Sr. No. 234

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.14568 of 2016 (O&M)
Date of Decision: 14.02.2019

Navdeep Sood and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. D.V.Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate,
for the petitioners.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. Sahil Garg, Advocate for
Mr. Sumit Jain, Advocate,
for respondents No.4 and 5.

ARUN MONGA, J.(ORAL)

Present writ petition has been filed for issuance of a writ in the nature of certiorari to quash the order dated 07.06.2016 (Annexure P-13) as also order dated 11.07.2016 (Annexure P-17) passed by respondent No.5-Markfed, whereby pay of some of the petitioners has been reduced and qua others it is likely to be reduced, on the basis of an audit objection.

2. Succinctly, the case of the petitioners is that petitioners were initially appointed as 'Assistant Accountants' in the year, 1993 and by virtue of having completed 8 years in service became entitled to the Assured Career Progression Scheme (ACP).

Accordingly, their basic pay was to be refixed.

3. In view thereof, respondent No.5-Markfed granted them the benefit of ACP w.e.f 22.04.2001. It is relevant to mention here that Government of Punjab vide Instructions dated 25.09.1998 notified the ACP Scheme for its employees and the same was adopted by Markfed vide Resolution No.52 dated 19.01.2001 as approved by the Registrar, Cooperative Societies vide its order/letter dated 25.01.2001.

4. However, the Audit Officer of the Markfed, deputed by the Chief Auditor of Cooperative Societies, Government of Punjab, raised an objection on the pay fixation of the petitioners. He observed that they were not eligible for the grant of ACP as they had got the benefit of more than one increment. The Audit Officer, further stated that in view of Instructions of 1988, in case an employee gets the benefit of more than one increment in the basic pay, then he cannot be given the benefit for increase in the pay from the same date.

5. I have gone through the respective pleadings filed by the parties herein as also have heard the learned Senior counsel for the petitioners and learned State counsel.

6. Learned State counsel, at the very outset, objects to the maintainability of the present writ petition on the ground that Markfed neither being a State nor instrumentality of the State, the petitioners cannot invoke the writ jurisdiction against Markfed. He relies on the judgment of Single Bench of this Court in CWP No.10054 of 2013 titled as ***Baldev Krishan Gupta Vs. State of***

Punjab and others as also the judgment rendered by the Division Bench of this Court in LPA No.2252 of 2011 tilted as ***Som Nath and others Vs. The Deputy Registrar Cooperative Societies, Hoshiarpur and others.***

7. Per contra, learned Senior counsel for the petitioners states that said judgments are not applicable to the present case. He submits that in view of the Full Bench judgment titled as ***Chiman Lal Gupta (dead) through Legal Representatives Vs. The Punjab State Cooperative Supplies and Marketing Federation Limited, Chandigarh and others,*** rendered by this Court, writ petition is maintainable by the employees of the Markfed to seek mitigation of their grievance. The relevant extract of the Full Bench judgment is reproduced hereinbelow:-

> *"Held, that the Markfed is an agency and instrumentality of State and falls within the ambit of expression "other authorities" appearing in Article 12 of the Constitution of India.*

8. I am in agreement with the learned Senior counsel that the Full Bench Judgment leaves no manner of doubt that Markfed is amenable to the writ jurisdiction.

9. As far as merits are concerned, the State of Punjab has not said much, other than saying that the averments of the petition need no reply, to most of the corresponding paragraphs of the writ petition. The only stand taken on merits is that as per Instructions issued by the Government of Punjab dated 01.12.1988 (Annexure P-18), the petitioners are not entitled to the grant of

ACP. The same was, therefore, rightly withdrawn by the Markfed vide impugned orders dated 17.06.2016 (Annexure P-15) and 11.07.2016 (Annexure P-16). For ready reference, relevant of Instructions dated 01.12.1988, *ibid* as extracted in written statement are reproduced hereinbelow:-

> *"An employee will be eligible for proficiency increments only if he has not gained any enhancement in his basic pay,* ***except by way of annual increments and fixation of pay as a result of revision of pay scales from time to time.*** *Thus in case pay in the senior scales/selection grade is fixed at the minimum whereby one gets the benefit of one or more increment(s) the service rendered against the post prior to the date of such fixation of pay will not be counted for the purposes of grant of proficiency step up (s). However, the period of eight or eighteen years service will further be reckoned for the purpose of grant of proficiency step-up (s) from the start of placement in the senior scale/selection grade."*

10. A perusal of the above shows that the same is not applicable to the petitioners. It clearly envisages that if the pay scales are revised, then there is no effect on the fixation of the pay of the concerned official/employee.

11. In the present case, the pay scale of the 'Accounts Cadre' to which the petitioners belong, was revised from 25.01.2001. The pay of the petitioners was accordingly revised. The benefit of ACP was, therefore, rightly granted to the petitioners, vide order dated 29.03.2006 (Annexure P-18), in consonance with Instructions dated 01.12.1988. Interpretation of

said instructions resorted by the Audit Officer was misplaced and the consequent audit objection cannot held tenable in law.

12. In view of my above discussion, it is held that the petitioners were originally rightly granted the benefit of ACP vide order dated 29.03.2006 (Annexure P-8). The subsequent orders dated 17.06.2016 (Annexure P-15) and 11.07.2016 (Annexure P-16) passed pursuant to the objection of the Audit Officer for reduction of their pay do not stand judicial scrutiny and are not legally sustainable.

13. Accordingly, impugned orders dated 07.06.2016 (Annexure P-13) and 11.07.2016 (Annexure P-17) are set aside.

14. Petition is allowed in the aforesaid terms.

(ARUN MONGA)
14.02.2019 **JUDGE**
vandana

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No