

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

**CWP-26512-2015 (O&M)
Date of decision: 02.05.2017**

Subhash Setia

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ram Niwas Sharma, Advocate for the petitioner
Mr.Naveen Sheoran, DAG Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner was initially appointed in Haryana Tourism Corporation as Accountant on 23.8.1976 and was promoted as Senior Accountant in September 1987. Thereafter, on 17.5.1995, petitioner was permitted by the Finance Department Haryana to appear in Haryana Subordinate Accounts Services (HSAS) examination. Since, the petitioner qualified the said examination, he was appointed as Section Officer on 31.10.1998 in the pay scale of Rs.6500-9900 subject to the conditions contained in letter dated 17.5.1995 (Annexure P1). Subsequently, his pay in the pay scale in the Tourism Corporation was protected vide order dated 6.12.2001 (Annexure P2). Grouse of the petitioner is that in the previous department, his date of increment was the 1st May every year but under the garb of letter dated 29.4.2002, it was changed from 1st May to 1st October vide order dated 23.5.2002 (Annexure P4). Petitioner made various

representations and ultimately, the same was rejected vide letter dated 16.4.2015 (Annexure P7). Now, the petitioner claims that his past service should be counted towards increments and that his pension and pensionary benefits should be allowed after allowing him annual increment in the month of May every year.

In the written statement, respondent nos.1 and 2 have taken objection that the representation of the petitioner was rejected by respondent no.2 vide letter dated 14.2.2003. The present writ petition was filed in the year 2015 with delay. Therefore, the present writ petition is barred by delay and laches. Further objection was raised that the Tourism Corporation is necessary party. It was admitted that the petitioner was working as Senior Accountant in Haryana Tourism Corporation Limited, Chandigarh in the pay scale of Rs.6500-9900 and was drawing basic pay of Rs.8100/- and his date of increment was 1.5.1999. The post of Senior Accountant and that of Section Officer in the State Accounts Services cadre are not identical within the ambit of Rule 2.60(c) of Punjab Civil Services Rules Volume I Part I. The protection of pay vide order dated 6.12.2001 was admitted. It was also admitted that next date of increment of petitioner was kept as 1.5.1999. It was also admitted that later on same was changed to 1st October 1999. Respondents justified in not treating the previous service for grant of increment and not treating 1st May 1999 as date of increment.

I have heard learned counsel for both the parties and have also carefully perused the record.

Admittedly, the petitioner was previously working in Haryana Tourism Corporation on the same pay scale i.e. Rs.6500-9900. Later on, he appeared in HSAS examination and was selected as such. A copy of the

proforma containing conditions for appointment to SAS Cadre for filling up the vacancies of Section Officer in SAS cadre is attached as Annexure P1. As per condition no.1, employees of Boards/ Corporations absorbed in SAS shall be treated as fresh entrants into Government service and their service for the purposes of pensionary benefits shall start from the date of their joining service in the State Government. Then under condition no.2 the previous pay can be protected in consultation with the Finance Department. As per condition no.3, in the seniority, they will be placed below the Government employees who have already joined as Section Officer irrespective of the year / Session of qualifying the SAS examination. The Government also stipulated that the government will not own any liability whatsoever for the services rendered under the Boards/ Corporations. Therefore, it is apparent that under the said terms and conditions in which the petitioner appeared in SAS examination, he was to be treated as new entrant in the government service.

Now, the question would arise as to whether after entering in the government service, petitioner's date of increment is to be kept as 1st May which was in the Tourism Department or the date on which he joined in the Government Department?

I am of the view that since, it was a fresh appointment, the relevant month for grant of increment will be the date on which he joined Government Department i.e. 30.10.1998. Therefore, next increment will become due only in October 1999.

Learned counsel for the petitioner has placed reliance upon Rule 4.4 (b) to claim that the date of increment is to be counted as in the previous department. Rule 4.4 is reproduced as under:-

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 or responsibilities of greater importance (as interpreted for the purposes of rule 4.13) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(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 or 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 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.

Note.— *The expression “if he holds a lien on a permanent post” occurring in this clause should be held to include the lien on a permanent post to which a Government. employee is appointed in a provisional substantive capacity under rule 3.14 (d), and the*

expression “substantive pay in respect of the old post” occurring in it should be held to include his substantive pay in respect of that provisional substantive appointment. This clause should, therefore, be held to permit the substantive pay in respect of a provisional substantive appointment being taken in to account in determining his initial pay in another post to which he is appointed. When the initial pay of a Government employee in a post is thus fixed, it will not be affected even if during the tenure of his appointment to that post he reverts from his provisional appointment.

(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,

(ii) a permanent 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 substantially owned or controlled by the Government) on an identical time scale, 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 (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 previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government employee in a 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 service to be counted.

(ii) all his seniors, except those regarded as unfit for such appointment, were serving in the post carrying the scale of pay in which benefit is to be allowed or in higher post, whether in the department itself or elsewhere, and at least 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.

Note.— *In respect of Government employee serving in an ex-cadre post on identical time scale of pay as the time scale of the parent cadre service rendered in the ex-cadre post upto 31st May, 1966 shall count for purposes of fixation of pay and increment to the extent*

admissible under proviso I (iii) as it existed immediately before 1st June, 1966, if the same is more advantageous to him.

A perusal of the aforesaid Rule shows that clause (iii) relied upon by the petitioner relates to appointment covered by clause (a), which is different from fresh appointment from some Board/ Corporation into the Government Service. The petitioner is bound by terms and conditions of the said advertisement inviting applications for SAS cadre. The petitioner was granted regular increment from 1999 in the month of October only. He remained silent for all these years though he kept on making representations. The government vide impugned order dated 16.4.2015 (Annexure P7) decided to reject the claim of the petitioner for treating the date of increment as 1st May 1999.

There is no illegality or infirmity in the impugned order dated 16.4.2015 (Annexure P7). So far as previous service of the petitioner is concerned, terms and conditions of the letter inviting applications itself shows that it is to be treated as new service. The petitioner has otherwise incurred increment in the previous department and his pay was protected. Therefore, his previous service also cannot be counted for the purpose of grant of increment which will amounting to granting double benefit.

It being so, there are no merits in the present writ petition. The same is dismissed accordingly.

02.05.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No