

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

241

**CWP No. 3946 of 2014 (O&M)
Date of Decision : 06.12.2019**

Ram Shah and others

... Petitioners

Versus

State of Punjab and others

...Respondents

(2)

CWP No. 10146 of 2013 (O&M)

Pargat Singh

... Petitioners

Versus

State of Punjab and others

...Respondents

(3)

CWP No. 10346 of 2013 (O&M)

Harminder Lal

... Petitioner

Versus

State of Punjab and others

...Respondents

(4)

CWP No. 10347 of 2013 (O&M)

Dayal Singh

... Petitioner

Versus

State of Punjab and others

...Respondents

(5) **CWP No. 10477 of 2013 (O&M)**

Gian Chand

... Petitioner

Versus

State of Punjab and others

...Respondents

(6) **CWP No. 10491 of 2013 (O&M)**

Surinder Nath

... Petitioner

Versus

State of Punjab and others

...Respondents

(7) **CWP No. 10502 of 2013 (O&M)**

Saminder Singh

... Petitioner

Versus

State of Punjab and others

...Respondents

(8) **CWP No. 10574 of 2013 (O&M)**

Joginder Pal Singh

... Petitioner

Versus

State of Punjab and others

...Respondents

(9)

CWP No. 10637 of 2013 (O&M)

Machhinder Pal

... Petitioner

Versus

State of Punjab and others

...Respondents

(10)

CWP No. 10751 of 2013 (O&M)

Balbir Singh

... Petitioner

Versus

State of Punjab and others

...Respondents

(11)

CWP No. 12174 of 2013 (O&M)

Baljinder Kumar and others

... Petitioners

Versus

State of Punjab and others

...Respondents

(12)

CWP No. 12666 of 2013 (O&M)

Sham Charan and others
... Petitioners

Versus

State of Punjab and others
...Respondents

(13) **CWP No. 16228 of 2013 (O&M)**

Sewa Singh and others
... Petitioners

Versus

State of Punjab and others
...Respondents

(14) **CWP No. 13670 of 2013 (O&M)**

Kuldeep Singh and others
... Petitioners

Versus

State of Punjab and others
...Respondents

(15) **CWP No. 20980 of 2013 (O&M)**

Ram Singh
... Petitioner

Versus

State of Punjab and others

...Respondents

(16) **CWP No. 22140 of 2013 (O&M)**

Mool Raj
... Petitioner

Versus

State of Punjab and others
...Respondents

(17) **CWP No. 25534 of 2012 (O&M)**

Gurnam Singh and others
... Petitioners

Versus

State of Punjab and others
...Respondents

(18) **CWP No. 5593 of 2013 (O&M)**

Kulwaran Singh and others
... Petitioners

Versus

State of Punjab and others
...Respondents

(19) **CWP No. 9588 of 2013 (O&M)**

Gurbachan Singh and others
... Petitioners

Versus

State of Punjab and others

...Respondents

(20) **CWP No. 9583 of 2013 (O&M)**

Mehal Singh and others

... Petitioners

Versus

State of Punjab and others

...Respondents

(21) **CWP No. 2282 of 2016 (O&M)**

Bachan Singh

... Petitioner

Versus

State of Punjab and another

...Respondents

(22) **CWP No. 9138 of 2014 (O&M)**

Surinder Singh and others

... Petitioners

Versus

State of Punjab and others

...Respondents

(23) **CWP No. 4523 of 2013 (O&M)**

Makhan Singh and others

... Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. H.K.Brinda, Advocate for the petitioner(s)
in CWP No. 3946 and 9138 of 2014.

None for the petitioner(s) in CWP-25534-2012;
CWP No. 4523, 5593, 9588 and 9583 of 2013.

Mr. I.D.Singla, Advocate for the petitioner(s)
in the remaining cases.

Mr. Navdeep Chhabra, DAG, Punjab.

SUVIR SEHGAL, J.

This order will dispose of bunch of 23 cases bearing CWP Nos. 3946 of 2014, 10146, 10346, 10347, 10477, 10491, 10502, 10574, 10637, 10751, 12174, 12666, 16228, 13670, 20980, 22140 of 2013 25534 of 2012, 5593, 9588, 9583 of 2013, 2282 of 2016, 9138 of 2014 and 4523 of 2013.

Facts are being taken from CWP No.3946 of 2014. The petitioners have prayed for issuance of a writ in the nature of certiorari quashing impugned orders (Annexures P-6 to P-55) and for directing the respondents to grant ACP scale of Rs.3120-6200 as mentioned in para 3 (i) of Notification dated 25.09.1998 (Annexure P-2) along with the consequential benefits and for a further direction to the respondents to refund the amount, if any, which stood recovered from the petitioners on refixation of their pay in the scale of Rs.3120-5160.

The petitioners were selected and joined as Constables in the Department of Home, Punjab and were posted in District Roopnagar. Some of them have retired from service and the others are still serving.

Vide notification dated 25.09.1998 (Annexure P-2) on the basis of

recommendations of the 4th Pay Commission, the Punjab Government implemented the Assured Career Progression (ACP) Scheme whereunder every employee, who did not get any promotion, was entitled to get benefit of 1st, 2nd and 3rd ACP on rendering 8, 16, 24, 32 years of service. A circular was issued by the Government on 10.01.2000 (Annexure P-3) clarifying the notification. Vide letter dated 24.08.2000 (Annexure P-4), Department of Home, issued instructions that Constables will be entitled to the pay scale of Rs.3120-6200 under the ACP Scheme. Later, para 4(i) of the notification (Annexure P-2) was substituted by the Government vide notification dated 07.12.2001 (Annexure P-5) wherein it was provided that placement in the higher scale shall be granted only to those employees whose over all service record is adjudged as 'good'. The petitioners claimed that despite the fact that their record was good and they had initially been inducted in the ACP scale of Rs.3120-6200, they have been granted the pay scale of Rs.3120-5160 by reducing their pay scale vide impugned orders Annexures P-6 to P-55 and recovery of excess payment is being effected from them.

At the time of preliminary hearing, this Court vide order dated 10.03.2014 dismissed the writ petition qua petitioners No. 1 to 6, 9, 10, 12, 13, 15 to 19, 22 to 27, 29, 30, 33 to 35, 37, 39 to 41, 43, 46 and 48 to 50 and issued notice of motion qua petitioners No.7, 8, 11, 14, 20, 21, 28, 31, 32, 36, 38, 42, 44, 45 and 47. This order was challenged by the petitioners by filing LPA No.645 of 2014, ***Ram Shah and others Versus State of Punjab and others*** which was decided on 11.05.2016, whereby while allowing the appeal, the Division Bench passed the following order:

"This letters patent appeal is directed

against the judgment dated 10.03.2014 whereby the learned Single Judge segregated the writ-petitioners in three groups, namely, (i) those who are still in service; (ii) those who approached the Court after inordinate delay and laches, and (iii) those who approached the Court within a reasonable time. The writ petitions qua those who approached the Court after inordinate delay and laches, have been dismissed whereas the respondents have been called upon qua the others. The petitioners whose writ petitions have been dismissed for inordinate delay and laches, are in appeal before us.

The joint writ petition was filed by in-service/retired Constables of Punjab Police seeking a direction for the grant of ACP scale as per the Government Circular dated 25.09.1998. They further relied upon a decision of this Court in LPA No.2003 of 2012 (State of Punjab and others versus Constable Amar Nath No.105/HPR (retired)), dated 05.02.2013, whereby identical relief granted to the Constables by learned Single Judge was upheld.

Learned Single Judge has referred to the case-law and well settled principles to hold that though the writ proceedings are not regulated by the law of limitation but those who wish to invoke the equitable and discretionary jurisdiction must approach the Court within a reasonable period.

No exception can be taken to the view formed by the learned Single Judge and in a given case the delay and laches can have fatal effect on the fate of a litigant even if he is entitled to the relief on merits. However, the Constitutional Courts possess variety of tools to re-modulate the nature of relief and balance the equities so that a

person who went into slumber is not unduly enriched but at the same time, his rights within the wider ambit of Articles 14 & 16 of the Constitution are also protected. What is the actual effect of the order passed by the learned Single Judge? The answer is that those who are juniors and are either still in service or have recently retired, will get the higher retiral benefits and those who are older in age and were seniors would be deprived of such benefits. In such a situation, we are of the considered view that the retirees who approached the Court at belatedly can be suitably penalized by depriving them payment of arrears etc.

It would not only eliminate the element of discrimination but will further ensure that no undue advantage is given to those who slept over their rights.

We, thus allow the appeal; modify the order passed by the learned Single Judge and issue notice of motion in the writ-petition qua the appellants as well. It is made clear that if the claim of the appellants or those who approached the Court after unexplained and unreasonable delay, is accepted by the Court, such relief shall be granted prospectively only, namely, from the date they have approached the Court though they might be entitled to notional fixation of pay and other retiral benefits without payment of arrears.

Ordered accordingly.

Dasti."

In response to the writ petition, separate replies have been filed by respondent No.1 and 2 and by respondent No.3. Respondent No.3 in a short affidavit has submitted that no cause of action has arisen against it and the action in the matter is to be taken at the hands of respondents

No.1 and 2. In a separate affidavit filed by respondents No.1 and 2, they have submitted that the dates of birth, date of appointment and retirement of some of the petitioners have been wrongly mentioned in Annexure P-1 and the correct particulars have been given in para 2 of the reply on merits. They further submitted that the pay scale has been correctly fixed and that no recovery has been effected from the petitioners.

Counsels for the parties have been heard and record has been perused with their able assistance.

The matter in issue is no longer *res-integra*. The issue came up for consideration in CWP No. 8573 of 2008, ***Amar Nath Versus State of Punjab and others***, decided on 28.05.2009. After considering the rival stand of the parties, this Court allowed the writ petition and held that petitioner was entitled to the benefit of ACP. In LPA No.2003 of 2012 preferred by the State of Punjab, the Division bench vide judgment dated 05.02.2013 upheld the directions issued by the writ Court.

The same issue again came up for adjudication before the co-ordinate Bench of this Court in CWP No.23667 of 2017, ***Sukhjeet Singh and others versus State of Punjab and another***, decided on 30.01.2019. The judgment dated 30.01.2019 was challenged by the petitioners in LPA No.1383 of 2019. After hearing the petitioner, the LPA was dismissed as not pressed vide order dated 09.09.2019.

After noticing the judgment in ***Amar Nath's*** case (supra) as also the judgment of a Division Bench in LPA No.531 of 2016, ***Bachan Singh versus State of Punjab and another***, decided on 04.08.2016, the writ Court in Sukhjeet Singh's case (supra) passed the following direction:-

*"The present writ is also allowed in the same terms as CWP No.8573 of 2008 decided on 28.05.2009 (**Amar Nath Vs. State of Punjab and others**). However, the petitioners will not be entitled for the arrears and their pay and pensionary benefits will be fixed notionally only but they will be granted the actual benefits only from the date when they filed the present writ petition i.e. from 10.10.2017.*

The writ petition stands allowed in the above terms."

In view of the above decision, the instant writ petitions are disposed of in terms of the direction passed in CWP No. 23667 of 2017, **Sukhjeet Singh and others Versus State of Punjab and another**, decided on 30.01.2019. As directed by the Division Bench in **Ram Shah's** case (Supra) and in **Sukhjeet Singh's** case (supra), the petitioners will not be entitled to the payment of arrears and their pay and pensionary benefits will be fixed notionally and they will be granted actual benefit from the date, they have filed the present writ petition.

Disposed of accordingly.

06.12.2019

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No