

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Date of decision : 01.02.2019**

**(I) CWP-6380-2006 (O&M)**

Darshan Kumar Bhasin and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**(II) CWP-9068-2006 (O&M)**

D.S. Jaidka and another

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. Gurpreet Singh Dhillon, Advocate for the petitioner(s).

Mr. TPS Chawla, DAG, Punjab.

**JITENDRA CHAUHAN, J.**

The above noticed two writ petitions are being disposed of by this single judgment as common questions of law and facts are involved therein. However, the facts are being derived from CWP-6380-2006, for brevity.

Prayer in the instant writ petition is for issuance of a writ of

Certiorari quashing impugned orders (Annexures P-6 to P-12), passed by respondent No.2, whereby, the pay of the petitioners has been re-fixed and further to stay the recovery in pursuance of the said orders.

It is contended that as on 31.12.1995, the petitioners were holding the posts of Executive Engineers in the Department of Water Supply and Sanitation, Punjab and were placed in the entry scale of ₹3000-4500/-. However, they were drawing salary in the pay scale of ₹3700-5300/- after having completed 18 years of service. After revision of pay scales w.e.f. 01.01.1996, the petitioners were rightly placed in the pay scale of ₹14300-18150/- having completed 14 years of total regular service in the entry scale and on the basis thereof, the petitioners continued to receive their pension/salary, as per their entitlement. However, the petitioners were shocked to receive notice dated 11.08.2005 (Annexure P-3) from the respondents that as per instructions of the Finance Department dated 17.04.2000, the petitioners w.e.f. 01.01.1996 ought to have been placed in the pay scale of ₹12000-16350/- instead of ₹14300-18150/-. Comments of the petitioners were sought within 15 days from the date of issuance of the notice. Replies to the said notice were submitted by the petitioners, however, without appreciating the contents of the replies given by the petitioners, the impugned orders were been passed. The sole grievance of the petitioners is that the instructions dated 17.04.2000, were not applicable to the case of the petitioners. Rather, the instructions would be applicable only to the posts which as on 31.12.1995 carried the pay scale of ₹2200-4000/-.

On the other hand, learned State counsel submits that for the purpose of fixing the salary, those persons whose salary was fixed at ₹3700-5300/-, were first to be fixed in the initial revised scale of ₹12000-15500/- and thereafter by granting the benefit of Assured Career Progression Scheme, their pay was to be fixed in the pay scale of ₹14300-18150/-. However, the basic pay of the petitioners was wrongly fixed at ₹17000/- on 01.01.1998 instead of ₹17546/-. Thus, learned State counsel has prayed for dismissal of the instant appeals.

Heard.

Similar controversy came to be decided by this Court in ***Dr. Rameshwar Chander and others Vs. The State of Punjab and others***, rendered in CWP-9023-2002, decided on 07.09.2010, wherein, it has been laid down as under:-

*“Petitioners were working as Senior Medical Officers in the Health Department of Government of Punjab. Their initial pay scale was of Rs.3000-4500. However, they were drawing salary in the pay scale of Rs.3700-5300 after they had completed 18 years of service. Case of the petitioners is that after revision of pay-scale w.e.f. 1.1.1996 they were to be placed in the pay scale of Rs.14300-18150 as they have completed 14 years of total regular service in the entry scale whereas the case of the respondents is that for fixing the salary, those persons, whose salary was fixed at Rs.3700-5300, were first to be fixed in the initial revised scale of Rs.12000-15500 and thereafter by granting the benefit of Assured Career Progression Scheme, their pay is to be fixed in the pay scale of Rs.14300-18150. It is stated that*

wrongly the basic pay of the petitioners was fixed at Rs.17,700/- on 1.1.1998 instead of Rs.17546/-. The rationale adopted by the Department to fix the salary of the petitioners is just and is according to functional chart. A uniform procedure has been adopted qua all the employees. The interpretation, as projected by the petitioners that their pay should be fixed according to their understanding cannot be accepted. Petitioners' prayer that they should be placed in the scale of Rs.14300-18150 is liable to be rejected. The reasoning given by the Department that first petitioners are to be placed in the scale of Rs.12000-15500 and thereafter by giving the benefit of assured career progression scheme, their pay is to be fixed in the scale of Rs.14300-18150 is just and proper. Hence, the claim of the petitioners cannot be entertained. The second prayer made in the present petition is that if the Department has wrongly fixed the pay scale of the petitioners initially at Rs.17700/-, and actually the petitioners have also drawn the same, no recovery be made from them in view of the ratio of law rendered in a Full Bench of this Court reported as **Budh Ram and others versus State of Haryana and others, 2009(3) SCT 333**. It is held in Budh Ram's case (supra) that if there is no deception, misrepresentation on the part of the employee, no recovery can be effected from him of the amount paid in excess. There is merit in this contention. It was held by Full Bench as under:-

“10. .... Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the

*Government to direct recovery of the excess amount simply because on a true and correct interpretation of the rules, such a benefit was not due .....”*

*Mr. Kalra states that the recovery of the excess amount has been made from the petitioners. He submits that the same be ordered to be refunded to the petitioners.*

*Hence, the present writ petition is partly accepted. The amount, if recovered, be refunded to the petitioners. However, there will be no order as to costs.”*

The case of the petitioners is squarely covered by the interpretation rendered in Dr. Rameshwar Chander's case (Supra) and accordingly, the instant writ petitions are, hereby, dismissed in the same terms.

Photocopies of this judgment be placed on the files of the connected cases.

**01.02.2019**  
***atulsethi***

**(JITENDRA CHAUHAN)**  
**JUDGE**

|                               |     |    |
|-------------------------------|-----|----|
| Whether speaking / reasoned : | Yes | No |
| Whether Reportable :          | Yes | No |