

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

258

Date of Decision : 18.04.2017

1. CWP No.19607 of 2016 (O&M)

Charanjit Vaid Petitioner

Versus

State of Haryana and others Respondents

2. CWP No.12258 of 2016 (O&M)

Subhash Chander Sharma and anr. Petitioners

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Anand Chhibbar, Senior Advocate with
Mr. Sachin Rai Vai, Advocate and
Mr. Vaibhav Sahni, Advocate
for the petitioner (CWP No.19607 of 2016).

Mr. Raman B.Garg, Advocate
for the petitioners (CWP No.12258 of 2016).

Mr. Harish Rathee, Sr. DAG, Haryana.

AJAY TEWARI, J. (Oral)

This order shall dispose of the above mentioned two petitions.

The petition bearing CWP No.19607 of 2016 was filed by
Smt.Charanjit Vaid challenging the action of the respondents in reducing
her pay/retiral benefits and ordering recovery.

The petition bearing CWP No.12258 of 2016 was filed by two persons who were senior to Smt.Charanjit Vaid with the claim that they should be given the same pay and allowances as were being given to Smt. Charanjit Vaid.

The case of Smt.Charanjit Vaid-(Petitioner in CWP No.19607 of 2016) is that there was one Smt. Adarsh Sehgal who though was senior to her as a JBT became junior to her in the cadre of Mistress. However, since she was getting higher pay Smt. Charanjit Vaid filed CWP No.16110 of 2005 praying that her pay be stepped up equivalent to Smt. Adarsh Sehgal. That writ petition was allowed by this Court and the respondents duly implemented the judgment and stepped up her pay at par with Smt. Adarsh Sehgal. However, after many years the impugned order was passed. In the written statement support is sought to be drawn from Note 6 of Rule 7 of the Pay Revision Rules, 1996 which is quoted herein below :-

“Wherein fixation of pay under sub rule (1), pay of a Government servant, who, in the existing scale was drawing immediately before the 1st day of Jan, 1996 more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior.

Provided that if the pay of a senior Government servants in the revised scale is getting fixed at a stage lower than that of his junior because of the junior drawing his pay scale as a personal measure to him and not at the strength of the prescribed functional pay for the post held by him, the benefit of upgradations or stepping up to the senior under these rules will not be admissible.”

It is sought to be argued that Smt. Adarsh Sehgal being senior to the petitioner-Charanjit Vaid in the cadre of JBT was enjoying higher pay as a measure personal to her and therefore, the proviso quoted above would justify the re-fixation/reduction of the pay of the petitioner.

Learned senior counsel appearing on behalf of the petitioner has argued that the respondents have erred in relying upon Note 6 and its proviso because the proviso clearly protects the interests of those seniors whose juniors are getting higher pay on the strength of the prescribed functional pay. He has further argued that a 'measure personal' is restricted to those conditions where some higher pay is granted to a particular employee on account of some personal achievement for instance acquisition of higher degree or special increment on account of some act of bravery etc. As per him, Smt. Adarsh Sehgal was getting higher pay only on the basis of her seniority and on the strength of the prescribed functional pay and consequently the respondents were not justified in reducing the pay of the petitioner on the ground that Smt. Adarsh Sehgal was getting higher pay as a measure personal to her.

Learned Senior DAG is not in a position to deny the interpretation of 'measure personal' which has been given by the learned senior counsel for the petitioner.

In the circumstances, the very basis on which the impugned order has been passed is completely eroded. Once it has to be held that Smt. Adarsh Sehgal was junior to the petitioner in the cadre of Mistress and was getting a higher pay scale not as a measure personal to her, the petitioner's pay had been rightly fixed equally to Smt. Adarsh Sehgal and consequently the same could not have been refixed.

Coming to CWP No.12258 of 2016 it is not denied that the petitioners herein are senior to Smt. Charanjit Vaid and they in their turn are entitled to have their pay fixed at the same level as Smt. Charanjit Vaid.

Learned Senior DAG is not in a position to deny the fact that these petitioners are senior to Smt. Charanjit Vaid in every manner.

In the circumstances, both the petitions are allowed. The order refixing the pay of the petitioner-Smt. Charanjit Vaid **in CWP No.19607-2016** is quashed and the respondents are directed to immediately release the retiral benefits of the petitioner within a period of three months from the date of receipt of certified copy of this order. In case the amounts are not released within the aforesaid period the petitioner would be entitled to claim interest on the delayed payments @ 8% p.a. w.e.f. today till the date/s of payment.

As regards the petition bearing **CWP No.12258-2016** the respondents are directed to give the benefit of pay parity and increased pensionary benefits to the petitioners within a period of three months from the date of receipt of certified copy of this order. In case the amounts are not released within the aforesaid period the petitioners would be entitled to claim interest on the delayed payments @ 8% p.a. w.e.f. today till the date/s of payment.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

18.04.2017

pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No