

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.2948 of 2018

Date of Decision : 09.02.2018

Manjit Singh Aujla.

... Petitioner

VERSUS

State of Punjab & ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. JPS Sidhu, Advocate for the petitioner.

B.S.WALIA, J. (Oral)

1. Prayer in this writ petition is for the issuance of a writ of Certiorari to quash impugned order dated 15.01.2018 (Annexure P-1) as also letter/communication dated 05.07.2016 (Annexure P-2) whereby the claim of the petitioner for stepping up of pay equal to that of his junior and for grant of ACP benefit on completion of four years service has been rejected. Prayer is also for the issuance of a writ of certiorari for quashing of ACP Scheme dated 03.11.2006 to the extent it is applicable only w.e.f. 01.11.2006. Further prayer is that the benefit of ACP Scheme be given to the petitioner as he had completed 6 years of service on the post of Director and had retired on 30.04.2006, and there was no basis for making a distinction /classification between pre 01.11.2006 and post 01.11.2006 retirees. Another prayer is for direction's to the respondents to re-fix and to step up the pay of the petitioner and grant him all benefits in respect thereto qua pension and other retirement benefits etc.

2. I have heard learned counsel for the petitioner.

3. Admittedly, the petitioner retired from service as Director, State Planning Board on 30.04.2006. Assured Career Progression Scheme dated 3.11.2006 (Annexure P-6) is for grant of benefits w.e.f. 01.11.2006 on completion of 4, 9 and 14 years of service in the cadre. Grievance is that one Jasbir Singh, who was junior to the petitioner was granted the benefit of Assured Career Progression Scheme dated 03.11.2006 w.e.f. 01.11.2006. The Assured Career Progression Scheme is applicable only w.e.f. 01.11.2006. Admittedly, the petitioner was not in service on 01.11.2006, having retired on 30.04.2006. Consequentially, the benefit of the Assured Career Progression Scheme is not applicable in the case of the petitioner. Consequentially, claim for stepping up of pay of the petitioner at par with his junior is also without any merit since, admittedly, junior to the petitioner i.e. Jasbir Singh, retired from service on 30.09.2009. In other words, the junior of the petitioner was in service on the date on which the Assured Career Progression Scheme dated 03.11.2006 came into force. As regards the claim of the petitioner for grant of the revised pay scales, learned counsel contends that the Punjab Civil Services (Revised Pay) First Amendment Rules 2009 were notified on 27.05.2009 and were deemed to have come into force on or w.e.f 01.01.2006. Learned counsel by relying upon Note-5 of Rule 7 contended that since the petitioner was getting more pay than Jasbir Singh his junior in the same cadre prior to 01.01.2006 and his pay was fixed in the revised pay band at a stage lower than that of Jasbir Singh, he was entitled for his pay to be stepped up to the same stage in the revised pay band as of his junior Jasbir Singh. The petitioner claims to have made representations from time to time after his retirement for the grant of benefit under the ACP by making the same applicable to persons who had retired prior to 01.11.2006 as also for the grant of benefits under the revised pay rules. Eventually, the claim of the petitioner for stepping up of pay equal to Jasbir Singh in the light of his

representations dated 29.09.2014, 05.01.2015, 24.04.2015, 05.08.2015, 11.01.2016 and 18.04.2016 was rejected vide memo No.PSPB (6PB-Pay-Anamoly/2016/3213) dated 05.07.2016-Annexure P-2. The petitioner was informed that under Revised Pay Rules, 2006, ACP Scheme was implemented from 01.11.2006 whereas the petitioner had retired from Government service on 30.04.2006 and in the circumstances, while his junior Jasbir Singh had been given the benefit of ACP Scheme as he had continued in Government service upto his superannuation on 30.09.2009, there were no instructions on the basis of which pay of a retired employee could be made equal i.e. stepped up to the pay being drawn by employees in service or at par with other employee who had retired after him.

4. The petitioner filed CWP No.540 of 2017 with a prayer for quashing of impugned rejection of his claim for grant of ACP as communicated to him vide letter dated 05.07.2016 etc and for stepping up of pay. Submission is that despite various representations including representation dated 18.04.2016 having been submitted to the respondents, no decision was taken in respect thereto. However, I find this submission contrary to the record in view of a decision already having been taken on the numerous representations referred to above vide letter dated 05.07.2016 (Annexure P-2). Therefore, the stand of the petitioner that no decision had been taken, nor any reply received in response to his representations dated 29.09.2014, 05.01.2015, 24.04.2015, 05.08.2015, 11.01.2015, 11.01.2016 and 18.04.2016 is contrary to the record.

In any case, once the grievance is that the Assured Career Progression Scheme dated 03.11.2006 was liable to be quashed to the extent of inapplicability to pre 01.11.2006 retirees, the grievance ought to have been agitated by the petitioner in the year 2006 or shortly thereafter. However, the

Career Progressions Scheme as well as for fixation of pay in the Revised Pay Scales only on 24.09.2009 and thereafter, made number of other representations as has been noticed in the order of this Court dated 24.08.2017 in CWP No.540 of 2017.

It is settled law that repeated representations will not extend limitation. Order dated 24.08.2017 passed in CWP No.540 of 2017 was in the background of the petitioner's stand that despite repeated representations including representation dated 18.04.2016 having been made to the respondents, no decision had been taken in respect thereto nor any action taken whereas decision had already been taken rejecting the claim of the petitioner on 05.07.2016 i.e. Annexure P-2 in respect of claim for stepping up of pay equal to Jasbir Singh his junior by grant of ACP. The claim of the petitioner for fixation of pay of revised pay scale was rejected vide order dated 15.01.2018 (Annexure P-1) on the ground that he had retired on 30.04.2006 therefore his revised pay scale was fixed on 01.01.2006 at Rs.37,230/- whereas Jasbir Singh, his junior had continued in service and retired on 30.08.2009 and had opted for the revised pay scale w.e.f 01.11.2006. Accordingly, the pay of Jasbir Singh was fixed as on 01.11.2006 at Rs.47,230/-. Accordingly, Jasbir Singh was drawing pay w.e.f. 01.01.2006 to 31.10.2006 in the pre-revised pay scale i.e. from 01.01.2006 to 31.01.2006 @ Rs.14,700/- and from 01.01.2006 to 30.04.2006 @ 15,100/- per month which was less than the pay of the petitioner from 01.01.2006 to 30.04.2006. On the basis of the same, the order records that Jasbir Singh never drew more pay than the petitioner till the retirement of the petitioner on 30.04.2006. The ACP Scheme was stated to be applicable w.e.f. 01.11.2006 whereas the petitioner had retired from Government service on 30.04.2006 while Jasbir Singh was promoted as Director on 02.08.2002 and retired on 30.08.2009 after getting benefit of 4 years of service in the cadre of

Director under ACP Scheme 4-9-14. Therefore, the pay of the petitioner could not be stepped up at par with that of Jasbir Singh. Apart from the fact that the petitioner obtained directions on 24.08.2017 in respect of pay scale which was revised on 27.05.2009 w.e.f. 01.01.2006, it is apparent that the writ petition is highly belated having been filed in August, 2017 i.e. Close to 8 years after the accrual of the cause of action if any as on 27.05.2009. Likewise, prayer for quashing of ACP Scheme to the extent it has been made applicable only w.e.f. 01.11.2006 vide ACP Scheme dated 01.11.2006 (Annexure P-6) is also highly belated.

Not only is the writ petition bereft of merit, it is also highly belated. Accordingly, the same is dismissed in limine.

(B.S.WALIA)
JUDGE

February 09, 2018

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