

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

Reserved on 28.11.2018

Date of decision: December 13, 2018

CWP No.6649 of 2007 (O&M)

Gurcharan Pal Singh and others

.....Petitioners

Versus

State of Punjab and others

....Respondents

CWP No.1139 of 2008 (O&M)

Balbir Singh Hothi and another

.....Petitioners

Versus

State of Punjab and another

....Respondents

CWP No.10759 of 2007 (O&M)

Narinder Singh Bajwa

.....Petitioner

Versus

State of Punjab and another

....Respondent

CWP No.10853 of 2007 (O&M)

Harjinder Singh

.....Petitioner

Versus

State of Punjab and another

....Respondents

CWP No.11083 of 2007 (O&M)

Major Singh Sandhu

.....Petitioner

Versus

State of Punjab and another

....Respondents

CWP No.11272 of 2007 (O&M)

Inder Pal Chopra

.....Petitioner

Versus

State of Punjab and another

....Respondents

CWP No.11814 of 2007 (O&M)

Pardeep Kumar Beri

.....Petitioner

Versus

State of Punjab and another

....Respondents

CWP No.8886 of 2007 (O&M)

Vinod Kumar Aggarwal

.....Petitioner

Versus

State of Punjab and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. G.S. Bal, Senior Advocate with
Ms. Loveinder Kaur, Advocate for the petitioners
(in all the petitions).

Ms. Anu Pal, DAG Punjab.

A.B. CHAUDHARI, J

By this common order, all the above eight writ petitions are being disposed of.

2. In these writ petitions filed by the employees of the Food Supplies Department of the Government of Punjab, a writ of mandamus has been sought to grant equation of the post of Head Analyst with that of AFSO pursuant to judgment dated 20.07.2000 (Annexure P-2) passed by this Court with a further prayer for quashing item No.7 of Appendix 'B' of the Punjab Food and Supplies Department (State Service) Clauses-III Rules, 1990 so far as the post of Head Analyst is stated to be the feeder post for promotion to the post of AFSO.

FACTS

3. The petitioners in these writ petitions were appointed initially as Junior Analysts and Sub-Inspectors in Food and Supplies Department, Punjab. At the time of their appointment, they were governed by the Punjab Food and Supplies Department (State Service Class-III) Rules, 1968 (for short 'Rules of 1968'). Some of them were promoted as Head Analyst on 08.05.1997 and some on different dates. According to the petitioners, by second pay commission recommendations and in particular to Paragraphs 38.11 and 38.15, the post of the Head Analyst was required to be equated with the post of AFSO and the post of Junior Analyst was required to be equated with that of Inspector.

However, despite recommendations by the second pay commission, the needful

was not done by the Government. In the meanwhile, the Punjab Food and Supplies Department (State Service Class-III) Rules, 1990 (for short 'Rules of 1990') came into force with effect from 01.04.1990 in supersession of Rules of 1968. Thereafter, 3rd pay commission was introduced with further commendations of pay-scales. As a sequel, the writ petition was amended to incorporate the claim for grant of further revised pay-scales and with equation of the post to Head Analyst with that of AFSO as well along with the relevant prayer clause. The said CWP No.3412 of 1987 was allowed by the learned Single Judge on 20.07.2000 (Annexure P-2). Letters Patent Appeals and the SLPs were dismissed. The Government of Punjab then implemented the said judgment.

According to the petitioners, in the original writ petition No.3412 of 1987 itself prayer clause (v) was inserted by way of amendment for claiming the relief of equation of the post of Head Analyst with that of AFSO, but then that relief, though, was actually granted, was not incorporated in the judgment of the learned Single Judge. Therefore, the petitioners filed the applications for clarifications and the learned Single Judge of this Court passed various orders granting liberty to file these fresh petitions. Hence, these fresh writ petitions were filed.

ARGUMENTS

4. In support of these writ petitions, learned Senior counsel for the petitioners vehemently argued that the Government of Punjab after having challenged the order dated 20.07.2000 made by the learned Single Judge and the orders in the Letters Patent Appeal and the SLP accepted the operative part of the judgment and implemented it. However, in the last part of the said judgment, the words “as a consequence thereof, the further effects be also

given to the petitioners” have not been correctly understood by the Government and according to the petitioners, those operative words means “grant of relief in terms of prayer clause (v) of the amendment writ petitions”. Therefore, these fresh petitions filed by the petitioners are on the same reasoning as rendered by the learned Single Judge in its judgment for making equation of the post of Head Analyst with that of AFSO with all monetary and other deemed benefits. According to the learned Senior counsel for the petitioners, the relief in the prayer clause (v) was inserted in the petitions by way of amendment, but through inadvertence, there is no reference for grant of relief in terms of prayer clause (v) which should not work adverse to the interests of the petitioners when as a matter of fact their writ petitions were allowed by the learned Single Judge of this Court. Mr. G.S. Bal, learned Senior counsel for the petitioners then contended that all the petitioners have retired and, though, AFSOs who were promoted are not party-respondents to the amended writ petitions, petitioners do not claim any relief against them and therefore, these writ petitions would be maintainable. Learned Senior counsel then contended that the plea of abandonment also cannot be entertained because of the liberty granted by this Court to file fresh writ petitions. He, therefore, prayed for the reliefs as claimed in the present writ petitions.

5. *Per contra*, learned State counsel Ms. Anu Pal, DAG Punjab submitted that the recommendations of the pay commission may or may not be accepted by the Government and that is the settled law. She relied on the decision of the Apex Court in the case of **M.P. Rural Agriculture Extension Officers Association** versus **State of M.P. and another**, 2004 (4) SCC 646. Learned DAG Punjab then submitted that the Rules of 1968 were superseded by the Rules of 1990 and therefore, it is too late in the day to ask for relief on

equation in their favour of the post of Head Analyst with that of AFSO and then consequently no relief can be granted. The petitioners have admittedly retired from service. Those AFSOs who were promoted have not been made party to the petitions. At any rate, according to her, the petitions are barred by law. She therefore, prayed for dismissal of the writ petitions. She also cited decisions in the case of **State of West Bengal versus Subhas Kumar Chatterjee and others**, 2010 (11) SCC 694 and in particular Para-13 thereof.

CONSIDERATION

6. We have heard Mr. G.S. Bal, learned Senior counsel for the petitioners at length so also Ms. Anu Pal, DAG Punjab. We have perused the entire record including the earlier orders made by this Court in the subject matter of the present writ petitions.

Learned Single Judge of this Court had allowed the writ petitions filed by the petitioners by holding that the posts of Junior Assistant was required to be equated with the post of Inspectors. Perusal of the entire judgment nowhere shows any adjudication or finding about the equation of the post of Head Analyst with that of AFSO. The strong reliance placed by the learned Senior counsel for the petitioners on the operative part of that judgment and in particular the words “as consequence thereof”, in our opinion, is misplaced. We quote the following operative paragraph of the said judgment dated 20.07.2000 passed in CWP No.3412 of 1987, which reads thus:-

“In view of the above, I allow this petition and direct the State Government to implement the recommendations of the Second Pay Commission pertaining to the Junior Analyst by equating their posts with those of Inspectors as spelt out in the 1968 rules and granting them to pay scales as recommended and which have been granted to the Inspectors. As a consequence thereof, the future effects be also given to the petitioners in

accordance with the applicable rules, if found eligible. So far as the payment of arrears are concerned, the same shall be granted in accordance with the provisions of law applicable for implementation of the recommendation made by the Second Pay Commission. No order as the costs.”

7. The aforesaid operative order or even the body of the judgment nowhere shows grant of any such relief as contended. We, therefore, reject the submission made by the learned Senior counsel for the petitioners to that effect that “as a consequence” means grant of substantive relief as per prayer clause (v). It is then seen that the petitioners had approached this Court by way of contempt petition bearing COCP No.422 of 2002 and this Court had made the following order on 20.02.2003 (Annexure P-6), which reads thus:-

“ORDER

It is not disputed that the original writ petitioners have already been given the benefit of the judgment though the counsel for the petitioner states that the benefits has not been fully given. Counsel for the petitioner states that the order was required to be complied with qua all the Contempt Petitioners. Since there is no specific direction to that effect, it cannot be taken to be so in the Contempt Proceedings.

Disposed of.

If the petitioners are aggrieved by the interpretation of the order of this court by the respondents, they are free to have their remedies in appropriate proceedings in accordance with law.”

8. Thereafter, the petitioners filed one more petition bearing CWP No.18613 of 2002 based on the legal notice in which the Division Bench of this Court on 23.11.2002 (Annexure P-7) made the orders asking the Government to pass speaking order that was given. Accordingly, Annexure P-8 was passed on 21.03.2003 and the gist of the said order reads thus:-

“Although Second Pay Commission recommended for the grant of pay scale of Assistant Food and Supplies Officers to the Head

Analyst, but Govt. did not agree to this recommendation of the Pay Commission. For implementation of the judgment in CWP No.3412 of 1987 dated 20.07.2000, petitioners filed Contempt Petition No.422 of 2002 in the Hon'ble High Court, which has been dismissed on 20.02.2003. In this way the decision dated 20.07.2000 in CWP No.3412 of 1987 has been fully implemented. It is also clarified that as per Food and Supplies Department (Class-III) Service Rules, 1990, there is no provision for grant of promotion to the Head Analyst as District Food and Supplies Officers.

