

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

**CWP No.881 of 2015 (O&M)
Date of decision : May 02, 2017**

Sarabjit Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Arora, Advocate for the petitioner.

Mr. Nikhil Chopra, Addl. A.G, Punjab.

Mr. Vivek Chauhan, Advocate for respondent No.3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J.

Petitioner, who is a retired Superintendent from the office of Executive Officer, Panchayat Samiti, Harsha Chhinna, Amritsar, has invoked the writ jurisdiction of this Court under Article 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing the memo dated 27.12.2013 (Annexure P-5) and order endorsed on 26.05.2014 (Annexure P-6), whereby the pay of the petitioner has been reduced after his retirement withdrawing the benefit of proficiency step up/ACP granted to the petitioner on 03.07.1993 and 03.07.1999, respectively. The petitioner also seeks quashing of the order dated 11.07.2014 (Annexure P-9) and order dated 23.06.2014 (Annexure P-8),

whereby an amount of ₹1,90,205/- and ₹16,150/- has been withheld/recovered from the gratuity/leave encashment of the petitioner.

Further, direction is sought for releasing the pension and other retiral benefits of the petitioner at the last drawn salary without any reduction along with due arrears of pension and also releasing the withheld/recovered amount from the gratuity/leave encashment of the petitioner along with interest.

The petitioner initially joined as Clerk with the respondents-department on 03.07.1975. She was granted proficiency step up on completion of eight years of service w.e.f. 01.07.1986. She was granted higher pay scale of Junior Assistant i.e. ₹1,500-2,640/-. Thereafter, she was granted the benefits of another proficiency step up increment w.e.f. 03.07.1993 on completion of 18 years of service. It is stated that the cadre of Clerk and Junior Assistant is same with no extra benefits of higher responsibility. On 25.09.1998, the Government issued instructions, whereby the ACP on completion of 8-16-24-32 years was granted. The petitioner was granted the benefits of proficiency step up on completion of 24 years of service under the said ACP scheme, vide order dated 18.11.1999 w.e.f. 03.07.1999. The petitioner was promoted as Superintendent on 15.11.2001. She was granted the benefits of four years ACP in the cadre of Superintendent vide order dated 13.08.2010. The petitioner ultimately superannuated on 31.08.2013. However, when the pension case of the petitioner was processed, the objection was raised by the office of Accountant General, Punjab, on the basis of which impugned memo dated 27.12.2013 (Annexure P-5) was issued and the impugned order endorsed on

26.05.2014 (Annexure P-6) was passed, whereby the pay of the petitioner was reduced by withdrawing the benefits of 18 years proficiency step up from 03.07.1993 and 24 years ACP w.e.f. 03.07.1999. Consequently, the recoveries of ₹1,90,205/- and ₹16,150/- have been ordered. The petitioner claims that the said recoveries are contrary to Rule 6.19(c) and Rule 9.4(b) (iii) of the Punjab Civil Services Rules, Volume II and seeks quashing of the said orders.

In the reply, the respondent Nos.1 and 2 have maintained that the step up increments were wrongly granted and have been rightly withdrawn. It was stated that the petitioner was granted scale of Junior Assistant on 27.03.1991. Therefore, the benefit of ACP on completion of 18 years of service in 1993 granted on 03.07.1993 could not have been granted to the petitioner. The petitioner would have been entitled to 8 years ACP only on 27.03.1999 when she completed 8 years of service on the said post. The petitioner was promoted as Superintendent on 15.11.2001 and was given benefit of four years ACP in the cadre of Superintendent vide order dated 13.08.2010. In this manner, the benefits of 18-24 years under ACP could not have been granted to the petitioner and recoveries has been correctly ordered.

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

The instructions of the Government regarding grant of additional increment on completion of 18-24 years of service on account of recommendation of 3rd Pay Commission regarding proficiency step up are Annexure P-1, under which on completion of 8-18 years of service being

recorded satisfactory, one increment was to be granted.

Rule 7 of the said Instructions is reproduced as under:

“For reckoning the period of 8 years and 18 years the entire service in time scale, Senior Scale and Selection Scale on or placement and not involving in a cadre, shall counted. If any employee joining a scale at a stage higher than the minimum as a result of promotion or otherwise, his proficiency step-up(s) as would stand postponed by a number of years equal to the number of increments already covered by her from the minimum of the scales of the time of initial fixation of pay in the scale. This step up is related to the number of years is fixed by the process of promotion at the sixth stage at a scale only after 8 years. If an employee service in a scale only of pay for more than 18 years and is not promoted to higher scales on account of lack of promotion opportunities or non-availability of a vacancy in the promotion scales, he would be granted two step-up(s) in him emoluments.”

It has been argued on behalf of the respondents that since the petitioner was granted higher pay scale of Junior Assistant on 27.03.1991, therefore, as per said Rule 7 of the Government Instructions (Annexure P-1), the proficiency step up would have been postponed by a number of years equal to the number of increments already covered by her from the minimum of the scales of the time of initial fixation of pay in the scale. It is stated that since the petitioner was placed in the higher pay scale of Junior Assistant, though in the same cadre of Clerk on 27.03.1991 and the said scale was ₹1,500-2,640/-, which was higher than the initial scale of Clerk. Therefore, Rule 7 of the Government Instructions (Annexure P-1) should

have been applied and one increment on account of proficiency step up could not been granted on completion of 8-18 years of service reckoning on account of initial appointment as Clerk.

On the other hand, learned counsel of the petitioner has argued that for the purpose of grant of proficiency step up, the service is to be counted from the initial stage and not from grant of higher pay scale. Further reliance has been placed upon Rule 6.19(c) and 9.4(b)(iii) of the Punjab Civil Services Rules, Volume-II, under which the emoluments reckoning for pension, only the salary received immediately before the date of retirement is to be seen. It is further stated that Rule 9.4(b)(iii) for the purpose of calculating of the average emoluments, the Head Office may verify the correctness of emoluments for the period of 24 months preceding the date of retirement of a Government employee and not for any period prior to that date.

Rule 6.19(c) of the Punjab Civil Services Rules, Volume-II is reproduced as under:

“A-Emoluments reckoning for Pension

6.19-C. The term “emoluments” when used for this purpose shall mean ‘pay’ as defined in Rule 2.44 of the Punjab Civil Services Rules, Volume I, Part I including dearness pay as determined by the orders of the Government issued from time to time, which the employee was receiving immediately before his retirement, or the date of his death.”

The relevant extract of Rule 9.4(b)(iii) of the Punjab Civil Services Rules, Volume II is reproduced as under:

“ Calculation of Average emoluments:- For the purpose of calculation of average emoluments, the

Head of Office shall verify from the service book, the correctness of the emoluments drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service have been correctly shown in the service book, the Head of Office may verify the correctness of emoluments for the period of twenty-four months preceding the date of retirement of a Government employee, and not for any period prior to that date.”

It comes out that after retirement of the petitioner when the service book was sent to the office of Accountant General, Punjab, the objection was raised and to meet the said objection, the proficiency step up/increments granted to the petitioner way back in the year 03.07.1993 and 03.07.1999 have been withdrawn.

After going through the Government Instructions (Annexure P-1) and Rule 9.4(b)(iii) of the Punjab Civil Services Rules, Volume-II, I am of the view that if the petitioner is placed in the higher pay scale, the proficiency step ups were to be postponed by a number of years equal to the number of increments already covered by her from the minimum of the scales of the time of initial fixation of pay in the scale. However, what the respondents-department had done is that they had just calculated 18 years of service of the petitioner from the initial stage. Since the petitioner was appointed as Clerk on 03.07.1975, she completed 18 years of service on 03.07.1993 and without considering the implication of Rule 7 of the Govt. Instructions (Annexure P-1), the additional increment was granted to the petitioner. Thereafter, applying the said formula, on completion of 24 years of service, further ACP was granted on 03.07.1999 as per Instructions dated

25.09.1998.

I am of the view that the increments were wrongly granted. However, then the question would arise whether after 14-20 years of the grant of said increments, the same can be withdrawn, stating that these were wrongly granted? A perusal of Rule 9.4(b)(iii) read with Rule 6.19(c) of the Punjab Civil Services Rules, Volume II shows that for reckoning pension, the last drawn pay is to be seen and the office is to verify only the correctness of the emoluments for the period of 24 months preceding the date of retirement of the Govt. Employee and not for any period prior to that date. Therefore, the Accountant General was not justified in checking up the entire service record of the petitioner to see whether from the initial stage, the increments of proficiency step ups were correctly granted or not. Therefore, the order of withdrawing the proficiency step ups granted on 03.07.1993 and 03.07.1999 are contrary to Rule 9.4(b)(iii) of the Punjab Civil Services Rules, Volume II. Even if, it is assumed that the pay was wrongly fixed, in view of the authority of Hon'ble the Supreme Court ***“State of Punjab and others etc. v Rafiq Masih (White Washer) etc.”***, ***2015(2)SCC (Civil) 608***, the recovery cannot be effected from the retiral dues of the petitioner.

In somewhat similar circumstances, the Apex Court in ***“Sushil Kumar Singhal v Pramukh Sachiv Irrigation Department and Ors.”***, ***2014 (3) S.C.T. 98***, quashed the re-fixation of the pay and the recovery orders. In the Rule under consideration in the said case, the pension fixation authority then enquire the emoluments only for last 10 months, whereas under Rule 9.4(b)(iii) of the Punjab Civil Services Rules, Volume II, the correctness of

the emoluments for the period of 24 months preceding the date of retirement of the Govt. employee and not for any period prior to that date, are verified.

As a result of the foregoing discussion, the present petition is allowed. The impugned memo dated 27.12.2013 (Annexure P-5), order endorsed on 26.05.2014 (Annexure P-6) are hereby quashed. Consequently, the impugned orders dated 11.07.2014 (Annexure P-9) and dated 23.06.2014 (Annexure P-8) are also hereby quashed. The amount already recovered, in pursuant to these orders be refunded to the petitioner along with interest @ 9% per annum from the date of recovery till the date of payment within a period of three months from the date of receipt of certified copy of this order.

(KULDIP SINGH)
JUDGE

May 02, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes