the adverse remarks was made by the petitioner.

It was stated that though the petitioner had joined the post of Agriculture Inspector on 29.01.1968 but he passed the departmental examination, which was held on 11.11.1996 and was confirmed on the post of Horticulture Development Officer vide order dated 26.02.1997. The period of his probation was declared to have completed successfully w.e.f. 10.11.1996 (A.N.). The claim of the petitioner for grant of pay-scale on completion of 14 years of service was considered and was rightly declined.

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

Admittedly, as per Notification dated 19.05.1998 (Annexure P-3), Punjab Civil Services (Revised Pay) (First Amendment) Rules, 1998 came into operation w.e.f. 01.01.2006. There was a provision of grant of revised pay-scales, which included the pay-scale of the petitioners. The claim of the petitioner is that he had completed 14 years of service and that Circular dated 21.12.2011 (Annexure P-4) to the extent that it lays down the criteria for grant of higher pay-scale, is illegal. The Clause-2 is reproduced as under:

*“ The grant of above noted revised scales of pay shall
be subject to the conditions laid down in the Assured*

Career progression Scheme issued by the Department of personnel vide letter No.7/84/98-5PP1/4426, dated 17.4.2000. The pay in the above mentioned revised scales of pay effective from the 01st December, 2011 shall be fixed prospectively and there shall be no element, whatsoever, of retrospectivity in this regard and there will be no question of payment of arrears or of fixation of pay on notional basis from any previous date.”

It goes to show that for the grant of higher pay-scale, the conditions laid down in ACP Scheme dated 17.04.2000 (Annexure P-10) are to be applicable. As per the said Scheme, at least 50% of the ACR of the petitioner should be 'Good' and out of the last three years, two should be 'Good' and for the remaining years the benchmark may be 'average'.

I am of the view that as higher pay-scale is based on account of the proficiency being achieved by the employee. Therefore, there is nothing illegal in the prescribed criteria for grant of higher pay-scale on completion of 14 years of service. A perusal of the ACRs of the petitioner reproduced above shows that he was having the 'average' remarks in all. Only one ACR for the year 1998-99 was termed as 'Good'. The ACRs for the years 1995-96, 1996-97 and 1999-2000 were having adverse remarks. When the petitioner completed 14 years of service on 01.01.1997 his case was considered and he was found unsuitable in the placement of higher pay-scale. Thereafter, the case of the petitioner was considered year to year till 2001 but he did not meet the said criteria. Therefore, there is nothing illegal in the impugned orders dated 01.03.2013 (Anenxure P-7) and dated 29.04.2013 (Annexure P-9). The claim of the petitioner is that he was

granted higher pay-scale of ₹12,000-16,350/- on completion of 16 years of service on 11.11.1997 vide order dated 07.12.1999, therefore, when he could be eligible for higher pay-scale on completion of 16 years of service then why he could not be held entitled for pay-scale on completion of 14 years of service on the basis of same service record.

I am of the view that when the new pay-scales were introduced, certain conditions were also introduced, which have been found to be valid. There is nothing on file to show as to what criteria was applied while granting scale on completion of 16 years of service. However, the petitioner has to prove that he was qualified for the higher pay-scale on completion of 14 years of service. Since the service record of the petitioner was not good and he did not fulfill the requisite conditions, therefore, there is no illegality or infirmity in the impugned orders.

Consequently, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

February 13, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No