In view of the position explained above, Legal Notice dated 24.09.2002 served by Shri Baldev Singh and others and representation dated 20.11.2002 is hereby rejected.

*Dated, Chandigarh
21.3.2003* *Principal Secretary
Food, Civil Supplies and Consumer Affairs
Department, Punjab”*

9. The petitioners, thereafter, filed CM No.11330 of 2003 which was described as for seeking clarification, but in fact, perusal thereof and the order thereon shows that it was a review. By order dated 27.10.2006 (Annexure P-12), the same learned Single Judge clearly held that as to the prayer about equation of the post of Head Analyst with that of AFSO, the same never fell within the purview of original judgment rendered by him. The Court also stated that the petitioners would be well within their rights to agitate in accordance with law. Another applications bearing CM No.21050 of 2006 and CM No.15211 of 2004 was filed, on which one more order was passed on 23.12.2006 (Annexure P-14), which reads thus:-

“This application had been filed for being disposed of along with CM No.11330 of 2003. However, the relief claimed is separate but has been claimed by way of seeking clarification of the order. Inadvertently this application was not disposed of on the date when the review application had been decided. Since the matter has been duly commented upon while deciding the aforesaid

application, I do not think, any further opinion is required. However, the applicant-petitioners shall be at liberty to file fresh petition in regard to the relief claimed in the instant application.

Disposed of accordingly.”

10. That the petitioners are claiming that the aforesaid orders granted liberty to the petitioners to file these petitions. We do not agree with the submissions made by the learned Senior counsel for the petitioners in this behalf. The prayer clause (v) was already inserted in the petition in respect of the subject matter of the present petitions. This Court did not grant any relief pertaining to prayer clause (v) nor there is any discussion about it in the body of the judgment. The reliance placed on the word “as a consequence” has also been clarified by the learned Single Judge himself that the same would not amount to grant of relief in terms of prayer clause (v) and was thus, declined. The reliance placed by the learned Senior counsel for the petitioners that the petitioners could file the present fresh petitions is again misplaced. The liberty granted in those orders will have to be read and seen as in accordance with law.

11. The law is well settled that if a relief has been claimed in the earlier petitions and the same was abandoned by the petitioners, it cannot be sought by filing fresh petitions. We therefore, hold that all these writ petitions are barred by the principle of abandonment of the claim which is now sought to be made and the petitions are not maintainable.

12. That apart, even otherwise, we find that the Apex Court in **M.P. Rural Agriculture Extension Officers Association's case** (supra) observed thus in Para 12:-

“The Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof vis-a-vis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its

wisdom and in furtherance of a valid policy decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing appropriate rules. The State in terms of the said provision is also entitled to give a retrospective effect thereto. A policy decision had been adopted by the State that the post of Extension Officers shall be filled up only by graduates. Such a policy decision ex facie cannot be termed to be arbitrary or irrational attracting the wrath of Article 14 of the Constitution of India. A dying scale was provided by the State for the non-graduates. Fresh recruitments were to be made only from amongst the persons who held the requisite educational qualification. With a view to avoid any discrimination between the new recruits and the serving employees who possessed the same qualification, the State cannot be said to have acted illegally in granting a higher scale of pay also for the existing degree holders.”

13. In the case of **State of West Bengal**, the Apex Court observed thus, in Para 13 as thus:-

*“13. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. [See: **Union of India v. Arun Jyoti Kundu**, 2007 (4) S.C.T. 389 : 2007(5) R.A.J. 416 : (2007) 7 SCC 472 and **State of Haryana & Anr. v. Haryana Civil***

Secretariat Personal Staff Assn., 2002 (3) S.C.T. 674 : (2002) 6 SCC 72]. It is no doubt, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post.”

14. We agree with Ms. Anu Pal, DAG Punjab that these decisions of the Apex Court will squarely cover the issue in present petitions, even otherwise on merits. At any rate, the petitioners cannot be granted any relief of equation of the post of Head Analyst with that of AFSO, and thereafter, for promotion to the post of AFSO. The obvious reason is that all the petitioners have retired long back and no relief can be granted in such eventuality.

15. To sum up for the reasons aforesaid, we do not find any merit in these petitions and hence, we make the following order:-

ORDER

- (i) CWP No.6649 of 2007, CWP No.1139 of 2008, CWP No.10759 of 2007, CWP No.10853 of 2007, CWP No.11083 of 2007, CWP No.11272 of 2007, CWP No.11814 of 2007 and CWP No.8886 of 2007 are dismissed;
- (ii) Rule discharged;
- (iii) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(H.S. MADAAN)
JUDGE

December 13, 2018
mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**