

**Review Application No.397 of 2018 (O&M) in
CWP No.7086 of 2015**

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: August 19, 2019

1. RA No.397 of 2018 (O&M) in CWP No.7086 of 2015

Kuldeep Singh & others

...Petitioners

Versus

DHBVN & others

...Respondents

2. RA No.398 of 2018 (O&M) in CWP No.6903 of 2015

Sunil Kumar & others

...Petitioners

Versus

DHBVN & others

...Respondents

3. RA No.396 of 2018 (O&M) in CWP No.6953 of 2015

Sandeep Kumar & others

...Petitioners

Versus

DHBVN & others

...Respondents

1. RA No.399 of 2018 (O&M) in CWP No.7087 of 2015

Naveen Kumar & others

...Petitioners

Versus

DHBVN & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Tajinder Singh, Advocate,
for the applicant-respondents.

Mr. D.S.Matya, Advocate,
for the non-applicant/petitioners.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of four review applications accompanied by applications seeking condonation of delay in filing the same.

Mr. Puneet Jindal, learned Senior Counsel assisted by Mr. Tajinder Singh, Advocate, representing the applicant/respondents submitted that in respect of the claim for regularization and reduction of pay, many affected employees of the Dakshin Haryana Bijli Vitran Nigam (DHBVN) approached this Court by filing numerous writ petitions. Writ petitions were disposed of by setting-aside the impugned action of the DHBVN with a further direction to consider the case for grant of minimum pay scale in terms of the directions contained in the judgment of Hon'ble Supreme Court rendered in **State of Punjab & Ors. Versus Jagjit Singh & Ors., 2016 (4) S.C.T. 641.**

It has been next contended that in the aforementioned four writ petitions, there was no pleading or averment for grant of benefit of minimum pay scale and, therefore, question of grant of the same did not arise, though this Court issued a direction for grant of minimum pay scale. In fact, as per the directions contained in the other orders, like 10.08.2017 (Annexure A-2), chance has been given whereby the department after consideration of the material, rejected the cases for grant of minimum pay scale and is not aware of the subsequent challenge to the same. The delay is neither intentional nor willful as the opinion of the Advocate General was on similar lines as the one contained in the order dated 10.08.2017. Realising the fallacy and on receipt of the contempt notice filed in 2017, occasion arose to file the review applications and in this process, delay

occurred. There is error apparent on record. The claim of the petitioners does not fall within the parameters laid down in the judgment cited above.

Per contra, Mr. D.S.Matya, learned counsel for the non-applicants/petitioners opposed the review applications and as well as applications seeking condonation of delay on the following grounds:-

- a) The delay is not reasonable rather bereft of each and every day delay;
- b) Review applications with change of counsel cannot be entertained at the drop of the hat in view of the settled law;
- c) The relief sought in the writ petitions in the manner “any other relief” was of a great multitude which would entail into relief even if not claimed;
- d) There is no error apparent on record. In all the other judgments referred, there was a specific direction of a right of consideration;
- e) No explanation has come forth as to how and under what manner the non-applicant/petitioners are not entitled to equal pay for equal work and, thus, urged this Court for dismissal of the review applications with exemplary costs.

I have heard the learned counsel for the parties and appraised the paper book.

It would be in the fitness of things to extract the relevant portion of the direction contained in the order dated 10.08.2017 passed in CWP No.25997 of 2016 and other connected matters, whereby the main relief sought in the writ petition was accepted by this Court. The same reads

thus:-

“Accordingly, keeping in view the above since the matter in principle already stands decided, the present writ petitions are also disposed of in the same terms as in Rajesh Kumar and Kuldeep Singh's case (supra) to the extent that the petitioners will be paid the arrears for approximately two years at the initial rate which they were being paid. However, the payment be made within a period of 3 months from the date of receipt of certified copy of the order. The prayer for minimum of the pay scale in view of the judgment in State of Punjab and others vs. Jagjit Singh and others, 2016 (4) SCT 641 case will be decided by the respondents within a fixed time frame also of two months.”

I would not be repeating the same but the main relief was only with regard to regularization and reduction in the pay. It is the conceded position on record that there was no pleading or averment for grant of minimum pay scale as being paid to the staff/employees regularly recruited.

The opinion of the Advocate General is being placed on record as Annexure R-1. It reflects that it was in terms of the directions contained in other matters.

It is a matter of record that the contempt petition in the connected matter was filed in 2017, which has been disposed of with a direction to the non-applicant/petitioners to seek revival of the same as and when the review application is dismissed. Delay in such circumstances, in my view, has not gone unexplained but falls within the explanation 'reasonable'. Accordingly, the delay in filing the review applications is condoned.

With regard to the grant of minimum pay scale, neither there is any prayer nor averment or pleading. The direction by this Court in the bunch of four writ petitions sought to be reviewed could not have been

issued and accordingly there is error apparent on record and, therefore, the order dated 13.01.2017 is recalled and the writ petitions will be confined to the relief sought in the main petition, i.e., for reduction in the pay, which, in all the cases has been granted to the affected staff/employees.

I may not be committing a fallacy in not referring to the decision rendered by this Court in the connected writ petitions, one referred to above, i.e., dated 10.08.2017. There has been a compliance whereby the case for grant of minimum pay scale was considered and rejected. I would also be not commenting with regard to entitlement of the pay as it would take away the legal right of the affected persons in case they choose to challenge the same in the independent proceedings.

Applications stands disposed of.

August 19, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No