IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. 29453 of 2018(O&M)
DATE OF DECISION : 02.12.2019

Om Parkash Setia & Ors.

... Petitioners

versus

State of Punjab & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vivek Sharma, Advocate,
for the petitioners.

Mr. P.S. Bajwa, Addl. AG Punjab

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ARUN MONGA, J. (ORAL)

1. The petitioners herein are aggrieved by a part of the promotion order dated 27.02.2017(Annexure P-2) to the extent it directs that their pay and seniority is to be fixed from the date of issuance of impugned order itself. They have also sought quashing of orders dated 16.03.2018, 28.05.2018, 28.05.2018 and 19.12.2017(Annexure P-5 Colly.) vide which their claim for granting the next annual increment with effect from 01.02.2018 instead of 01.03.2018, has been declined.

2. In the return respondents have taken a stand that as per terms and conditions stipulated in the promotion order dated 27.02.2017 of the petitioners, they have to be considered in the Punjab School Education (School and Inspection) Group-A cadre from the date of promotion.

Keeping in view the intent of the promotion order, the pay of the petitioners in Group-A was fixed with notional benefits with effect from 01.02.2017.

3. I have heard learned counsel for the parties and have gone through the paper-book carefully.

4. On a joint perusal of pleadings, conceded position that emerges is that on promotion of the petitioners from the post of Lecturer to Principal, their promotional pay was fixed under Rule 11 of the Revised Pay Scale Rules, 2009, which for ready reference, is reproduced hereinbelow:-

> *"11. Pay on Promotion will be fixed under rule 11 of the revised pay scale rules 2009 as under:*
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> *(i) One increment equal to three per cent of the sum of the pay in the pay band plus existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotional post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also,the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is being made, the pay in the pay band will be stepped to such minimum.*
>
> *(ii) On promotion from one grade pay to another, an employee shall have an option to get his pay fixed in the higher post either from the date of his promotion or from the date of his next increment. The option may be exercised within a period of one month from the date of his promotion. In case Government employees, who stand promoted during the period from 1st day of January, 2006 to the date of publication of the Punjab Civil Services (Revised Pay) Rules,2009, the option may be exercised with in a period of three months from the*

date of such publication. The option once exercised, shall be final.*

(iii) In case, the government employee opts to get his pay fixed in the higher post from the date of his promotion, the next increment in the higher post will be granted after completion of qualifying service of twelve months.

(iv) In case, the Government employee opts to get his pay fixed from the date of his next increment, then, on the date of promotion, pay in the pay band shall not be changed, but the grade pay of the higher post will be granted. Further re-fixation will be done on the date of his next increment. On that date, he will be granted two increments, one annual increment and the second on account of promotion.

While computing these two increments, basic pay prior to the date of promotion, shall be taken into account. To illustrate, if the basic pay prior to the date of promotion was Rs. 100, first increment would be computed on Rs. 100 and the second increment on Rs. 103.

The next increment in the higher post in this case will be granted after completion of qualifying service of twelve months from the date of re-fixation.

Note 1 A Government employee drawing pay in the higher pay scale/grade pay on account of progression under ACP scheme on promotion, will be given benefit of one increment and such higher pay scale/grade pay shall be protected as a measure, personal to him.

Note 2 For the purpose of promotion, the grade pay of Rs. 5400 in PB-4 shall be treated as higher than the grade pay Rs. 5400 in PB-3.

Note 3 A Government employee drawing pay in the higher pay scale/grade pay on account of progression under ACP scheme on promotion, will be given benefit of one increment and such higher pay scale/grade pay shall be protected as a measure, personal to him.

> *Note 4 For the purpose of promotion, the grade pay of Rs. 5400 in PB-4 shall be treated as higher than the grade pay Rs. 5400 in PB-3 .*"

5. A perusal of the above would reveal that as per sub Rule (ii) *ibid,* on promotion, an employee shall have an option to get his pay fixed in the higher post either from the date of his promotion or from the date of his next increment. The word "shall" leaves no manner of doubt that affording the right of the option to be exercised by an employee(petitioners herein) is not directory in nature and is mandatory and his option shall be decisive in the matter. In the event of the said option having been exercised by the petitioners, he was to be given the benefit of sub-rule(iv) *ibid* in accordance with his option.

6. In the return filed by the respondents, no explanation, worth of any credence, has been rendered other than bald denial that no violation has been committed.

7. In the course of arguments, learned State counsel seeks to justify the impugned orders on the ground that petitioners themselves did not exercise the option of seeking their pay fixation within a period of one month and, therefore, cannot turn around at later stage and challenged non-implementation of the Rules *ibid.*

8. I find the said argument quite vapid as it is the obligation of the employer to ensure that the Rules made for the benefit of the employee are applied and followed in true letter and spirit and, therefore, employer is under statutory obligation to seek option of the employee, which it failed to do so.

9. As regards the denial of petitioners' right to exercise the option resulting in deprivation of the benefit on the next due increment, they

promptly represented vide representations dated 21.03.2018, 07.06.2018 and 14.07.2018 contained at Annexures P-6 to P-8 respectively. The same is reflective of the fact that the petitioners were throughout willing to exercise their option but they were not given the choice by the employer.

10. In the premise, once it is established that the petitioners were not afforded the right to exercise an option as mandated under Rule 11(ii) read with(iv), the impugned orders passed herein do not stand the scrutiny of law and are liable to be set aside.

11. Accordingly, writ petition is allowed. Order dated 27.02.2017 (Annexure P-2) is set aside to the extent of Clause (G) thereof, whereas orders dated 16.03.2018, 28.05.2018, 28.05.2018 and 19.12.2017(Annexure P-5 Colly.) are quashed in toto. Respondents are directed to grant one opportunity to the petitioners to exercise their options in terms of Rule 11 *ibid,* within a period of 30 days and thereafter to pass fresh orders qua the grievance raised by them in the petition, in accordance with law.

(ARUN MONGA)
JUDGE

December, 02, 2019
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1. Whether speaking/ reasoned: Yes/ No
2. Whether reportable: Yes/ No