

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 8426 of 2014
Decided on: 02.05.2019

Ram Chand Panju

...Petitioner

Versus

Haryana Khadi & Village Industries Board & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Present : Mr. K.L. Arora, Advocate
for petitioner**

**Mr. Ashwani Talwar, Advocate
for respondents No. 1 and 2**

Mr. S.K. Vashisth, DAG, Haryana

ARUN MONGA, J.

1. Petitioner herein, *inter alia*, seeks quashing of impugned order dated 04.07.2013 (Annexure P-8), whereby his claim for grant of revised pay scale has been rejected by the respondent-Haryana Khadi & Village Industries Board (hereinafter 'the Board').

2. Briefly, the facts are that petitioner joined the respondent-Board as Cashier in 1972. Subsequently, he was granted promotion to the post of Accountant. On 19.03.1998, petitioner cleared the Subordinate Accounts Services (SAS) Examination and was consequently promoted as Senior Auditor (SAS) vide order dated 05.06.2001 (Annexure P-4). After repeated representations, vide order dated 21.02.2005 (Annexure P-7), he was given the benefit of this promotion w.e.f. 19.03.1998. However, he was placed in the pre-modified scale of Rs.5500-9000/- instead of revised pay

scale of Rs.6500-9900+100 Special Pay.

3. Haryana Government from time to time had revised pay scale of the employees working as Senior Auditors (SAS) in all the Boards and Departments. Vide notification dated 07.01.1998 (Annexure P-6/4), pay scale of Sr. Auditors (SAS) was revised to Rs. 6500-9900 + Rs. 100/- Spl. Pay w.e.f. 01.01.1996. Pay scale of Sr. Auditors (SAS) was further revised to 'PB-II 9300-34800 + 4600 GP' w.e.f. 01.01.2006 vide notification dated 30.12.2008 (Annexure P-6/5).

4. Petitioner, in the meanwhile, kept continuously representing for grant of the revised pay scales but to no avail. In the interregnum, the petitioner retired but he continued to submit representations to the respondent-Board which were not adverted to. Finally vide impugned order dated 04.07.2013 (Annexure P-8), his claim was rejected. Being aggrieved, the petitioner is before this Court.

5. When the petitioner was granted promotion on 05.06.2001, it was with a stipulation that he would not be entitled to any additional pay or remuneration under Rule 4.22(iv) of the Haryana Civil Service Rules, Volume I (for brevity, Service Rules). However, vide resolution dated 27.03.2002 (Annexure P-10), respondent-Board decided to grant the benefit of same pay scale as granted by the Finance Department in the other departments of State of Haryana and the same was sent for the approval of the Government. Rule 4.22(iv) of Service Rules reads as under:-

“4.22(iv) No additional pay shall be admissible to a Government employee who is appointed to hold current charge of the routine duties of another post or posts regardless of the duration of the additional charge.”

6. Respondent-Board in its return has averred that the petitioner's

claim is liable to be rejected at the outset being barred by limitation. The petitioner has impugned the order dated 04.07.2013 (Annexure P-8) which could not have been challenged as the same only reiterated the stand taken by the Board previously and did not give rise to any fresh cause of action.

7. It is further averred that the petitioner was granted promotion to the post of Sr. Auditor (SAS) vide order dated 05.06.2001 (Annexure P-4) and it was clearly stipulated that he would not be granted any additional pay or remuneration as per Clause 4.22(iv), Haryana Civil Service Rules, Volume I, Part I. The petitioner had given his joining report regarding the same which is annexed as Annexure R-1/6. The relevant part of order Annexure P-4 is reproduced herein below:-

“Shri Ram Chand Panju, Accountant is hereby promoted as Senior Auditor in the SAS Scale of Rs.5500-175-8300-EB-175-900 with immediate effect against the vacant post of accounts officers.

He shall draw pay against the post of Accounts Officer till the post of Senior Auditor falls vacant. However, he will continue to hold current duty charge of the post of AO. He will not be entitled for any additional pay or remuneration to held the current charge of AO as provided in rule 4.22(iv) of CSR Vol.I.”

