

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23667 of 2017

DATE OF DECISION:30.01.2019

Sukhjeet Singh and others

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. I.D. Singla, Advocate for the petitioners.

Mr. Mehardeep Singh, Additional Advocate General,
Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order by which the pay of the petitioners have been refixed vide order dated 20.06.2017 (Annexure P-3 Colly). By the said order, the pay of the petitioners have been refixed in the pay scale of ₹3120-5160 w.e.f. 01.01.1996 and the excess amount of pay has been treated as a personal pay to be adjusted in the subsequent increments.

As per the facts enumerated in the writ petition, the petitioners joined as Constable with the State of Punjab. The petitioners did not get any promotion during the service career and, therefore, they were designated as Head Constable (ORP) in their

own rank and pay. The State of Punjab framed Scheme for Assured Career Progression Scheme for those employees, who have to continuously work in the same rank for number of years and could not get promotion. Under the said scheme, which became available w.e.f. 01.01.1996, the benefit of higher pay scale was to be granted. As per the circular issued by the Director General of Police dated 25.09.1988, the Constable was entitled for higher pay scale of ₹3120-6200 on completion of eight years service. It has been averred in the writ petition, rather than granting the petitioners the pay scale of ₹3120-6200, the petitioners were granted the pay scale of ₹3120-5160 and the excess amount of basic pay was treated as personal pay to be adjusted in the future increments. This action was taken in respect of the similarly situated Constables as well, who were granted the pay scale of ₹3120-5160. A similarly situated person as the petitioner herein, namely Amar Nath, filed a writ petition being CWP No.8573 of 2008 against the order of the respondents in treating the pay above ₹5160 as a personal pay to be adjusted in the future increments. The said writ petition was allowed by the coordinate bench on 28.05.2009. The relevant para of the said order is as under:

“In the reply, filed by the State, it is stated that the pay of the petitioner has been refixed under the instructions of the letter of the Accountant General, Punjab. The Accountant General, Punjab has also filed a separate reply and it is specifically stated that the office of the Accountant General, Punjab never suggested the Administrative Department to reduce or re-fix the pay of the petitioner. On the government instructions referred to above, it is evident that the petitioner was given the benefit of ACP

without any misrepresentation or fraud. No valid or sustainable ground has been shown in the impugned order. Impugned order is thus liable to be set-aside. I ordered accordingly.

As a consequence of the above, this petition is allowed. It is held that the petitioner is entitled to benefit of ACP. Hence, the order for recovery is also quashed. Since, the petitioner has retired from service, all retiral benefits payable to the petitioner shall be refixed and be released in the light of this judgment within four months from the date of receipt of certified copy of this judgment.”

The State of Punjab filed LPAs in the said decision being LPA No. 2003 of 2012. Those LPAs were decided by the Division Bench on 05.02.2013 after considering the matter. The relevant portion of the order by which appeal filed by the State of Punjab was dismissed, is as under:-

“In order to justify the correctness of the aforesaid order, Mr. Sidhu, counsel for the State also referred to the provisions of the ACP scheme. Para 3(iv) of which covers the case of Amarnath, provides that in those cases where an employee continues to serve in the same posts even after 32 years of service, shall be paid in the next higher pay scale in the hierarchy of pay scale as indicated in column 3 of the Ist Schedule annexed to Rule 1998 and his pay shall be fixed as mentioned in sub para (ii) of para 3. It further stipulates that pay of an employee who was in service before 1.1.1996 shall be first fixed in the revised pay scales admissible to him under Rules 1998 and then regulated in the manner provided thereafter. On the basis of this, argument was that the pay was to be first fixed and then regulated under Rules 1998 and that was exactly done in the case of Amarnath and other writ petitioners and on that basis it is argued that pay was rightly fixed.

This argument appears to be attractive in the first blush, however, it ignores the fundamental aspect. No doubt in this manner pay is to be fixed in the revised pay scale, however, the moot question is where the benefit on the upgradation as per ACP scheme 1998, is provided in this entire exercise?

As already pointed out above both revision in pay scales, pursuant to the recommendations of the Pay Commission, as well as grant of benefit of upgradation of the pay scales became effective from 1.1.1996. Probably this is the cause of confusion in the mind of the appellants. No doubt as per the revision of pay Rules, the revised pay scales for the incumbent was ₹3120-5160 after old scale ₹950-1800, however, Amarnath had also become entitled to the benefit of upgradation under the ACP scheme at the same time. Para 3 of the Rules provides for this upgradation after 8/16/24/32 years of service, respectively. When he had become entitled to upgradation, as per para 3(i) he was to be granted pay scales which is next higher in the hierarchy of the pay scales given in column 3 of the First Schedule as is clear from this para which reads as under:

“3(i) After a service of 8 years in a post or posts in the same “Cadre” (hereinafter referred as the same post) an employee who is not promoted to the next higher level on account of non-availability of a vacancy at such higher level or non-existence of a promotional level in the cadre shall be granted the pay scales which is next higher in the hierarchy of pay scales given in column No.3 of the “First Schedule”, annexed to rules, 1998. If on 1.1.1996 or the date opted under Rule 6 of Rule, 1998 an employee becomes entitled to a higher pay scale on account of protection under the sale

rules he shall be granted such higher pay scale.”

The next higher pay scale as per the Schedule is ₹3120-6200, therefore, on granting the benefit of upgradation, the pay of Amarnath shall be refixed in pay scale of ₹3120-6200. This was not done, instead his pay was fixed in the pay scale of ₹3120-5160 and because of this reason a sum of ₹354 which was beyond ₹5160/- was treated as personal pay. When pay of Amarnath, as per which fixation, came to ₹5154/- it is to be fixed in the pay scale of ₹3120-6200, which is well within the upper limit of the said pay scale and there was no question of any surplus pay to be treated as personal pay. The learned Single Judge vide impugned order has simply held that these respondents are entitled to upgradation as they had completed 8/16/24/32 years of service in the same cadre. They, therefore, could not be deprived of the benefit of ACP scheme.

We, thus, do not find any merit in any of these appeals which are accordingly dismissed.”

The SLP filed against the said order was also dismissed on 26.11.2014. being Special Leave Petition (Civil) No.8086 of 2014. Counsel for the petitioners states that despite the fact that similarly situated persons were already held entitled for relief but still vide order dated 20.06.2017, the pay of the petitioners have again been fixed in the same manner as was fixed in the case of Amar Nath, though the said action has already been held to be incorrect. Relief has been denied to the petitioners by again fixing the salary of the petitioner in the pay scale of ₹3120-5160 instead of ₹3120-6200. This order is under challenge.

In reply, the respondents-State has admitted that the case

of the petitioner is covered under the judgment of Amar Nath but an

objection has been taken that the present writ petition has been filed after a lapse of 20 years and, therefore, the same is liable to be dismissed on the ground of delay and laches. The relevant portion of the admission of the respondents is as under:

“10. That it is submitted that the present writ petition of the petitioners is covered under the Amar Nath and Joga Singh's case except petitioner No.3, but some others similar writ petitions mentioned above in para nos.6 & 7, were dismissed by this High Court on the ground of delay and laches. The present writ petition has been filed by the petitioners after lapse of 20 years which is very huge limitation period. The Hon'ble Supreme Court of India has held in Civil Appeal No.1941 of 2014 (arising out of SLP(C) No.15530 of 2013-Chennai Metropolitan Water Supply and Sewerage Board and others V. T.T. Murali Babu, decided on 10.2.2014 that:

“13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and others, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. V. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221, which is as follows: “Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief,

which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

I have heard counsel for the parties.

Once it is admitted by the respondents that the case of the petitioners is covered by the judgment in Amar Nath's case, it was incumbent upon the respondents themselves to grant the benefit to the petitioners after the said litigation attained finality. The said litigation attained finality in the year 2014 and as per the settled principles of law in case of the employees, who are similarly situated should have been allowed the benefit rather than asking them to approach this Court. The Division Bench judgment of this Court in **Satbir Singh Vs. State of Haryana, 2002(2) SCT 354** held as under:

“11. State has pervasive obligations to discharge in relation to maintaining its expected standards of employer-employee relationship. As already noticed, one of the important facets of such obligations is to be reasonable and fair in granting service benefit to its employees in accordance with service rules and the principles enunciated on pronouncement of judgments by the Courts. When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is

not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of **Dr.(Mrs.) Santosh Kumari v. Union of India and others, JT 1994(7) SC 565: 1995 (1) SCT 527 (SC)** the Hon'ble Apex Court held as under:-

“The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the Court. A more deserving candidate may not have the means of approach the Court.”

Further, once the similarly situated persons have been granted the benefit and their pay has been refixed as directed by this Court, the present writ petition can not be dismissed on the ground of delay. If the present writ petition is dismissed on the ground of delay then it could be a possibility, where a junior person will be getting higher pay and pensionary benefits than the senior only on the ground that he approached this Court and got the benefit. Though the petitioners should have been more vigilant in raising their grievance before the appropriate forum but the relief cannot be denied to them only on the ground of delay if it is the possibility that the relief could be moulded.

The Division Bench of this Court in LPA No.531 of

2016(O&M) decided on 04.08.2016 while considering the order passed by the learned Single Judge dismissing the writ petition on the ground of delay and laches held as under:

- “(1) This order shall dispose of LPA Nos.531, 532, 534, 541, 542, 545, 546, 547, 548, 557, 637, 639, 719, 727, 728, 729, 730, 731, 758, 785, 1365, 1369 & 1370 of 2016 as all the above-captioned appeals are directed against the common order of learned Single Judge dated 26.02.2016, whereby writ petitions filed by the appellants have been dismissed, on the ground of delay and laches.
- (2) Learned Single Judge has relied upon a previous decision rendered in the case of (Ram Shah and Ors. vs. State of Punjab & Ors. (CWP No.3946 of 2014 decided on 10.03.2014), in support of the order under challenge.
- (3) It is undeniable that the decision of learned Single Judge in Ram Shah’s case (supra) was challenged before this Court in LPA No.645 of 2014 and the Division Bench to which one of us (Surya Kant, J) was a member, allowed the appeal in part and after modifying the order of learned Single Judge, the writ petitions which were dismissed on the ground of delay and laches, were ordered to be heard along with other bunch of writ petitions in which similar relief had been prayed for.
- (4) Learned counsel for the appellants states that the writ petitions along with which Ram Shah’s case was ordered to be heard are now listed on 17.01.2017.
- (5) In Ram Shah’s case, this Court viewed as follows:-
- “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 remodulate 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.”

(6) Following the view quoted above, the instant appeals are also allowed; the order of learned Single Judge is set aside and the writ petitions are ordered to be heard on merits on 17.01.2017 along with the above-cited case. However, it shall be the discretion of learned Single Judge to modulate the relief keeping in view all the relevant factors.

(7) The parties are directed to appear before the learned Single Judge on 17.07.2017.”

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 petiiton stands allowed in the above terms.

January 30, 2019
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No