

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

216-5

**CWP-18024-2016 (O&M)
Date of decision: 03.03.2017**

Sanjay Kumar

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.Ravinder Malik (Ravi), Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the present writ petition, the petitioner has questioned proposed pay fixation dated 01.12.2015 vide Annexure P3 passed by 3rd respondent, notice dated 20.03.2015 (Annexure P-4) whereby the respondent No.3 has intimated the petitioner regarding recovery of Rs.3,29,750/- from him and also for quashing the impugned order dated 27.05.2015 (Annexure P-5).

2. Petitioner was appointed as a Peon on 18.01.2001. He has earned promotion to the cadre of Driver on 31.10.2006. As per the government policy, there was a choice for exercising option for particular pay. After issuance of Haryana Civil Service (Revised Pay) Rules, 2008, the petitioner failed to exercise option which was beneficiary for him. In the meanwhile, the State-respondent issued a memo relating to fixation of pay in the revised pay structure in cases where promotion were made during the period from

01.01.2006 to 30.12.2008 seeking relaxation of re-exercising the option by which 3 months time was extended from 14.01.2010 vide Annexure P6. The said circular or OM was not widely circulated amongst the employees so as to exercise fresh option. Therefore, petitioner could not exercise his revised option so as to get his pay re-fixed which would be beneficial for him. In this regard, on 30.09.2015 also clarification was issued which is an internal correspondence between two officers. Thus, in respect of re-exercising option which was time bound and was relaxed from time to time by the officials which is evident from the order dated 07.05.2014 (Annexure P-11) by which petitioner's junior one Sh. Sanjay Kumar has been permitted to re-exercise the option. Consequently, benefit of revised pay has been extended to him. Whereas, the petitioner submitted representation on 06.06.2013. The same has been turned down. Thus, the present petition has been presented.

3. Short question for consideration in the present petition is whether pursuant to the Haryana Civil Service (Revised Pay) Rules, 2008 exercising option for a particular fixation of pay in the revised pay structure for those who had earned promotion during the period from 01.01.2006 to 30.12.2008 can exercise fresh option or not. Admittedly, on 14.01.2010 vide Finance Department's OM or circular, it is evident that 3 months fresh option of exercise was permitted. Such circular or OM was not widely circulated amongst the employees so as to exercise fresh option. It is also fact that junior to the petitioner one Sh. Sanjay Kumar who had also not exercised option timely and he was permitted to exercise option of pay and it was entertained by the respondent Department. His re-fixation of pay is

with reference to his option on 07.05.2014. In view of these facts and circumstances, Annexure P3 dated 01.12.2015 are set aside. The respondents are directed to accept the petitioner's fresh option for re-fixation of pay and extended the benefit with reference to exercising of fresh option. The State Government is a model employer. Government is bound to give wide circulation in respect of Annexure P6 dated 14.01.2010 by which time limit for exercising option has been extended which has not been widely circulated thus, the petitioner could not exercise option afresh with reference to 14.01.2010 OM or circular. That apart, if the beneficial legislation is in vogue, the same shall be given effect if such benefit is beneficial clause to the employee. Therefore, the petitioner is entitled for exercising a fresh option for the purpose of seeking revised pay under Rules, 2008 pursuant to the 14.01.2010 OM and circular so also on par with one Sh. Sanjay Kumar who has given the benefit on 07.05.2014. Petition stands allowed. Pursuant to Annexure P4, if the respondents have effected recovery the same shall be calculated and refunded to the petitioner within a period of 3 months. The concerned respondent is directed to extend service benefits as per petitioner's fresh option.

03.03.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No