8. It has also been stated that the petitioner had been working as Sr. Auditor (SAS) with the respondent-Board. When he was granted the said promotion he was given an option to join the Finance Department. If he had so exercised this option only then would he have been eligible for the revisions in pay scales which had been notified by the State Government at regular intervals.

9.

By way of replication, the petitioner refuted the stand of the

respondent-Board. It is averred that it was for the first time that the impugned order dated 04.07.2013(Annexure P-8) was passed by the respondent-Board rejecting the petitioner's claim. No prior order rejecting the claim of the petitioner was ever communicated to him. The petition was thus stated to be within limitation.

10. Petitioner has also stated in replication that higher posts of Sr. Auditor and Accounts Officer were created by the Finance Department and the Administrative Department of the Board vide order dated 19.09.1989 (Annexure P-17). He was promoted as per the policy made by the Board. He stated that in the absence of any express regulations made by the Board regarding the pay scales, the notification of the State Government, regarding the same, would prevail. Regulations 11 and 14, *ibid*, govern such instances. It is further contended in replication that the employees did not have to necessarily join State Government. If he would have done so, he would not have been eligible for pension.

11. I have heard the learned counsel for the respective parties at length and have gone through the paper-book with their able assistance.

12. At the outset, I find that the preliminary objection taken by the respondent-Board that the suit is barred by limitation, is not sustainable. A perusal of the impugned order dated 04.07.2013 (Annexure P-8) would show that there is no mention about passing of any previous orders by the Board rejecting the claim of the petitioner. The position is also fortified by letter dated 10.10.2007 (Annexure P-15), written by the Financial Commissioner & Principal Secretary, Industries Department, Haryana to the Director, Industries and Commerce, Haryana, whereby it was noted that claim of the petitioner has been rejected. However, the letter in question was

never communicated to the petitioner.

13. Respondent-Board has placed reliance on Annexures R-1/1 and R-1/2, but the same rather negate their contention. A perusal thereof would show that they were merely internal office communications and were never conveyed to the petitioner, informing him that his claim had been rejected. Vide impugned order dated 04.07.2013 (Annexure P-8), it was for the very first time that the petitioner got to know that his claim was being rejected and he consequently filed the present writ petition in 2014.

14. Even otherwise, the present petition has been filed seeking directions to the respondent-Board to give benefit of revised pay scales to the petitioner. The same being a recurring cause of action would result in fresh start of limitation period every time the benefit is denied to the petitioner unjustly. Hence, the petition is not hit by delay and laches, as claimed and is maintainable.

15. In '**State of Haryana and others vs. Ram Kumar**' reported as **2009(2) PLR 169**, it has been held that where revised pay scales have not been granted to an employee then a recurring cause of action would arise to the petitioner for each month the salary is not paid to him. The relevant part is reproduced herein below:-

“ In view of what has been contended above, this appeal raises the following substantial question of law for consideration by this Court in this appeal:

Whether while granting benefit of arrears of salary in pursuance to the refixation of pay scale the arrears are to be restricted to three years and two months under the law of limitation?

On consideration, I find that the substantial question of law deserves to be answered in favour of the appellant State. Once the plaintiff was claiming the revision of pay

scale w.e.f. 24.7.1996 i.e. the date of completion of 10 years of regular service, the suit was filed only on 3.9.2004, therefore, he was not entitled to time barred claim.

However, the suit is held to be within limitation as it was a case of recurring cause of action as the plaintiff/respondent got a fresh cause of action every month on account of less payment of salary than to which he was entitled to.”

16. On merits, learned counsel for petitioner contended that the Board being an autonomous body, did not have to get any approval from the State Government. It is also pointed out that Sh. Balraj Singh, Chief Executive Officer, of the Board had also granted his approval to the proposal of the Board to grant pay parity to Sr. Auditors (SAS) with the employees of the Haryana Government. Petitioner had placed reliance on Regulations 11 and 14 of the Haryana Khadi and Village Industries Board (Service) Regulations, 1976 which are reproduced herein below:-

“Regulation 11-Pay of Members of service- *Members of the service shall be entitled to such scales of pay including special pay, if any, as may be authorised by Board from time to time. The scales of pay at present in force in respect of specified posts are given in Appendix 'A' to these regulations.*

