IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23419 of 2014 (O&M)
Date of decision : March 20, 2017

Parmod Kumar

...... Petitioner

v.

State of Haryana and others,

...... Respondents

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CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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Present : Mr. Deepender Ahlawat, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG Haryana

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Ajay Tewari, J (Oral)

By this writ petition, the petitioner has claimed that he be granted the benefit of the period he worked as Senior Manager Accounts in the HSIDC for fixing his pay on the post of Assistant Professor under the government on the ground that both the posts are in the identical time scale.

Admitted facts are that the petitioner was employed in the HSIDC as Senior Manager Accounts in the pay band-3 i.e ₹ 15600-39100 with grade pay of ₹ 6000/- and was drawing basic pay ₹ 26100/- (20100+6000 GP). Pursuant to advertisement for the post of Assistant Professor (College Cadre), he applied and was selected in the same pay scale of ₹ 15600-39100 with grade pay of ₹ 6000/-. However, when he joined the service, his pay was fixed at the initial of the scale i.e ₹ 21600/- (15600+6000 GP). For fixation of initial pay of a government servant, rule

4.4 of the Punjab Civil Service Rules, Vol.1 Part 1 (as applicable to Haryana), determines the field. The same is quoted herein below :-

> "4.4 The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:-
>
> (a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended-
>
> (i) When appointment to the new post involves the assumption of duties of responsibilities of greater importance (as interpreted for the purpose of rule 4.13) than those attaching to such permanent post, he will draw as initial pay the stage of time-scale next above his substantive pay in respect of the old post;
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> (ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay plus personal pay equal to the difference; and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post of for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay;
>
> (iii) when appointment to the new post is made on his own request under rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.
>
> (b) If the conditions prescribed in clause (a) are not fulfilled, he will draw as initial pay the minimum of the time-scale:
>
> Provided both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b) that if he either-
>
> (1) has previously held substantively or officiated in-
>
> (i) the same post, or
>
> (ii) a permanent post or temporary post on the

same time-scale, or

(iii)a permanent post other than a tenure post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantively owned or controlled by the Government on an identical time-scale, (emphasis supplied) or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated,

then the initial pay shall not except in cases of reversion to parent cadre governed by proviso 1(iii) be less than the pay other than special pay, personal pay or emoluments classed as pay by the competent authority under rule 2.44 (a)(iii), which he drew on the last such occasion, and he shall count for increments the period during which he drew that pay on such last and any proviso occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the last pay draw by the Government employee in the temporary post has been inflated by the grant of premature increments the pay which he would have drawn but for the grant of these increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post. The service rendered in a post referred to in proviso (1) (iii) shall, on reversion to the parent cadre, count towards initial fixation of pay, to the extent and subject to the conditions indicated below:-

(i) The Government employee should have been approved for appointment to the particular grade/post in which the previous services is to be counted;

(ii) All his seniors, except those regarded as unfit for such appointment, were serving in the posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the department itself or elsewhere, and atleast one junior was holding a post in the department carrying the scale of pay in which the benefit is to be allowed; and

(iii)The service will count from the date his junior is promoted and the benefit will be limited to the period the Government employee would have held the post in his

> parent cadre had he not been appointed to the ex-cadre post."

The petitioner claims that his basic pay should have been fixed at the same level i.e ₹ 26100/- since he fulfilled the parameters as laid down in the aforesaid rule. This claim having been rejected, he is before this Court.

The only ground taken to decline the benefit in the written statement is that the service under the HSIDC is not governed by the Civil Services Rules.

In my opinion, this argument cannot suffice. Rule 4.4 clearly protects a person who was holding a permanent post in a body which was wholly or substantially owned or controlled by the government on an identical time scale. It is not disputed that HSIDC is owned and controlled by the Government. It is also not disputed that the petitioner was in the identical time scale. Relief is also sought on the basis of a decision of this Court in Suresh Kumar v. State of Haryana and another, CWP No.11818 of 1988, decided on 13.9.2010, wherein it was held as follows :-

> " A perusal of the aforesaid rule would show that if an employee has previously held substantively or officiated in the same post or a permanent or temporary post on the same time scale or a permanent post other than tenure post or a temporary post including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government on an identical time scale then the initial pay should not be less than the pay, which he drew on the last such occasion....."

Learned Sr. DAG Haryana is not in a position to distinguish the above decision.

In these circumstances, this writ petition is allowed. The respondents are directed to refix the pay of the petitioner in terms of this decision within a period of three months from the receipt of a certified copy of this order and to release him the benefits thereof also within the aforesaid time limit. In case, the due benefit is not granted to the petitioner within the stipulated period, he would be entitled to recover the same with interest @ 12% pa from the date/s the amount/s fell due.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

March 20, 2017
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No