

CWP No. 4546 of 2015

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

CWP No. 4546 of 2015 (O&M)

Date of Decision: 09.10.2017

Surender Kumar Saini and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ajay Shekhawat, Advocate,
for the petitioners.

Mr. R.K. Doon, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 5877-CWP-2017

By this application, the applicants-petitioners seeks to place on record various documents as Annexures P-18 and P-19.

The application is allowed and the aforesaid documents are ordered to be taken on record as Annexures P-18 and P-19, with the accompanying writ petition.

CM No. 8738-CWP-2017

By this application, the applicants-petitioners seek to place on record Annexure P-20.

The application is allowed and the aforesaid Annexure P-20, is ordered to be taken on record.

CWP No. 4546 of 2017

The petitioners in this case seek the same pay scale as they were drawing at the time of their retrenchment from the Haryana Small Scale Industries & Export Corporation Ltd. (HSSI EC), i.e. the functional pay scale of Rs. 5,000-

7,850/-, with the benefit of the 1st ACP scale having been granted to all of them and the benefit of the 2nd ACP scale to some of them.

They having been retrenched from the said Corporation in the year 2002, they were offered appointments as Clerks in various departments of the Haryana Government, vide the appointment letters Annexures P-7 and P-18, in the year 2006. The pay scale offered to them in the said posts was Rs. 3,050-4590/-.

2. The contention of learned counsel is that they having worked on higher pay scales at the time when they were retrenched in the year 2002, they ought to have been given posts carrying the same pay scale, or one step below.

Upon query as to whether there is any specific policy to that effect, learned counsel points to the notification Annexure P-5, dated 21.06.2006, wherein it is stated as follows:-

“The Screening Committee shall devise a scheme with the approval of Chief Minister, on the basis of following broad parameters for adjustment of the retrenched employees, namely:-

(i) The adjustment shall be made either on an equivalent post carrying the same designation and nature of duties or on a lower post as per the availability of the vacancies subject to the condition that an employee occupying a Group C post at the time of retrenchment shall not be considered for adjustment on a Group D Post. The prescribed qualifications and age requirements for the purpose of adjustment of the retrenched employee shall be relaxed in view of his/her past experience in case of equivalent post. However, adjustment of a retrenched employee on a non-equivalent post shall be subject to his/her fulfilling the prescribed qualifications for the concerned post.

(ii) The adjustment shall be made either on an equivalent post carrying the same designation and nature of duties or on a lower post as per the availability of the vacancies subject to the condition that an employee occupying a Group 'C' post at the time of retrenchment shall not be considered for adjustment on a Group

'D' post as per appropriate term and conditions.

(iii) Group 'D' retrenched employees shall be considered for adjustment against Group 'D' vacancies and the concept of equivalence of post shall not be applicable.

(iv) The eligible persons shall be considered for adjustment on the basis of seniority of age.”

3. Similarly placed employees who were also appointed against lower scales, than the ones they had been drawing in the Corporations that they had been earlier working with, approached this Court by filing CWP No. 455 of 2011, titled as **Vijaya Kaul** vs. **State of Haryana and others**, which was disposed of by a co-ordinate Bench on 25.02.2012, (a copy of which judgment has been annexed as Annexure P-13 with the present petition), observing as follows (after noticing the conditions as reproduced hereinabove from the notification dated 21.06.2006):-

“A perusal of the above would show that effort was to be made by the Screening Committee to adjust the retrenched employees either on an equivalent post carrying the same designation and nature of duties or on a lower post as per the availability of the vacancies. The fact that three posts of Assistant were lying vacant in the office of the Additional Labour Commissioner, Gurgaon, where the petitioner was appointed as a Clerk, has not been disputed. It is also not disputed that similarly placed retrenched employees have been adjusted in the pay grade of Rs. 5,000-7,850/-, claim of the petitioner for appointment to the available posts of Assistant, which are in the grade of Rs. 5,000-7850, should have been considered and she should have been appointed on the said post as she fulfills the requirement for the said post. Her claim being covered by Clause 7 of the scheme, the appointment granted to the petitioner on the post of Clerk despite there being post of Assistant available, cannot sustain.

In view of the above, the claim made by the petitioner is allowed. She is held entitled to appointment on the post of Assistant with effect from the date she was appointed on the post of Clerk, i.e. 13.10.2006. Arrears shall, however, be restricted to 38 months from

the date of filing the writ petition. Since the petitioner has retired on 30.04.2011, the consequential benefits, which would include retiral benefits, be granted to her within a period of four months from the date of receipt of certified copy of this order.”