Regulation 14-Leave and other matters- *In respect of leave, pay and other matters not expressly provided in these Regulations members of the service shall be governed by the Punjab CSR Vol.I and III or such other instructions, rules and regulations as may be issued from time to time by Haryana Government.*

17. Learned counsel for the petitioner placed reliance on the judgment rendered by this Court in case titled as 'Chander Parkash vs. State

of Haryana and others' bearing CWP No. 14858 of 1998, decided on 20.03.2012, wherein it has been held that Boards, such as the respondent-Board, are not to be seen as government departments and would have autonomy to deal with their employees with reference to their service conditions. Hence, the approval of the State Government was not necessary in the present case.

18. Learned counsel for petitioner contended that the Board had resolved to grant benefit of revised pay scales to its employees vide resolution dated 27.03.2002 (Annexure P-10) but its benefit has been denied to the petitioner. It is stated that the Board itself was the final authority to approve the pay parity of employees working in Boards with that of the employees of the State Government. The Board wrongly sought approval for this from the State Government, which in turn rejected the proposal of the Board. The benefit could not, therefore, be denied to the petitioner on the ground of rejection of Board's proposal by State Government.

19. Per contra, learned counsel for respondents contended that reliance placed by the petitioner on the judgment in CWP No. 14858 of 1998 is misplaced. He would contend that in the referred case the petitioner was a SAS qualified employee who was granted promotion prior to the issuance of instructions of the Government dated 17.05.1995 (Annexure R-1/4), whereby SAS qualified persons were absorbed by the Haryana Government as fresh recruits who would not be given any benefit of prior service rendered.

20. I find merit in the contention of learned counsel for the petitioner. In view of the Regulations 11 and 14, *ibid*, it becomes evident that the Board, being an autonomous body, was empowered to make rules

regarding the service conditions, including the pay structure, for its employees and there was no necessity for the Board to take permission from the State Government concerning service conditions etc. of its employees. However, once the Government had issued notification regarding the revised pay scales then, as per Regulation 14, it was obligatory on the Board to grant the same to its employees in absence of any express notification by the Board.

21. It is not in dispute that the Government had, from time to time issued notifications regarding the revision in the pay scales of the employees. The pay scale for the post of Sr. Auditor (SAS) had been enhanced vide notification dated 07.01.1998 (Annexure P-6/4), to Rs. 6500-9900 + Rs. 100/- Spl. Pay w.e.f. 01.01.1996. Further enhancement was made to 'PB-II 9300-34800 + 4600 GP' w.e.f. 01.01.2006, vide notification dated 30.12.2008 (Annexure P-6/5). However, the petitioner is not seeking pay as revised by Annexure P-6/5.

22. It is also the conceded position that the revised pay scales had been resolved to be granted to the employees of the Board vide resolution dated 27.03.2002 (Annexure P-10). The Board had then sought approval from the Government for releasing the benefits, which as held above, was not required. As per the regulations, the Board was obligated to give their employees the benefits as notified by the Government.

23. Even if we consider that the approval from State Government was necessary to be sought, then also the claim of the petitioner has been wrongly denied, in view of the ratio laid down by a coordinate Bench of this Court in CWP 14858 of 1998, titled as 'Chander Parkash vs. State of Haryana and others', where it has been held that the Government cannot

interfere with the resolutions passed by the autonomous Boards, when once the Board had resolved to give the revised pay scale to its employees, the rejection of the approval by the State Government would be of no effect.

24. In view of the findings above and the reasoning contained therein, I am of the opinion that the petitioner is entitled to the benefit of modification/revision of pay scales as admissible to the Senior Auditors and Accounts Officers in terms of notification dated 07.01.1998 (Annexure P-6/4) read with notification dated 30.12.2008 (Annexure P-6/5).

25. The respondents are directed to grant benefit to revision of pay scales in terms of notifications, *ibid*, w.e.f. the date the petitioner is found entitled to the same along with interest @ 6% per annum w.e.f. the date of entitlement until the actual date of payment. However, it is made clear that the pecuniary benefits shall be confined to 38 months prior to the filing of the writ petition. Disposed of in above terms.

26. Let the needful be done within a period of three months from the receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

May 02, 2019

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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |