IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1100 of 2019 (O&M) in
CWP No.23260 of 2017
Date of decision: 06.03.2020

Punjab and Haryana High Court and another

.... Petitioners

VERSUS

Basdev Bansal

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Deepali Puri, Advocate for the appellants.

Mr. R.Kartikeya, Advocate for the respondent.

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ARUN KUMAR TYAGI, J.

The appellants have filed the present Letters Patent Appeal under Clause X of the Letters Patent Act for setting aside the impugned judgment dated 13.12.2018 passed by the Hon'ble Single Bench of this Court in ***CWP No.23260 of 2017*** titled as ***'Basdev Bansal Vs. Punjab and Haryana High Court and another'***.

2. Briefly stated the facts giving rise to filing of the present appeal are that the petitioner was appointed as a Clerk on 03.05.1991 to serve on the establishment of this Court. He was promoted as Special Secretary on 14.05.2013. When the petitioner applied for 10 days earned leave encashment in October, 2016 for the purpose of availing leave travel concession, the petitioner came to know that he was drawing less salary than his junior Sh. Arun Kumar Jain. The petitioner made representation dated 22.10.2016 which was allowed by respondent No.1 vide order dated 09.12.2016 whereby the pay of the petitioner was stepped up at par with his junior Sh. Arun Kumar Jain

w.e.f. 30/05/2014. However, the grant of actual financial benefits from such step up was limited w.e.f. 05.12.2016. The petitioner made representation dated 15.12.2016 requesting for grant of actual financial benefits from 30.05.2014 to 04.12.2016. His representation was declined by the respondents vide order dated 08.02.2017 on the ground that his claim was not covered under the rules/instructions as well as policy framed by this Court in such like matters. The petitioner submitted request letter dated 13.04.2017 for providing the necessary guidelines with respect to stepping up of pay and in response thereto received communication dated 17.05.2017 along with copies of the rules and instructions but to him the same did not disclose any plausible reason in support of impugned order dated 08.02.2017. Thereafter the petitioner agitated his claim for grant of ACP benefit due in the month of May 2017 on completion of 4 years of service which was declined vide order dated 07.09.2017 with the remarks that he will get the benefit of ACP w.e.f. 30.05.2018 i.e. on completion of 4 years from the date of step up with Sh. Arun Kumar Jan, Special Secretary (Readers' Line). Feeling aggrieved, the petitioner filed above-said civil writ petition before this Court seeking quashing of impugned orders dated 09.12.2016, 08.02.2017 and 07.09.2017 and grant of actual financial benefit of step up of his pay with effect from 30.05.2014 and grant of ACP on completion of 4 years of service with effect from 14.05.2017.

3. The writ petition was opposed by the respondents in terms of reply filed by them. In their reply the respondents pleaded that the petitioner was appointed as Reader w.e.f. 10.12.2007 and was promoted as Special Secretary w.e.f. 14.05.2013 before completing 4 years service as court secretary and the benefit of ACP on completion of 4 years of service in the

cadre of court secretary was not drawn by him whereas Sh. Arun Kumar Jain was appointed as Reader w.e.f. 17.12.2007 and was promoted as Special Secretary w.e.f. 30.05.2014 after getting the benefit of ACP on completion of 4 years of service in the cadre of Court Secretary on 12.01.2014 and he started drawing higher pay with effect from 30.05.2014 on account of fixation of pay on promotion as Special Secretary. The anomaly in the pay of the petitioner and junior employee w.e.f. 30.05.2014 on account of fixation of pay of junior employee is directly as a result of application of the provisions of rule 11-A of the Punjab Civil Services (Revised Pay) Rules, 2009 (for short '2009 Rules').The petitioner made representation dated 22.10.2016 which was considered and vide order dated 09.12.2016 the pay of the petitioner was stepped up at par with his junior Sh. Arun Kumar Jain w.e.f. 30.05.2014 but the grant of actual financial benefits from such step up was limited w.e.f. 05.12.2016 on parity with Sh. Narinder Singh, Superintendent Grade-1 whose pay was stepped with his junior w.e.f. 30.07.2008 only on notional basis. The representation for grant of actual financial benefits w.e.f. 30.05.2014 was declined as the same was not covered under the rules/instructions dated 12.08.2010 as well as policy dated 06.10.2010. The petitioner is not entitled to ACP on completion of 4 years service w.e.f. 30.05.2017 and the petitioner will get the same on 30.05.2018 on completion of 4 years service from the date of step up. The respondents accordingly prayed for dismissal of the petition.

