IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.6690-2019 (O&M)
Date of decision: 26.03.2019

Union Territory, Chandigarh and another

…..**Petitioners**

versus

Rajesh Kumar and others

……**Respondents**

CORAM: Hon'ble Mr.Justice Rajiv Sharma
Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Berjeshwar Singh Jaswal, Advocate for the petitioners

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Petitioners have impugned the order dated 25.07.2018 (Annexure P3) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, 'The Tribunal') vide which the Tribunal has directed the respondents (petitioners herein) to give a chance to the applicants-private respondents to revise their option at this stage as a special case which is not to be quoted as precedent and the pay of the applicants was ordered to be fixed notionally on the revised option so submitted and the arrears accruing as a consequence of exercising revised option be paid to the applicants w.e.f. 05.03.2017, the date of filing of O.A.

Applicants-private respondents are working as Junior Basic Teachers (JBT) since 06.03.2002 in the pay scale of Rs.4550-7200. In the year 2009, the recommendation of Fifth Pay Commission was notified by the Government of Punjab. Both the applicants opted for revised pay w.e.f. 01.01.2006. They were at serial no.314 and 378 respectively, in the seniority list. One Hardeep Singh, who was at serial no.399 of the seniority list, opted for the pay scale w.e.f. 01.11.2006. The grievance of the applicants is that their junior Hardeep Singh is drawing higher pay than the pay of the applicants. Applicants earlier filed O.A. No.445 of 2016 which was disposed of on 11.01.2017 with directions to the department to decide the representation dated 06.09.2013 and the legal notice dated 27.02.2016 by passing a speaking order. Vide speaking order Annexure A12 the said representation has been rejected. Applicants prayed before the Tribunal that their pay be fixed at par with their junior or in the alternative they should be granted second opportunity to exercise option for the revised pay scale so that anomaly of junior drawing more pay can be removed. They also prayed for quashing of impugned order Annexure A12.

We have heard learned counsel for the petitioners and have also carefully gone through the file.

Admittedly, as a result of the implementation of the Fifth Pay Commission, the options were required to be given by the employees. Both the applicants namely, Rajesh Kumar and Ravi Shankar opted for revised pay scale w.e.f. 1.1.2006, whereas their junior Hardeep Singh opted for revised pay w.e.f. 1.11.2006. Consequently, pay of Hardeep Singh was fixed Ten months later. His pay was fixed at Rs.5000 on 1.1.2006, Rs.5160 on 1.3.2006 after fixing increment and Rs.13800 on 1.11.2006. In this way, Hardeep Singh drew pay in the old pay scale till October 2006. This resulted in anomaly as Hardeep Singh junior of the applicants started drawing more pay than the applicants. Had the applicants exercised same option as by

Hardeep Singh they would have got the same pay.

Learned counsel for the petitioners has argued that option once exercised is final. Learned counsel has referred to the notification dated 27.05.2009, whereby Punjab Civil Service (Revised Pay) Rules, 2009 were implemented w.e.f. 1.1.2006. Learned counsel has referred to Rule 6 under which option is required to be exercised. Under Sub Rule 4 the option once exercised is final.

However, we are of the view that the Tribunal has taken the correct view of the matter. Admittedly, in this case, anomaly has arisen whereby Hardeep Singh junior of the applicants is getting more pay than the applicants -private respondents. The anomaly has arisen because Hardeep Singh exercised option for revised pay w.e.f. 01.11.2006, whereas the applicants opted for revised pay w.e.f. 01.01.2006. Rule 7 of the said notification dated 27.5.2009 deals with the fixation of pay in the revised pay structure. Note 5 of the said Rule is reproduced as under:-

> *Note 5. Where in the fixation of pay under this rule, a Government employee, who, in the existing scale was drawing immediately before the first day of January 2006, more pay than another Government employee junior to him in the same cadre, gets his pay fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised pay band as that of the junior.*

The Note makes it clear that in case of such anomaly arising, the pay of the senior has to be stepped up to the same stage as the revised pay band of that junior.

Rule 6 (Sub-Rule 4) regarding exercise of option cannot be read in isolation. However, the Tribunal in its discretion, in place of passing order of stepping up the pay of the applicants equal to the junior of the applicants, allowed the applicants to file revised option and thereafter, fixation of pay as per their option.

There is no illegality or infirmity in the same, keeping in view the background that the applicants are getting less pay than their junior. No ground to interfere.

Resultantly, the writ petition is dismissed in limine.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

26.03.2019

gk

Whether speaking/ reasoned: Yes
Whether Reportable: Yes