

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

CWP-11678-2015

Date of decision: 31.10.2018

Sukhwinder Singh and others

...Petitioners

Versus

PSPCL and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.HS Saini, Advocate for the petitioners

Mr.RL Sharma, Advocate for the respondents

JITENDRA CHAUHAN, J.

By way of instant writ petition, under Articles 226/227 of the Constitution of India, the petitioners seek issuance of direction to the respondents to grant the benefit of promotional increment(s) to the them, in view of circular dated 23.04.1990 (Annexure P-2) alongwith all consequential benefits including interest @ 18% per annum on the delayed payment.

Learned counsel for the petitioners submit that the case of the petitioners is squarely covered by the ratio of law laid down by this Court in CWP-20139-2015 titled as **Chiman Singh Vs. Punjab State Power Corporation and others**, decided on 29.02.2016, whereby, the similarly placed persons were granted the benefit as prayed for in the present writ petition.

Learned counsel for the respondent(s) though do not controvert

the assertion raised on behalf of the petitioners, however, it has been submitted that some of the issues involved in the present petition have not been discussed in Chiman Singh' case (supra).

However, there are no elaborations or details of such issues, which have neither been stated before this Court nor has come on record.

Heard, learned counsel for the parties and perused the record.

A perusal of the record would reveal that in Chiman Singh's case (supra), the order so passed is being covered by the decision of this Court rendered in LPA-883-2012, decided on 03.07.2012 which has attained finality with dismissal of SLP-20468-2012. Since, the similarly situated persons have been granted the benefit in Chiman Singh's case (supra), therefore, the petitioners cannot be deprived of the relief sought. The arrears shall be restricted up to 38 months from the date of filing of the petition in view of the ratio of law laid down in **Saroj Kumari Vs. State of Punjab**, 1998(3) SCT 664 wherein it has been observed as under:-

“9. After hearing learned Counsel for the parties on this point we are of the view that in case where a person invokes the jurisdiction of this Court under Article 226 of the Constitution of India for fixation of his pay under relevant rules/ instructions or even on the basis of a judgment of a competent Court, the question of delay and laches would not come in as it would be a case of a continuing wrong and every month the person is paid the salary which according to him is not in accordance with the relevant rules and instructions a fresh cause of action would arise

every month. Such a case is not a case of one time action like the case of termination or dismissal from service. As observed by the Apex Court in M. R. Gupta's case (supra) that the Court while granting relief regarding the payment of arrears may apply law of limitation. Since a Civil Suit would be maintainable for realizing arrears of three years and two months, the writ Court would be justified in restricting the payment of arrears to three years and two months prior to the filing of the writ petition.

10. We do not agree with the submission of the learned Advocate General, Punjab, that the writ Court should decline the relief to a person who is claiming correct fixation of his pay in accordance with the relevant rules and instructions merely because he has been negligent in approaching the Court. If such a person can file a civil suit for the correct fixation of his pay where he can further claim arrears up to a period of three years and two months prior to the Filing of the civil suit, there is no reason why such relief should be denied by a writ Court. Apart from the above, it may be noticed that in such cases as the present one where only fixation of pay is sought and arrears are claimed, rights of third party do not intervene during the period the person may not have approached the Court. The correct fixation of pay and the payment of arrears do not affect third party's right. This was also so observed by the Division Bench in Rattan Singh's case which has been quoted above, on the basis of which the

argument was raised by the learned Advocate General Punjab.

11. For the foregoing reasons we are of the view that in cases where only fixation of pay according to the relevant rules/instructions or a judgment is prayed for, the writ petition cannot be dismissed at the threshold on the ground of delay and laches but the payment of arrears can be restricted to a reasonable period. Three years and two months would be considered a reasonable period as that is the period for which a person can ask for the payment of arrears before a Civil Court.”

Accordingly, the writ petition is allowed in terms of Chiman Singh's case (supra). The respondents are directed to treat the petitioners at par with the petitioners in Chiman Singh's case and consider the claim of the petitioners in the light of the said case and pass the consequential order within a period of three months from the date of receipt of a certified copy of this judgment.

31.10.2018

gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes /No