

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 10926 of 2016

Date of decision : September 04, 2018

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Subodh Kumar

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Ranjit Saini, Advocate for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General,
Haryana.

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RITU BAHRI, J.

The petitioner is seeking quashing of the order dated 15.2.2016 (Annexure P-11) passed by respondent no.2, whereby the petitioner has been denied the benefit of ad hoc service on the ground that junior to the petitioner namely Dr. Jai Singh was given the benefit of ad hoc service as per the order passed by Hon'ble the Supreme Court and therefore, the petitioner is not entitled to the same pay scale.

The petitioner was appointed as Ayurvedic Medical Officer/Vaidya with the respondent-Department vide appointment letter dated 21.2.1980 (Annexure P-1). The petitioner continued to work on this

post up to 16.2.1982. The petitioner was duly selected on regular basis on the same permanent post through Subordinate Selection Board, Haryana and joined as such on 1.1.1983. He was issued a show cause notice vide letter dated 16.12.1998 (Annexure P-2) seeking recovery of excess salary paid to him on account of benefit granted for the past ad hoc service prior to appointment on regular basis. The only reason given for making the recovery was that there was break in service intervening the ad hoc service and appointment on regular basis and on this account, the petitioner was not entitled for benefit of ad hoc service toward annual pay increment. The petitioner gave his reply to the said show cause notice by way of legal notice. Vide letter dated 28.7.1999 (Annexure P-3), respondent no.2 directed respondent no.3 to recover the excess salary paid to the petitioner. The petitioner challenged the show cause notice dated 16.12.1998 (Annexure P-2) and letter dated 28.7.1999 (Annexure P-3) by filing CWP No. 12170 of 1999. Various other affected employees who were junior to the petitioner i.e Jai Singh, Anup Singh and Subash Chander also approached this Court by filing CWP No. 5763 of 2001 titled, 'Dr. Subash Chander vs. State of Haryana'. The writ petition bearing CWP No. 5763 of 2001 came up for hearing before this Court on 7.11.2001. It was partly allowed to an extent that no recovery will be made which has already been paid as envisaged in the order and dismissed the writ petition with regard to other relief. A copy of the order has been annexed as Annexure P-4 Vide order dated 29.7.2002 (Annexure P-5), this Court allowed CWP No. 12170 of 1999 in terms of judgment dated 7.11.2001 (Annexure P-4) passed in

CWP No. 5763 of 2001 on that limited aspect of recovery only and dismissed the same with regard to the other relief. Civil Appeal 3865, 3866 of 2003, 3863 of 2003 and 3892 of 2003 were filed against the judgment dated 7.11.2001 (Annexure P-4). These civil appeals were filed by employees junior to the petitioner. Hon'ble the Supreme Court vide order dated 16.2.2010 (Annexure P-6) disposed of the same by observing that the amount which has already been paid shall not be recovered from the appellants. The respondents shall fix the pay of the appellant at par with their counterparts but they will not claim arrears. Pursuant to the order passed by Hon'ble the Supreme Court, order dated 21.9.2011 (Annexure P-7) was passed and the pay of Dr. Jai Singh was fixed notionally w.e.f 5.1.1983 to 15.2.2010. The petitioner is now claiming that since the pay of his junior has been notionally fixed, he should be granted the same benefit. The petitioner has placed on record copy of gradation list issued by AYUSH Department, Haryana as on 1.7.2011 (Annexure P-8). As per the petitioner, his seniority no. in the list is 52, whereas the persons who are getting more salary than petitioner are at serial no.54 and 98 and 113 of seniority list.

On notice, written statement has been submitted on behalf of respondents no. 1 to 3, wherein a stand has been taken that the order dated 21.9.2011 (Annexure P-7) was passed with respect to only the person who had approached Hon'ble the Supreme Court and the petitioner cannot get benefit at par with him. It was further clarified that initially his service was purely on ad hoc basis. The petitioner was duly selected on regular basis on the same permanent post through Subordinate Selection Board, Haryana and

joined as such on 1.1.1983. There was a break of almost 11 months in his earlier service and regular service from 21.1.1982 to 31.12.1982. Hence the ad hoc service rendered by him cannot be counted for the purpose of refixation of his pay. The Division Bench of this Court in CWP No.10242 of 1999 titled 'Dr. Satish Kumar Sharma vs. State of Haryana and others' decided on 10.08.1999 while interpreting rule 4.9 read with 4.4 b of Punjab Civil Services Rules, volume-I, Part-I as applicable to the State of Haryana had observed that the benefit of ad hoc service for the purpose of fixation of pay on regular appointment could only be made admissible if the ad hoc service was followed by regular service without any break. Keeping in view the judgment passed by the Division Bench in ***Dr. Satish Kumar Sharma's case (supra)***, the petitioner cannot claim parity with those juniors who had approached Hon'ble the Supreme Court.

Counsel for the respondent has further argued that benefit granted by Hon'ble the Supreme Court cannot be extended to the petitioner as he had not filed any appeal against the judgment passed by this Court, whereby the writ petition had been dismissed.

Heard counsel for the parties. A perusal of the judgment dated 16.2.2010 passed by Hon'ble the Supreme court (Annexure P-6) shows that a conscious decision was taken to fix the pay of the appellants with their counterparts on the condition that they will not claim arrears. Vide order dated 21.9.2011 (Annexure P-7), pay of Dr. Jai Singh has been refixed at par with their counterparts. Jai Singh is junior to the petitioner. In view of the Division Bench judgment of this Court in ***Dr. Satish Kumar Sharma's***

case (supra), not giving benefit to the petitioner at par with their juniors would attract Articles 14 and 16 of the Constitution.

In view of all that has been discussed above, the writ petition deserves to be allowed. The Respondents are directed to re-fix the salary of the petitioner at par with his juniors without giving any benefit of arrears.

September 04, 2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No