

The short controversy is that the petitioner was working as a Clerk in the Department of Education under the Government of Punjab. On 8.2.1978, there was a general strike by the Punjab Government employees. Apparently, in order to reward the employees (non-gazetted employees), who did not participate in the strike, the Government of Punjab had decided to grant a special increment to those employees with effect from 8.2.1978.

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In the meanwhile, on account of the Punjab Civil Services (Revised Scales of Pay) Rules, 1979, the pay scales of the Punjab Government employees were revised with effect from 1.1.1978. The pay of the petitioner was accordingly fixed, vide order dated 18.11.1981 (Annexure-P-6), taking that she had opted for revised pay scales with effect from 8.2.1978. The petitioner accordingly continued to draw the salary in accordance with the revised pay scales. The petitioner, on attaining the age of superannuation, retired from service as Assistant Registrar (Examination) on 31.10.2005. Apparently, when the pension case of the petitioner was being processed, some anomaly came to the notice of the authorities. Accordingly, a show cause notice dated 1.8.2006 (Annexure-P-7) was issued, stating that the option given by the petitioner (Assistant Registrar, Examination) for fixation of her pay with effect from 8.2.1978, is not correct. It was noticed that the State Government has given a special increment to those Government employees (non-gazetted employees), who did not participate in the strike on 8.2.1978. The said special increment cannot be treated a normal increment. Therefore, her pay is liable to be fixed from 1.1.1978, instead of 8.2.1978. Thereafter, the petitioner challenged the said notice before this Court by way of filing CWP No. 10236 of 2006, titled as Darshani Devi Versus The State of Punjab and others, (Annexure-P-8 Colly.) with a prayer to release the retiral benefits and objecting to re-fixation of her pay. The said writ petition was connected with another CWP No. 15744 of 2005, titled as Karnail Singh Versus State of Punjab and others, (Annexure-P-8 Colly.). Both the writ petitions were disposed of on 23.4.2014, giving liberty to the State to proceed in accordance with the statement made by the learned State counsel.

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In view of the matter, the petitioner submitted a representation dated 20.5.2014 (Annexure-P-9) to respondents. After considering the same, respondents passed the impugned order dated 10/12.9.2014 (Annexure-P-10), vide which her claim was rejected, stating that her pay has now been rightly fixed and excess amount of Rs. 1,40,118/-, already recovered from the petitioner, was correctly recovered from her.

In the reply, the State has taken the stand that the pay of the petitioner has been rightly fixed on 18.3.1980, as per the option given by the petitioner, in which the revised pay scales became effective with effect from 1.1.1978. Thereafter, the petitioner gave her second option for revised pay scales with effect from 8.2.1978. It is stated that she got to manage her pay scales fixed with effect from 8.2.1978. She was not entitled to give the second option of revised pay scales with effect from 8.2.1978. Therefore, the pay of the petitioner has been rightly re-fixed and recovery was rightly ordered.

I have heard the learned counsels for the parties and have also carefully gone through the file.

It comes out that the new pay scales became effective with effect from 1.1.1978 and in pursuance to that, the employees were given the revised pay scales. According to the stand of respondents themselves, the petitioner gave the first option for opting new pay scales with effect from 1.1.1978. The second option could not be given. However, the petitioner also became entitled to special increment for not participating in the general strike of the Government employees with effect from 8.2.1978. She gave the second option, opting for new pay scales with effect from 8.2.1978. Apparently, that option was accepted by respondents and accordingly, vide

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order dated 18.11.1981 (Annexure-P-6), her pay was fixed, treating her date of option as 8.2.1978. The petitioner continued to draw the salary according to the said second option. It was only after the retirement of the petitioner on 31.10.2005 when the trouble arose. Apparently, when the department submitted the case of the petitioner to the concerned authorities for pension, that error was detected and consequently now her pay has been re-fixed as per her first option with effect from 1.1.1978.

Now, the question would arise for consideration before this Court as to whether respondents though wrongly allowed the petitioner to exercise the second option could withdraw the same after lapse of 24 years and if they are allowed to do so, then what are the rights of the petitioner ?

I am of the considered view that though under the rules, the second option could not be exercised, but the department rightly or wrongly allowed the petitioner to exercise the second option in view of the fact that she was entitled to special increment with effect from 8.2.1978 for non participating in the general strike of the State Government employees. Therefore, the said date was treated as the date of increment. The State Government, acting on the same, re-fixed the pay of the petitioner and she continued to draw the salary till her retirement i.e. 31.10.2005. Now, respondents re-fixed the pay of the petitioner, considering her first option with effect from 1.1.1978. The present orders have been passed on 10/12.9.2014 (Annexure-P-10).

I am of the view that if the State can rectify such error after 24 years, the petitioner can also be allowed to exercise the option from the date of her choice.

The identical matter was considered by this Court in CWP No.

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14054 of 2011, titled as Mohan Lal Jain Versus State of Punjab and others, decided on 9.8.2012 (Annexure-P-14), where in the similar circumstances, this Court allowed the petitioner in that case to exercise the fresh option and quashed the recovery.

I am of the view that the petitioner was not at fault nor she made any mis-representation to respondents. Therefore, in view of the authority of the Apex Court in State of Punjab and others etc. Versus Rafiq Masih (White Waster) etc., 215 AIR (SC) 696, the recovery of Rs. 1,40,118/-, recovered from her payment of gratuity, stands quashed and the recovered amount is ordered to be refunded to the petitioner alongwith statutory interest. The impugned order dated 10/12.9.2014 (Annexure-P-10) so far as refusing the exercise of fresh option by the petitioner, is also quashed and the petitioner is permitted to submit fresh option for the date of increment, within one month from the date of receipt of certified copy of this order and submit the same to the department. After the fresh option is submitted, the pay and pension of the petitioner will be accordingly re-fixed alongwith consequential benefits. The pay of the petitioner will be notionally fixed from the date of option and no arrears shall be paid.

The present writ petition is allowed.

(KULDIP SINGH)
JUDGE

28.3.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes