

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

CWP No.20441 of 2015

Date of Decision:17.01.2017

Surender Singh and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Deepak Sonak, Advocate for the petitioners.

Mr. Harish Rathee, Sr. D.A.G. Haryana.

P.B. BAJANTHRI J.

In the instant writ petition, the petitioners have questioned the validity of order dated 11.5.2015 (Annexure P-4) by which the Director General of Prisons Haryana, Panchkula directed all the Superintendent Jails in the Haryana State to take steps to recover the irregular payment paid to newly recruited warders as extra pay with reference to circular dated 6.2.1980 read with circular dated 11.11.1980 Annexures P-2 and R-1 respectively.

The petitioners are stated to have been appointed in the Jail Department, Haryana in the month of April 2013. It is not disputed that they have worked on the gazetted holidays while they were in service. The concerned officer extended the benefit of extra pay on the score that the petitioners have worked on gazette holidays in view of Annexure P-2 and Anneuxre R-1. The Director General of Prisons, Haryana noticed that payment of extra pay to the newly recruited warders is not in accordance with the instructions issued on 06.11.1990. Thus, he has directed all the Superintendent of Jails in Haryana State to recover the extra pay granted to

the newly recruited warders (petitioners). Thus, the petitioners have questioned the validity of instructions given by the Director General of Prisons Haryana vide Annexure P-4.

Learned counsel for the petitioner submitted that as per instructions dated 6.2.1980 (Annexure P-2) rightly the Superintendent of Jails granted the benefits of extra pay with reference to sub clause c) of para 2 of the instructions dated 6.2.1980. There is no infirmity whatsoever. Therefore, the impugned action of the Director General of Prisons directing the Superintendent of Jails to recover the extra payment made to the newly recruited warders is not in accordance with Annexure P-2.

On the other hand, learned counsel for the respondents vehemently contended that as per the modified instructions dated 06.11.1990 in particularly Clause viii), the Director General of Prisons has ordered for recovery of payment of extra pay given to the newly recruited warders on the score that the petitioners have not completed one year of service so as to claim benefit of extra payment for having discharged the duties of the post even on the gazetted holidays. Thus, there is no infirmity in the order dated 11.5.2015 (Annexure P-4).

Heard learned counsel for the parties.

Crux of the matter is whether the petitioners are entitled for extra pay on account of discharging duties of the post held by them on gazetted holidays or not?

Perusal of Annexure P-2 in particularly sub clause c) of para 2 which reads as under:

“c) Cash compensation shall be said proportionate to the period of duty during the last financial year, to illustrate, if period of duty as warder/Headwarder, during the last financial

year, falls short of 7 days due to leave or promotion the higher rank or for any reasons, the cash compensation to be allowed for the year

Rs.500-500 x 73/365 =Rs.100=Rs.400”

The petitioners are entitled for benefit of extra pay. Learned State counsel relied on later instructions dated 6.11.1990 in particularly clause viii which reads as under:

“viii) That only those employees will be allowed benefit of this scheme who had rendered one year or more than one year regular service on 31.03.1980.”

Perusal of Annexure P-2 read with Annexure R-1 dated 11.11.1980 has not modified sub clause c) of para 2 of instructions dated 6.2.1980. Thus as long as sub clause c) of para 2 is existing in the eyes of law irrespective of completion of one year of service. The persons who have worked on gazetted holidays are entitled to extra pay with reference to the sub clause c) (supra). Thus, the impugned order of the Director General of Prisons to all the Superintendent of Police to recover the excess payment made on account of discharging the duties of post held on gazetted holidays is highly arbitrary and contrary to Annexure P-2 in particularly sub clause c) (Supra). Therefore, Annexure P-4 do not sustain. Accordingly, order dated 11.5.2015 (Annexure P-4) is set aside. If any recovery has been already effected, the same shall be refunded by the concerned respondents within a period of three months from today.

The petition stands allowed.

17.01.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No