4. The State having gone in appeal against the said judgment, LPA No. 899 of 2012 was dismissed by a Division Bench, observing as follows at the end of the judgment:-

“In our considered view, no interference is called for in the impugned order passed by the learned Single Judge. We say so for the reason that the respondent was admittedly working in the pay scale of Rs.5500-9000 at the time of retrenchment. Though there was no post carrying the same designation or nature of duties in the Labour Department where she was adjusted but the authorities ought to have followed the same criteria as they applied in the case of Store Keepers while adjusting them as Assistants. If the authorities have interpreted and construed the policy decision dated 21.6.2006 (Annexure P-3) in a manner beneficial to M.P.Sharma, Ram Kishan, Puran Mal, Mohinder Singh and Sat Narain Verma who were adjusted against the posts carrying pay scale of Rs.5500- 175-9000, the respondent also should have been given the same treatment. Keeping in view the fact that the respondent has meanwhile retired from service and the order under challenge would only marginally increase her retiral benefits, we are not inclined to interfere with the impugned order.

Dismissed.”

5. The present petitioners thereafter approached this Court by filing CWP No. 8051 of 2013, a copy of which has been annexed as Annexure P-16 with the accompanying petition, which was disposed of on 08.07.2014, by first observing that in the reply filed by the respondents, the factum of availability of 62 posts (on a higher scale), stood admitted in paragraph 8 of that reply (by the Secretary to the Government of Haryana, Department of General Administration).

Eventually, the petition was disposed of with a direction to the Chief Secretary, Government of Haryana, to consider and decide the representation of the present petitioners, within a specified period.

6. The said representation has been decided on 29.09.2014, vide the impugned order, Annexure P-17, with the Chief Secretary stating in the order that the petitioners had accepted the posts to which they were appointed in the year 2006, subject to the condition that such appointment would be a fresh appointment, with no claim raised for the benefit of past service.

7. At the end of her order, the Chief Secretary has also stated as follows:-

“It will not be out of place here to mention that the petitioners have accepted the terms and conditions of appointment to the various posts offered to them without any protest. They cannot select the conditions of policy. The petitioners have been offered appointments strictly as per policy of the Government. Therefore, the petitioners are not entitled to seek appointment against any specific post of their choice. Claim of the petitioners is also not sustainable as the adjustment of retrenched employees was a onetime measure that has ended with the adjustment of such employees. Therefore, it is not open for the petitioners to challenge the same at this stage as has been held by the Hon'ble High Court in its judgment dated 04.02.2014 rendered in LPA No. 570 of 2012. There is no illegality in the action of the Government. Moreover, the claim of the petitioners is time-barred as the petitioners have rendered long service of seven years on their present post as has been explained above. In view the position explained above the petitioners are not entitled for the claim as prayed for by them vide their representation.

Accordingly, the representation is hereby rejected, being devoid of merit.”

8. A perusal of the judgment referred to in the impugned order (passed in LPA No. 570 of 2012 and other connected cases titled as “**Jai Narain Kaushik and others** vs. **State of Haryana and another**”, a copy of which has been

produced in Court by learned counsel for the petitioners), shows that it was observed by the Division Bench in that case, that the appellants therein had sought the benefit of past service towards their seniority. It was further observed that the services of the appellants therein and others who were retrenched from different Corporation to the State of Haryana, were so retrenched on account of the fact that the Corporations had failed to produce the desired results as regards the objective of their incorporation, despite the fact that private entrepreneurs did not participate in the said specific sphere of activities that those Corporations were participating in. It was also stated that the blame for the same could only be upon the persons working in the Corporations, with commitment lacking on their part.

9. While dismissing the LPA (the writ petition already having been dismissed), it was observed as follows:-

“As per Clause No.8, it is specifically stated that adjustment would be subject to their filing an affidavit stating that adjustment so provided would be considered as fresh appointment and he/she would not be given benefit of past service for the period he/she remained out of service as a result of retrenchment in any manner. Filing of that affidavit was a condition precedent to get re-employment. All the appellants filed affidavits in terms of the conditions mentioned above. Thereafter, they were taken back into service. If that is so, by entering into service subject to a condition, they cannot turn around and say that condition was bad. They should have challenged the condition before accepting offer made by the Government. It was not so done. Otherwise also, it is an admitted fact that all the employees, when retrenched had received retrenchment compensation. There was a break in their service ranging from two to four years and they were out of service for the said period. If that is so, the condition appears to be justified. They were not asked to return the amount so received by them by way of retrenchment compensation.”

10. Undoubtedly, the aforesaid observations do not 'augur well' for the petitioners in the present petition also.

It is undisputed that the petitioners approached this Court for the first time in the year 2013, seeking that they be given higher scales, by which time the judgment in **Vijaya Kauls'** case (supra) had already come.

Learned counsel for the petitioners has pointed to the fact that at least some of the present petitioners, like Vijaya Kaul, had also been representing to the respondents for the said relief right since 2006 itself, in support of which he points to the representations of 2006, some copies of which have been annexed as Annexure P-15 (colly.), with the present petition.

