

(106) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.615 of 2017 (O&M)
in CWP No.13906 of 2016
Date of decision: 20.04.2018

Naveen Kumar and others Appellants

Versus

State of Haryana and others Respondents

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

Present: Mr. Prem Meet Anand, Advocate for the appellants

B.S. Walia, J.

[1] Intra-court appeal is against judgment of the learned writ court dated 17.11.2016 dismissing challenge to the withdrawal of revision of pay scale granted vide order dated 10.10.2013. Along with the appeal, application seeking condonation of 110 days' delay in filing thereof, has also been filed.

[2] Learned writ court while acknowledging right of the State to rectify a mistake, sustained the order dated 10.10.2013 withdrawing the revised pay scale granted to the writ petitioners but negated the right of the respondents to recover the amount paid to the writ petitioners pursuant to the grant of the revised pay scale in view of the decision of the Hon'ble Supreme Court in '*Chandi Prasad Uniyal versus State of Uttarakhand*', (2012) 8 SCC 417, on the ground that the writ petitioners were low salaried employees and recovery from them would not be sustainable in view of the law laid down in the aforementioned decision.

[3] Pursuant to order dated 12.12.2012 in CWP No.24650 of 2012, wherein prayer was for grant of technical pay scale of ₹ 1200 - 2040, the petitioners vide order dated 04.04.2013 i.e. Annexure P-2, were granted the technical pay scale of ₹ 1200 - 2040 revised to ₹ 4000 - 6000 w.e.f. 01.01.1996, further revised to ₹ 5200 - 20200 + Grade Pay ₹ 2400/- w.e.f. 01.01.2006 granted vide office order dated 04.04.2013 i.e. Annexure P-2. Since, the petitioners were appointed as Helpers on 01.10.2003 without ITI, therefore technical pay scale was allowed to them on completion of three years experience on technical post w.e.f. 01.10.2006 and their pay was fixed at the initial stage in the Pay Band of ₹ 5200 - 20200 + Grade Pay ₹ 2400/-. However, as per stand in the written statement filed in the writ petition, pay of the petitioners was wrongly re-fixed vide order dated 10.10.2013 by wrongly interpreting the Revised Pay Rules 2008 and Note-4 of Rule 4.4 of CSR Vol.- I, Part I by multiplying the minimum technical pay scale of ₹ 4000/- with 1.86. However, re-fixation order dated 10.10.2013 was issued conditionally that in case any adverse opinion was received from the Government/Head Office, re-fixation of the petitioners would be withdrawn and the excessive amount may be recovered. The stand further taken up in the written statement was that when the error came to the notice of the Director, State Transport, Haryana, Chandigarh, instructions were issued to all General Managers vide memo dated 04.07.2006 for re-fixation of pay in the technical pay scale by considering the initial pay as ₹ 5200/- as per rules. It was further mentioned that order dated 10.10.2013 was erroneously issued by respondent No.3 fixing the pay of the petitioners at the stage of ₹ 7440 + ₹ 2400 Grade Pay was not as per the petitioners' entitlement because the basic pay of ₹ 7440/- was only to be granted to the Government employee at the time of first entry into

the instant case, the petitioners had not entered Government service as direct entrant on or after 01.01.2006, whereas they were brought into the Higher Pay scale of technical post i.e. ₹ 5200–20200 + ₹ 2400 Grade Pay and their pay was required to be fixed on the pay last drawn by them prior to the date of granting the higher pay scale i.e. ₹ 2720/- in pre-revised scale of ₹ 2550–3200 and the pay of the writ petitioners fixed at the next stage of the previous pay, subject to the minimum of the pay scale. Since the writ petitioners were drawing ₹ 2720/- and their pay was fixed at the minimum of pay scale i.e. ₹ 5200–20200 + ₹ 2400 Grade Pay from the date of their entitlement, therefore, ₹ 7440 + ₹ 2400 Grade Pay could only be granted to the direct entry level to Government employees as per Finance Department Haryana Instructions dated 18.08.2011.

[4] In the aforementioned background, stand in the written statement was that a mistake committed had been rectified in terms of letter dated 04.07.2016 received from the office of Director, State Transport, Haryana, directing all General Managers of Haryana Roadways to withdraw the pay of ₹ 7440 + ₹ 2400 GP to which the petitioners were not entitled to. In the writ petition, learned counsel for the petitioners' argument was that pay of the petitioners had been reduced without notice and the impugned order had been passed behind the back of the writ petitioners without complying with the principles of natural justice, therefore, the order was liable to be quashed.

[5] As has been noted above, the learned Writ Court while taking note of the stand of the State of a mistake having been committed on its part and of the same having been corrected, observed that it was always open to the Government to correct a mistake. However, while upholding the correction of the mistake, the learned Writ Court held that writ petitioners

there on the part of the writ petitioners, restrained the State from making recovery from the petitioners on account of their being low salaried employees in the light of decision of the Hon'ble Supreme Court in *Chandi Prasad Uniyal's* case (supra). In appeal, this Court vide order dated 13.07.2017, while taking note of the factual position, passed detailed order in the context of the prayer of the learned counsel for the appellants to remand the matter for reconsideration on the ground of notice not having been issued to the appellants before passing of the order impugned in the writ petition. However, this Court refused to accept the aforementioned plea of the appellants on the ground that accepting such a plea would force the appellants into the thrones of litigation besides they were already on notice that in the event of approval not being granted by the State/Head Office, the benefit would be withdrawn. In the circumstances, this Court required the appellants to show their entitlement which obviously would be the plea that they would raise in case their prayer for remand was accepted. However, despite repeated opportunities to learned counsel for the appellants to show entitlement of the writ petitioners to the benefit claimed, nothing was produced, instead prayer was made for adjournment which was not accepted.

[6] Accordingly, there is no merit in the appeal and the same is dismissed. Consequently, the application seeking condonation of delay in filing the appeal is also dismissed.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

20.04.2018
amit

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