

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

(233)

CWP-10177-2017

Date of Decision: November 21, 2019

Gurbax Singh and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Chatrath, Advocate, and
Ms. Anureet Budwal, Advocate, for the petitioners.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the prayer, which has been made by the petitioners, is that their pensionary benefits should be fixed as per the last pay drawn by them while working on the higher post on officiating/current duty charge. To support their prayer, the petitioners are relying upon a judgment passed by a Co-ordinate Bench of this Court in CWP No.17358 of 2015 titled as 'Jagjit Singh and others Vs. State of Punjab and others, decided on 09.09.2016.

The grievance which has been raised by the petitioners is that they were the senior most employees, who were working in the department and they were given officiating charge of the higher posts as no regular promotions were being made due to the pending dispute in the seniority. It has been alleged that the posts in the higher cadre were lying vacant against which, the petitioners were asked to discharge the duties of Head Master/Principal/BPEO as well as the drawing and disbursing officers. Learned counsel for the petitioner argues that petitioners are not only

entitled for the salary of the post of which they were discharging the duties,

but as they retired while discharging the duties of higher post, the last pay drawn should be taken into account for fixing their pensionary benefits.

Counsel for the respondents has controverted the prayer made by the petitioners on the ground that the petitioners were only asked to perform the duties on the higher post on officiating/current duty charge for which they have already been paid the scales and emoluments attached to the said higher posts, but for computing the pensionary benefits, only the substantive rank of an employee can be taken into account and as the petitioners were never promoted substantively to the said higher posts, hence, they cannot claim the pensionary benefits of pay-scales and emoluments attached to the said higher posts.

Learned counsel for the respondents further submits that in respect of the judgment passed by this Court in CWP No.17358 of 2015 titled as 'Jagjit Singh and others Vs. State of Punjab and others', State had preferred a LPA No.37 of 2017 and the Hon'ble Division Bench was pleased to pass an order on 02.02.2017 for keeping the order of learned Single Bench in abeyance. The said order has been attached as Annexure R-1 with the reply and therefore, the pensionary benefits on the basis of last drawn wages on the higher post on officiating basis cannot be taken into consideration for the grant of pension and other benefits.

Counsel for the petitioners has brought to the notice of this Court a decision dated 25.09.2018 rendered by the Division Bench of this Court while deciding LPA No.37 of 2017. By the said order dated 25.09.2018, the LPA filed by the State of Punjab has been disposed of by giving the following directions:-

"We have heard learned counsel for the parties at a considerable length and are of the view that the appellants

cannot take undue advantage of their own inaction or wrongs. Seniority is a condition of service. It has to be determined at the earliest in accordance with the Rules governing conditions of service. If any delay occurs because of multiple Court proceedings, the authorities ought to have evolved some mechanism to grant regular promotions to the senior most Lecturer/ Master/ Mistresses, for promotion is also a legitimate expectation in service career. The controversy nevertheless does not require further deliberations, for necessary directions to consider and promote the Lecturer/ Master/ Mistresses on higher posts as per their seniority and other eligibility conditions have already been issued by this Court in the above-cited order dated 23.05.2017. Let those directions be complied with within the time-frame given in the cited order. The respondents in the lead case or the writ petitioners in the connected petitions shall also be considered for regular promotion as per their seniority and eligibility conditions from the due date and in accordance with the Rules, which were in vogue at the time of occurrence of vacancies. While the promotions shall be granted retrospectively but on notional basis only and they shall be entitled to fixation of their pension and other retiral benefits as per the pay deemed to have been drawn by them on the higher promotional posts. They shall also be entitled to arrears of pension and other retiral benefits alongwith interest @7% per annum. The needful shall be done within a period of six months. However, if the respondents in the lead case and the writ petitioners in the connected cases have not been granted emoluments for the period they officiated/worked on the higher posts, let such claim be also considered within a period of four months.”

Learned counsel for the respondents has informed this Court that against the order passed by the Division Bench in LPA No.37 of 2017, a review application i.e. RA-LP No.10 of 2019 has been filed. This Court had adjourned the writ petition to await the decision of the review

application.

Learned counsel for the parties are agreed that the said review application has been dismissed by the Division Bench on 13.09.2019 therefore, as of now, there is no impediment for the grant of the benefit to the petitioners in terms of the order passed by the Division Bench in LPA No.37 of 2017.

Though, learned counsel for the respondents states that a decision has been taken to file an SLP before the Hon'ble Supreme Court of India. Once, as of now, there is no impediment in allowing the present writ petition in terms of the order passed by Division Bench in LPA No.37 of 2017.

Further, similar claim, as being raised by the petitioners in the present writ petition raised in CWP No.10171 of 2017 and CWP No.23872 of 2017, has already been allowed in terms of LPA No.37 of 2017.

The present writ petition is disposed of in terms of the direction given by this Court in LPA No.37 of 2017 and other connected cases, decided on 25.09.2018.

(HARSIMRAN SINGH SETHI)
JUDGE

November 21, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes