

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2473 of 2019

Date of decision : 30.08.2019

Raj Kumar Garg

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Surinder Garg, Advocate for the petitioner.

Mr. Navdeep Chhabra, D.A.G., Punjab.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the prayer of the petitioner is that he be allowed to exercise his option afresh keeping in view the Notification dated 24.12.1992 (Annexure P-1) for the grant of Master Scale.

Learned counsel for the petitioner states that the question of law as to whether an employee can be allowed to exercise option afresh or not, already stands answered by this Court while deciding CWP No. 7855 of 2014 and other connected cases titled as ***Jinder Singh and others Vs. State of Punjab and others***, on 17.12.2018, wherein, this Court has already held that employees are entitled for the grant of another opportunity to exercise their option in terms of the Notification dated 24.12.1992 (Annexure P-1) in view of the changed circumstances.

Learned counsel for the respondents, keeping in view the reply filed by the respondents, has stated that as the petitioner had retired on 28.02.2006 and the present writ petition has been filed in the year 2019, the same is liable to be dismissed on the ground of delay and laches and further, once the petitioner has already exercised his option, no fresh opportunity can be granted to him to exercise the option afresh as being claimed in the present writ petition.

Question of law as being raised in this writ petition is already answered by this Court more than once. This Court while deciding ***Jinder Singh and others's case (supra)***, on 17.12.2018, by relying upon the judgments passed by this Court on the same question of law on earlier occasion which have been noticed therein, which decision of this Court have already been attained finality upto the Hon'ble Supreme Court of India that keeping in view the facts and circumstances of this case, employees are entitled for the fresh option to opt for revised pay scale. Same question of law was also answered in CWP No. 7643 of 1997, titled as ***Narinder Kumar and others Vs. State of Punjab and others***, which decision has already been upheld upto the Supreme Court of India and the SLP filed by the State of Punjab, which was converted into a Civil Appeal No. 5486 of 2000, was dismissed where employees were allowed fresh option in similar facts and circumstances. Another writ petition bearing CWP No. 7464 of 2009 titled as ***Surinder Kumar and others Vs. State of Punjab and others***, was allowed by this Court on 25.02.2010 allowing the employees the benefit of fresh option but as the said writ petition was filed in the year 2009, the benefits to be granted to the petitioners therein were modified and

the benefit of re-fixation was granted notionally. Thereafter, another civil writ petition bearing CWP No. 8936 of 2010 praying for the same relief as being made in the present writ petition was allowed on 14.05.2010. Thereafter, two writ petitions bearing CWP No. 9140 of 2010 and CWP No. 9765 of 2010 involving the same question of law were also allowed by this Court on 18.05.2010 and 25.05.2010 respectively.

Learned counsel for the respondents is not been able to rebut that similar writ petitions, the details of which have been given hereinbefore, already stand allowed in respect of the claim, which is being made by the petitioner herein i.e. Allowing the petitioner to exercise fresh option to opt for the pay scale.

The objection which has been raised by the learned counsel for the respondents is that writ petition is liable to be dismissed on the ground of delay. He places reliance upon an order passed by this Court in CWP No. 13604 of 2014, titled as ***Bal Krishan Vs. State of Punjab and others***, wherein, a Coordinate Bench of this Court dismissed the writ petition of the similarly situated person on the ground of delay vide order dated 06.07.2014. The LPA filed against the said judgment bearing LPA No. 1838 of 2015 titled as ***Bal Krishan Vs. State of Punjab and others***, was allowed by the Division Bench on 16.02.2017 with the following orders:-

“1. The appellant's claim for allowing him to exercise fresh option for the grant of revised pay-scale has been turned down by learned Single Judge on the ground of inordinate delay and laches. Learned Single Judge has also referred to the case law, laying down that where a person acquiesced his rights or has been sleeping over such right, the writ Court can decline to exercise its discretionary jurisdiction.

2. However, after hearing learned counsel for the parties, we find that there are various orders passed by other Benches including by one of us (Surya Kant, J.) where such belated claim has been entertained though subject to the rider that the pay shall be fixed notionally and pension/emoluments shall be paid prospectively i.e. from the date of decision of this Court. In the order under appeal, learned Single Judge has not assigned any reason whatsoever to distinguish those reasons.

3. In this view of the matter, we allow this appeal; set aside the order dated 06.07.2014 and dispose of the appellant's writ petition with a direction to the respondents to consider his claim as contained in the legal notice dated 16.12.2013 (P-9) in the light of the decisions relied upon by him in the writ petition and pass an appropriate speaking order within a period of four months from the date of receipt of certified copy of this order.”

The Division Bench held that keeping in view the prayer made, the writ petition cannot be dismissed on the ground of delay. Therefore, the objection which is being raised by the learned counsel for the respondents is not maintainable in view of the order passed by the Division Bench in **Bal Krishan case (supra)**, LPA No. 1838 of 2015.

Thereafter, in a case involving similar facts and same prayer as being made in this writ petition, facts including the objection of the delay were considered by this Court in **Jinder Singh and others's case (supra)**, on 17.12.2018. The benefit of fresh option was extended to the petitioner thereafter rejecting the objection raised on behalf of the respondents of delay. The relevant portion of the said judgment is as under:-

“As per the factual matrix narrated hereinbefore, it is clear that the right to re-exercise an option under the

instructions dated 24.12.1992 has been accepted by this Court and objection being taken for dismissing the writ petitions on the ground of delay and laches is liable to be rejected. Grant of another opportunity to exercise option as per letter dated 24.12.1992 by which pay scales were revised, has been upheld upto the Hon'ble Supreme Court and there are large number of employees, who have been allowed the said exercise of an option by the respondents themselves. The exercise of an option is only being allowed after the employees' approach this Court for the grant of similar relief, which is unfortunate.

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In view of the above, the present writ petitions are allowed. The respondents are directed to allow the petitioners to re-exercise their option in terms of the Finance Department circular dated 24.12.1992 by which pay scales were revised, within a period of two months from the date of receipt of a certified copy of this order. The pay shall be fixed notionally w.e.f. 01.01.1986, 01.01.1996 and 01.01.2006, as the case may be and the actual benefit which the petitioners will be entitled for in terms of this judgment will be prospectively from the date of the decision of this Court. The fixation will be done notionally without any arrears to anyone till the date of this order.”

Learned counsel for the petitioner states that the case of the petitioner is squarely covered by the decision rendered in CWP No. 7855 of 2014 and other connected cases titled as ***Jinder Singh and others Vs. State of Punjab and others***, decided on 17.12.2018 and, therefore, the present writ petition should also be disposed of in same terms. Though, the same objections are raised by the learned counsel for the respondents but no

differentiating material was pointed out by the learned counsel for the respondents as to how the judgment in *Jinder Singh and others's case (supra)* does not cover the case of the petitioner. Therefore, present writ petition is allowed in terms of the direction given in CWP No. 7855 of 2014 and other connected cases titled as *Jinder Singh and others Vs. State of Punjab and others*, decided on 17.12.2018.

August 30, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*