

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1162-2015 (O&M)
Date of decision : 15.02.2019

Chhinder Singh and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sunny Singla, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioners, *inter alia*, seek quashing of the order dated 19.08.2013 (Annexure P-9), whereby, the petitioners were denied the benefit of arrears in contravention of the judgment passed in CWP-17889-2012 decided on 12.09.2012 (Annexure P-8).

The petitioners earlier preferred CWP-17889-2012 titled as ***Chhinder Singh & others Vs. State of Punjab & others***, decided on 12.09.2012, wherein, it has held as under:-

“The petitioners are either working or retired as Teachers/Masters/Head Masters in the Education Department, State of Punjab. The claim raised in the present petition is for the issuance of a Writ of Mandamus directing the respondent-authorities to permit them to exercise a fresh option in view of the changed circumstances on account of the change in

master scale issued vide notification dated 24.12.1992 (Annexure P-2). Further prayer is to grant to them all the consequential benefits arising upon exercise of such fresh option i.e. Re-fixation of pay, payment of arrears of salary and revised pensionary benefits etc.

Learned counsel for the petitioner contends that the claim of the petitioners is squarely covered in terms of judgement dated 25.2.2010 passed in CWP No. 7464 of 2009 titled as Surinder Kumar and others Vs. State of Punjab & others (Annexure P-5). In case of Surinder Kumar and others (supra) while allowing the writ petition in respect of identically situated employees and granting the right to exercise the option in terms of Finance Department Circular dated 24.12.1992, it had been directed that no resultant arrears of pay would be paid and the petitioners therein would be entitled to only the notional pay fixation.

In the light of the averments made in the petition and on the basis of submissions made by learned counsel for the petitioners, I deem it appropriate to dispose of the present petition with a direction to the respondent-authorities to consider the claim of the petitioners and decide the legal notice dated 13.6.2011 (Annexure P-7) served by the petitioners in the light of the judgement dated 25.2.2010 passed by this Court in CWP No. 7464 of 2009 (Annexure P-5). Needful be done within a period of three months from the date of receipt of a certified copy of this order.

Petition disposed of.”

In compliance thereof, impugned order Annexure P-9 has been passed, relevant extract whereof, reads thus:-

“In compliance for the above said order of Hon'ble Punjab and Haryana High Court Chandigarh, I undersigned have gone through the above cited judgment, legal notice dated 15.02.2013, government letter dated 24.12.1992, letter dated 07.02.2011 issued by government and various judgments passed by Hon'ble High Court in similar nature cases. The State government has revised the pay scales of government employees w.e.f. 01.01.1986 vide Notification dated 13.09.1988. The government gave option to the employees under said rules to give option for the revised pay scale rules from the date as beneficial to them. The petitioners have already exercised option for the said revised pay scale rules 1988 and pay has also been re-fixed accordingly. However, in view of the changed circumstances with change in pay scale of Master Cadre w.e.f. 01.01.1993, the petitioners want to exercise fresh option. The petitioners are retired or working employees of the Education Department. The government has issued instructions dated 07.02.2011, to implement order passed by Hon'ble Punjab and Haryana High Court in Civil Petition No.9765 of 2010 titled as Harsurinder Kaur v/s State of Punjab for change of option and also generalized said decision for change of option wherein, the government has allowed the employees to give fresh option with notional pay fixation and without any arrears for it. The government has also further clarified and generalized instructions through letter dated 25.10.2012 for change of option wherein the employees were also allowed to change option on notional basis without any arrears. Since the petitioners have already re-exercised option for the revised pay scale Rules 1988 as per instructions issued vide letter dated 07.02.2011

and vide letter dated 25.10.2012. The department has accepted their option and their pay have been fixed accordingly and their pensionary benefits have also been revised by the Accountant General Punjab accordingly. However, they are not entitled for any arrears of pay and pension. Since the government has issued and generalized instructions for change of option vide letter dated 07.02.2011 and vide instructions dated 25.10.2012 wherein, the government allowed change of option with notional pay fixation and without any arrears for it. Since, the petitioners have re-exercised their option for pay scale effective w.e.f. 01.01.1986 under above instructions and also being applicable on the petitioners, thereby they are not entitled for any arrears of pay and pension. However, they are only entitled for enhancement of gratuity and leave encashment.

Keeping in view the above submissions, I Dr. Kamal Kumar Garg, Director, Public Instructions (SE), Punjab, am of the view that since petitioners have already exercised fresh option and accepted by deparment on notional basis, therefore, they are not entitled for any arrears of pay and pension except enhancement of gratuity and leave encashment and claim of petitioners is disposed of accordingly.”

It is contended that while considering the claim of the petitioners vide impugned order dated 19.08.2013 (Annexure P-9), the respondents failed to take into consideration the true import of the decision rendered by this Court in CWP-7464-2009, titled as ***Surinder Kumar and others vs. State of Punjab and others***, decided on 25.02.2010.

On the other hand, learned State counsel submits that

Department of Finance issued circular dated 24.01.2011 (Annexure R-1) whereby, approval was accorded to change the option filed by the petitioners/similarly situated employees subject to the condition that their pay would be fixed notionally and they would not be entitled to any arrears of pay/pension. Thereafter, on the same lines, another circular dated 07.02.2011 (Annexure R-2) was issued by respondent No.1, whereby, directions were issued to the answering respondent for implementation of the judgment and for allowing the concerned employee to exercise option afresh on notional basis. Finally, vide circular dated 25.10.2012 (Annexure R-3), while generalizing the issue in respect of employees of other departments also, approval was accorded subject to the conditions that this benefit would be given on notional basis from the date whenever they submit their application for change of option and no arrears would be admissible prior thereto. Therefore, the claim of the petitioners to pay them arrears of pay/pension w.e.f. 01.03.2010, is not maintainable.

Heard.

The grouse of the petitioners is that while declining the claim of the petitioners, the respondents have misread the import of judgment passed by this Court in Surinder Kumar's case (supra), wherein, it has been held as under:-

“(10) Consequently, the writ petitions are allowed in part to the extent that while the respondents are directed to permit the petitioners to re-exercise their options in terms of the Finance Department's Circular dated 24.12.1992 (Annexure P-1) within a period of one month from the date of receipt of a certified copy of this

order, no resultant arrears of pay shall be paid to them and they shall be entitled to only the notional pay fixation w.e.f. 01.01.1986, 01.01.1996 and 01.01.2006, as the cas may be. The petitioners, however, shall be paid emoluments/pension as per the re-fixed pay w.e.f. 01.03.2010 onwards.”

It is to be noticed that the direction to pay emoluments/pension as per refixed pay w.e.f. 01.03.2010 was given to the respondents in respect of petitioners in Surinder Kumar's case (supra) only. The petitioners were not party therein. The respondents vide circular dated 25.10.2012 (Annexure R-3), while generalizing the issue in respect of employees of other departments also, accorded approval that this benefit would be given on notional basis from the date whenever they submit their application for change of option and no arrears would be admissible prior thereto. This, in the considered opinion of this Court, is the right course. Therefore, the claim of the petitioners to pay them arrears of pay/pension w.e.f. 01.03.2010, is not maintainable.

In view of the above, this Court does not find any merit in the instant writ petition and the same is, hereby, dismissed.

15.02.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No