11. He further submits that the petitioners were all graduates at the time of their retrenchment and consequently also at the time of appointment to the new posts, and therefore they could have been appointed to the 62 posts of Inspectors, Co-operative Societies, as were admittedly vacant, (referred to in the order of this Court passed in CWP No. 8051 of 2013, Annexure P-16).

Yet further, he submits that in response to an application filed under the RTI Act, 2005, the petitioners have now obtained a reply from the respondents (without specifying as to which authority amongst the respondents), that 793 posts in the pay scale of Rs. 5,000-7,850/5,450-8,000/-, were available at the time when the petitioners were appointed in the year 2006.

A copy of the said list of posts has been annexed as Annexure P-20 with CM No. 8378-CWP-2010, which has been allowed today, with the aforesaid annexure also taken on record.

12. Lastly, learned counsel for the petitioners points to sub-clause (iv) of Clause 7 of the notification dated 21.06.2006, (already reproduced hereinabove), to the effect that the “eligible persons shall be considered for adjustment on the basis of seniority of age”.

13. Learned counsel for the respondent-State on the other hand submits that, firstly, even as per the notification dated 21.06.2006, what was offered to the petitioners was not specific pay scales or one step lower pay scales, but that adjustment of those retrenched from different Corporations would be made, “either on an equivalent post carrying the same designation and nature of duties or on a lower post as per the availability of the vacancies subject to the condition that an employee occupying Group C post at the time of retrenchment shall not be considered for adjustment on a Group D Post. The prescribed qualifications and age requirements for the purpose of adjustment of the retrenched employee shall be relaxed in view of his/her past experience in case of equivalent post.”

Learned counsel for the State has also pointed out that in the affidavit filed by the Chief Secretary, dated 15.02.2016, it has been specifically stated that the petitioners are not eligible for the posts of 'Co-operative Inspectors', in view of the fact that they do not possess the preferential qualifications given in the eligibility conditions for appointment of Inspectors, i.e. graduation from a recognized University, with knowledge of Hindi up-to the Matric-standard, with preference to be given to a graduate in Economics or Commerce or Agriculture, or holding a Higher Diploma in Co-operation/Junior Personnel Diploma in Cooperation. In the case of Inspectors (Audit), one should be a graduate in Commerce with knowledge of Hindi upto the Matric standard, or one and a half years experience in Accounts, keeping in a Co-operative Union/Institutions. Preference was to be given to those who possessed “higher diplomas”.

Thus, as per learned State counsel the petitioners are not entitled to appointment in the higher scale simply because some other persons have been ordered to be adjusted, vide the aforesaid judgment of this Court passed in Vijaya Kauls' case (supra).

14. Having considered the aforesaid arguments, though undoubtedly the judgment in Vijaya Kauls' case is stated to have become final before a Division Bench, in the opinion of this Court, there are two things which stand against the petitioners; firstly, that they had first approached this Court by way of filing of CWP No. 8051 of 2013 (Annexure P-16), in the year 2013, i.e. 07 years after they had accepted the posts to which they have been appointed and secondly, as has been pointed out, that too after the judgment rendered in Vijaya Kauls' case (supra). Secondly, as pointed out by learned State counsel, there was no condition stipulated in the notification dated 21.06.2006, that the petitioners must be appointed to either the same scale or one scale lower than the one on which they had been working. They only had to be appointed to an equivalent post, or a post one step lower.

15. The petitioners all having been appointed to Group 'C' posts, which is also the same group in which they were working in the Corporations earlier, I see no reason to entertain this petition, further on account of the fact that in any case even if any posts to which the petitioners could have been appointed in a higher pay scale in Group 'C' were available in the year 2006, obviously, the same position did not stand even in the year 2013, when they first approached this Court by filing CWP No. 8051 of 2013.

As regards learned counsel for the petitioners' contentions with regard to the requirement for appointment of the petitioners and other eligible persons on the basis of seniority of age, I am afraid even that aspect at this belated stage, cannot be looked at, because it was something which the petitioners should have agitated at the time of accepting appointments, or at least soon thereafter, and not in the year 2013 for the first time.

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Very obviously, they approached this Court 7 years after their appointments, only upon seeing the judgment in **Vijaya Kauls'** case.

16. Therefore, keeping in view the aforesaid facts, including the long delay in approaching this Court, further keeping in view the observations made by the Division Bench in LPA No. 570 of 2012, to the effect that the petitioners had accepted retrenchment compensation at the time when they were retrenched from the Corporations that they were working in, which such compensation never having been asked to be returned when they were offered fresh appointments in the year 2006, they cannot claim at such a belated stage to be appointed to posts having a higher scale, or even to the grant of such higher scales in the posts they are presently serving in.

It needs to be noticed that it has not been stated anywhere that the petitioners were not paid retrenchment compensation, or that they had refunded it at the time of their new appointment in 2006.

For the aforesaid reasons, finding no merit in this petition, it is consequently dismissed, but with no order as to costs.

October 09, 2017
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes