

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

(206)

CWP-26125-2015

Date of Decision: August 28, 2019

Gurcharan Kaur and another

.. Petitioners

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagjot Singh Lalli, Advocate, for the petitioners.

Ms. Sunint Kaur, AAG, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is being raised by the petitioners is that though the petitioners have retired as a Superintendent Grade-I, on attaining the age of superannuation, on 31.07.2008 and 31.10.2008 respectively, but their pension has not being fixed keeping in view the pay of Superintendent Grade-I on which post they were working before their retirement but their pensionary benefits have been calculated and paid by taking into consideration the post of Superintendent Grade-II while revising pay and pension of the petitioners in view of the revision of the pay scale which came into being in the year 2009 w.e.f. 01.01.2006. The claim of the petitioners is that petitioners' pay and pensionary benefits including the pension be fixed keeping in view the revised pay scale as granted to the post of Superintendent Grade-I on which they were working at the time of superannuation.

The facts as narrated in the writ petition are that petitioner No.1 was appointed as a Clerk on 23.05.1977 and thereafter, promoted as an Assistant in the year 1986. On 29.02.2008, petitioner No.1 was promoted as Superintendent Grade-II and thereafter on 06.06.2008, she was further promoted as a Superintendent Grade-I. While working as Superintendent

Grade-I, petitioner No.1 retired on 31.07.2008. Similarly, petitioner No.2 was appointed as a Clerk on 17.02.1969. He was promoted as an Assistant in January, 1985. Petitioner No.2 was also promoted as Superintendent Grade-II on 29.02.2008 and thereafter as Superintendent Grade-I alongwith petitioner No.1 on 06.06.2008 and ultimately retired, on attaining the age of superannuation on 31.10.2008. Copies of the order of the promotion of the petitioners as Superintendent Grade-I, have been attached collectively as Annexure P-1 with the writ petition.

After the retirement of the petitioners, Punjab Civil Services (Revised Pay Scales) Rules, 2009 (hereinafter referred as '2009 Rules') were notified by the State of Punjab vide notification dated 27.05.2009 and the benefit of revised pay scale was given to the employees w.e.f. 01.01.2006.

In pursuance to the said notification, the petitioners also became entitled for revised pay scale w.e.f. 01.1.2006 and consequent revision of their pensionary benefits. In pursuance to 2009 Rules, the pay of the petitioners was revised initially in the post of Assistant w.e.f. 01.01.2006 onwards till February, 2008 when the petitioners were given the revised pay scale of the post of Superintendent Grade-II. But the petitioners were not granted the revised pay scale of Superintendent Grade-I w.e.f. 06.06.2008 and their pensionary benefits were not revised accordingly on the ground that the promotion of the petitioners to the post of Superintendent Grade-I as effected on 06.06.2008 was contrary to the rules.

In the present writ petition, the claim of the petitioners is that the petitioners be granted the revised pay scale of Superintendent Grade-I w.e.f. 06.06.2008 till their date of respective retirement and also fixing of

their pensionary benefits by taking into consideration the pay which they would have got on revision of the post of Superintendent Grade-I.

Upon notice of motion, the reply has been filed by the respondents. In the reply, the respondents have taken the same objection that the promotion of the petitioners to the post of Superintendent Grade-I as effected w.e.f. 06.06.2008 was contrary to the law as the petitioners were on probation for a period of one year on the post of Superintendent Grade-II and therefore, they could not have been granted the benefit of promotion to the post of Superintendent Grade-I, hence benefits of revised pay scale of the post of Superintendent Grade-I and the consequent revision of their pensionary benefits by taking into consideration the revised pay scale of the post of Superintendent Grade-I, cannot be granted.

The contentions raised on behalf of the respondents have been controverted by the petitioners by stating that the promotion of the petitioners to the post of Superintendent Grade-I was not bad in law and reliance has been placed in this regard on Punjab Financial Commissioner's Office (State Service Class II) Rules, 1967 (hereinafter referred as 1967 Rules). According to Rule 8 of the 1967 Rules, for promotion to the post of Superintendent, the Deputy Superintendent, Assistant Incharge and the Assistants who are members of the Punjab Financial Commissioner's Office having minimum of one year experience as Deputy Superintendent or a total 10 years Assistants are eligible. Learned counsel for the petitioners states that as the petitioners had been promoted as Assistant in the year 1985/1986, petitioners fulfilled the required criteria for promotion as Superintendent Grade-I and therefore, the objection which is being taken by the respondents that promotion of the petitioners as Superintendent Grade-I

is bad and is contrary to the law.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question of law as being posed in the present writ petition is as to whether, once the petitioners have been promoted as Superintendent Grade-I on 06.06.2008, which promotion has not been withdrawn so far by the respondents, whether the petitioners will be entitled for the revised pay scale of Superintendent Grade-I as revised by 2009 Rules w.e.f. 06.06.2008 onwards and the consequent revision of their pensionary benefits.

Once the promotion which have been granted to the petitioners by the respondents themselves to the post of Superintendent Grade-I on 06.06.2008, continues to be in operation even as of today, the objection as being raised by the respondents in denying the benefit of the revised pay scale of Superintendent Grade-I to the petitioners as revised by 2009 Rules w.e.f. 06.06.2008 is not at all sustainable. Keeping in view the fact that the order of promotion of the petitioners as Superintendent Grade-I dated 06.06.2008 was in existence upto the date of retirement and the same is in operation even till today, as the same has never been withdrawn on any ground by the respondents and petitioners discharged the duties of the post of Superintendent Grade-I till their retirement, the objection raised by the respondents in denying the benefit of revised pay scale to the petitioners on the post of Superintendent Grade-I cannot be sustained.

The objection, which has been raised by the respondents, that the petitioners were promoted as Superintendent Grade-II in February, 2008 and within a period of four months, they were promoted as Superintendent Grade-I and as, petitioners are deemed to be on promotion for a period of

one year on the post of Superintendent Grade-II and hence, could not have been granted the benefit of promotion of Superintendent Grade-I as on 06.06.2008, is of no avail to the respondents.

This question need not to be gone into by this Court for the reason that promotion of the petitioners to the post of Superintendent Grade-I has never been withdrawn by the respondents on any ground much less the ground which has been raised by the respondents in the written statement. If the respondents were of the opinion that the promotion of the petitioners as given to them to the post of Superintendent Grade-I on 06.06.2008 was bad in law, what prevented the respondents from passing appropriate orders in the last eleven years. Once, no order has been passed withdrawing the said promotion, respondents are estopped for terming the promotion to the petitioners to the post of Superintendent Grade-I as bad. Whether rightly or wrongly, the petitioners retired as a Superintendent Grade-I and the order promoting them continues to be in operation even upto now, therefore, the objection which is being raised by the respondents that as the promotion of the petitioners to the post of Superintendent Grade-I effected on 06.06.2008 was bad, and hence the petitioners are not entitled for the revised pay scale of the said post as revised by 2009 Rules, is liable to be rejected and is thus rejected.

Learned counsel for the respondents further argues that the petition is liable to be dismissed on the ground of delay and latches.

Counsel for the respondents states that the petitioners are claiming the benefit under 2009 Rules but the writ petition was filed in the year 2015.

Counsel for the petitioners rebut the said arguments by stating that immediately upon the revision of the pay scale by 2009 Rules, petitioners started making representations for the grant of benefit by revising their pay w.e.f. 01.01.2006 on the corresponding post, on which they were working for the period 01.01.2006 till their respective retirement date. The said representations have been attached by the respondents as Annexures P-6, P-8 and P-9 submitted in the year 2010. The rejection of the prayer of the petitioner for the grant of the benefit of revised pay of the post of Superintendent Grade-I and consequent revision of pensionary benefits and arrears, by the respondents was only on 23.10.2015 (Annexure P-10) and therefore, the writ petition was filed immediately by the petitioners challenging the said order.

Clarification given on behalf of the petitioners by the learned counsel for the petitioners regarding objection of the respondents about delay and laches is very much correct. The representation was filed by the petitioners in the year 2010 and the rejection of the claim of the petitioners by the respondents was only in the year 2015 and immediately thereof, the present writ petition was filed and therefore, it cannot be said under any circumstances that the present writ petition has been filed after any delay. Furthermore, the present writ petition is for the revision of the pay scale, it is incumbent upon the respondents themselves to revise the pay scale of the employees who are entitled for the relief under 2009 Rules. The respondents shall not wait for the eligible employees to approach this Court to claim the benefit. Once, the obligation for implementation of 2009 Rules is upon the respondents, no delay can be attributed to the petitioners, in the present case.

The writ petition is accordingly allowed. Impugned order dated 23.10.2015 (Annexure P-10) is set aside and a direction is issued to the respondents to grant the petitioners the benefit of revised pay scale as per the revised 2009 Rules, of the post of Superintendent Grade-I w.e.f. 06.06.2008 till their retirement and the retiral benefit be re-computed on the basis of revised pay scale on the post of Superintendent Grade-I with all consequential benefits. Let the arrears for which petitioners became entitled under this order, be calculated within a period of two months from the receipt of certified copy of this order and the arrears so calculated will be released to the petitioners within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

August 28, 2019
harsha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No