4. During hearing the petitioner gave up his claim for grant of ACP w.e.f. 30.05.2017 in view of the judgment in ***LPA No.790 of 2012*** titled as ***'Surjit Singh Vs. District and Sessions Judge, Hoshiarpur and another' decided on 03.08.2012***. Hon'ble Single Bench of this Court partly allowed the

writ petition vide judgment dated 13.12.2018 the concluding para of which is reproduced as under:-

> *"This petition is allowed and the impugned order dated 05/09.12.2016 to the extent it restricts actual benefit of stepping up from 05.12.2016 is held erroneous and arbitrary and is, therefore, quashed and as a consequence thereof, the order dated 08.02.2017 declining the request of the petitioner for arrears of proficiency step up for the period 30.05.2014 to 04.12.2016 is invalidated. The petitioner is held entitled to arrears of proficiency step up for the period claimed to remove unfair discrimination. As a result, the amount due be calculated and disbursed to the petitioner within a reasonable time of say three months. This order will, however, not apply to claim for ACP benefits which become due on completion of four years service w.e.f. 30.5.2018 since the claim from 2017 has been given up by the petitioner as non-contested. No prayer for interest on the arrears has been made in this petition and I find no ground for awarding interest on the arrears."*

5. Feeling aggrieved the respondents have filed present Letters Patent Appeal.

6. We have heard learned Counsel for the parties and have perused the relevant record.

7. Ms. Deepali Puri, learned Counsel for the appellants has argued that representation dated 22.10.2016 made by the respondent was allowed by the appellants vide order dated 09.12.2016 and the pay of the respondent was stepped up at par with his junior Sh. Arun Kumar Jain w.e.f. 30.05.2014 but the grant of actual financial benefits from such step up was limited w.e.f. 05.12.2016 on parity with Sh. Narinder Singh, Superintendent Grade-1 whose pay was stepped with his junior w.e.f. 30.07.2008 only on notional basis. The representation of the respondent for grant of actual financial benefits w.e.f. 30.05.2014 was declined as the same was not covered under the rules/instructions dated 12.08.2010 as well as policy dated 06.10.2010. The respondent is not entitled to payment of arrears from 30.05.2014 to

04.12.2016. The impugned order which wrongly allowed the same suffers from material illegality. Therefore, the same may be set aside.

8. On the other hand, Sh. R.Kartikeya, learned Counsel for the respondent has argued that on notional upgradation of his pay up to the level of the pay of his junior employee, the respondent is entitled to payment of arrears from the date of such notional upgradation, subject to law of limitation. His representation dated 15.12.2016 requesting for grant of actual financial benefits from 30.05.2014 to 04.12.2016 was wrongly declined. The impugned order directing payment of the same for the period from 30.05.2014 to 04.12.2016 does not suffer from any illegality. The appeal is without any merit and the same be dismissed with costs.

9. In the present case, both the petitioner and Sh. Arun Kumar Jain belonged to the same cadre and the posts to which they have been promoted are the same. Both were Court Secretaries and later promoted to the post of Special Secretaries. The petitioner was drawing more pay than his junior Sh. Arun Kumar Jain before promotion as Special Secretary. Both officers at the time of promotion to the post of Special Secretaries exercised option to get their pay fixed in terms of the same clauses of Rule 11 of the 2009 Rules. The petitioner was appointed as Reader w.e.f. 10.12.2007 and was promoted as Special Secretary w.e.f. 14.05.2013 before completing 4 years service as court secretary and the benefit of ACP on completion of 4 years of service in the cadre of Court Secretary was not drawn by him whereas Sh. Arun Kumar Jain was appointed as Reader w.e.f. 17.12.2007 and was promoted as Special Secretary w.e.f. 30.05.2014 after getting the benefit of ACP on completion of 4 years of service in the cadre of Court Secretary on 12.01.2014 and he started drawing higher pay with effect from 30.05.2014 on account of fixation of pay

on promotion as Special Secretary. The grant of ACP to the junior employee, for which he became entitled to under the Assured Career Progression Scheme-2006 was an incidence of service and the eligibility or entitlement of the junior employee is not in question. The claim of the petitioner for upgradation of his pay is not based on wrong-fixation of his pay in breach of any of the rules applicable to him. On the other hand, his claim is for parity in the pay on the basis of the principle that junior cannot get higher pay than the senior.

10. The concept of stepping up of the pay of a senior in order to maintain parity with his junior is a facet of directive principle of equal pay for equal work as contained in Article 39 (d) of the Constitution of India. The principle of equal pay for equal work is a general rule which can be deviated for good and justifiable reasons. When a single running pay scale is provided in a cadre, the constitutional mandate of equal pay for equal work is satisfied. However, equal pay for equal work does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. The grant of higher pay to a junior would ex-facie be arbitrary, but if there are justified grounds to do so, the senior cannot invoke the doctrine of equality. The pay fixation of an employee is dependent upon many factors which may be either length of service or higher pay scale in feeder cadre necessitating higher pay fixation on promotion etc..When pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for

experience/passing a test/acquiring higher qualifications or incentive for efficiency are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. (see ***State of Andhra Pradesh and another Vs. G. Sreenivasa Rao and others : 1989 (2) SCC 290***).

11. The employees of this Court are governed by the High Court Establishment (Appointment and Conditions of Service) Rules, 1973(for short the 1973 Rules). Part III of the 1973 Rules deals with the conditions of services of the employees. Rule 26 of the 1973 Rules provides for pay, whereas Rule 27 of the 1973 Rules deals with the special pay. Rule 28 of the 1973 Rules deals with increment and Rule 34-A(A) of the 1973 Rules deals with the pay fixation. The rules and instructions as applicable in the State of Punjab are generally followed in the matter of pay fixation. The instructions issued by Punjab Government vide letter No. 6/46/2010-1FP-II/327 dated 12.08.2010 deal with removal of anomaly by stepping up pay of senior government employees drawing pay less than the pay drawn by their juniors due to operation of the provisions of Rule 11-A of the 2009 Rules. Paragraph 2 of the above said instructions reads as follows:-

> *"2.After careful consideration of the matter the Governor of Punjab is pleased to decide that if due to normal operation of the provisions of Rule11-A of the Punjab Civil Services (Revised Pay) Rules, 2009, the pay of a senior employees gets fixed at a level lower than his junior employee, the pay of such senior employees shall be stepped up to the level of the pay of his junior employee subject to the following conditions:-*
>
> *(a) The junior and senior government employee should belong to the same cadre and the posts in which they have been promoted should also be identical and in the same cadre.*

(b) The pre-revised and revised scale/pay band and grade pay of the lower and higher posts, in which they are entitled to draw pay, should be identical.

(c) The senior government employee at the time of his promotion to the higher level had been drawing pay equal to or more than the pay of the junior. No relief will be given under these instructions if the senior employee exercises an option to get his pay fixation/promotion postponed or opts for revised pay structure from a date different than the date of option of the junior. However, if the option for fixation of pay exercised by the senior and junior employee is under different clauses of rule 11 of the Punjab Civil Services (Revised Pay) Rules, 2009 and at the time of the promotion of the junior employee the pay of such junior is fixed at a level higher than the pay of the senior, the senior employee may, if it is advantageous to him get his pay refixed subject to resultant financial adjustment, as if he had exercised the option under the same clause of rule 11 as has been exercised by the junior employee.

(d) The anomaly should be directly as a result of application of the provisions of rule 11-A of the Punjab Civil Services (Revised Pay) Rules, 2009. However, if in the lower post, the junior officer was drawing more pay in the pre-revised/revised pay scale than his senior by virtue of any advance increments granted to him or due to any inflation in pay other than by way of normal pay fixation, the benefit of step-up envisaged under these instructions shall not be admissible.

(e) The next increment to senior government employee shall be admissible on the same date as that of his junior, in respect to whom, he has got his pay stepped up.

(f) The benefit of stepping up of pay can be allowed to the senior employee for the second time, if the anomaly has again arisen with reference to the pay of the same junior, in respect of whom, the pay of the senior was stepped up for the first time."

12. The instructions issued by Punjab Government vide letter No. 6/46/2010-1FP-II/327 dated 12.08.2010 have been accepted and made

applicable in this court vide this court's office order dated 08.09.2010 issued under endorsement No.37875/2-Exc. Dated 15.09.2010.

13. The matter was also considered by the Committee of two Hon'ble Judges of this Court and the guidelines framed vide minutes of meeting dated 06.10.2010 duly approved by Hon'ble the Chief Justice, read as follows:-

> *"i) In terms of Rule 26(1) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973, the scale of pay payable to the employees of the High Court shall be as per the First Schedule to the Rules.*
>
> *ii) In the said pay scale, the pay shall be fixed in terms of Rule 34(1)(A) keeping in view the Rule 4.4 and Rule 4.14 of the Punjab Civil Services Rules such as by pay protection in case of an employee promoted to higher post in a lower scale of pay and pay fixation by granting additional increment on account of promotion and such similar reason;*
>
> *iii) The employees of one cadre will be placed in the same "pay scale" irrespective of source of promotion or feeder cadre;*
>
> *iv) The pay of a senior is not required to be stepped up, if the pay of both senior and junior is fixed as per pay fixation rules and instructions, and when junior draws higher pay on account of his length of service or pay fixation or some other reason including personal pay etc."*

14. In the present case it is not disputed that the anomaly in the pay of the petitioner and junior employee Sh. Arun Kumar Jain w.e.f. 30.05.2014 is directly as a result of application of the provisions of rule 11-A of the 2009 Rules on account of fixation of pay of junior employee. Vide order dated 05.12.2016 the pay of the petitioner was stepped up equivalent to the pay of Sh. Arun Kumar Jain on notional basis with effect from 30.05.2014 with next increment on the completion of qualifying service of 12 months, under rule 34 (1) of the High Court Establishment (Appointment & Conditions of Service) Rules, 1973 and instructions issued by the Punjab government vide letter No. 6/46/2010-1FP-II/327 dated 12.08.2010. However, the petitioner was made to

draw the actual benefit of step up from 05.12.2016 only. The representation dated 15.12.2016 made by the petitioner was rejected on the ground that the same was not covered under the rules/instructions (issued by Punjab government vide letter No. 6/46/2010-1FP-II/327 dated 12.08.2010) as well as the policy (Guidelines dated 06.10.2010) framed by this court in such like matters.

15. This was so done in view of the administrative precedent of the case of Sh. Narinder Singh, Superintendent Grade-1 whose pay was upgraded to the level of pay of his junior Sh. Varinder Shahi w.e.f. 30.07.2008 but actual financial benefit was granted from 01.10.2016. The order dated 27.10.2016 passed by Hon'ble Judge on administrative side reads as under:-

> *"The matter herein pertained to removal of alleged anomaly in pay fixation which has crept in due to the fact that while senior employee stood promoted on the higher post, his junior, while continuing in the feeder cadre, became eligible for the grant of ACP and eventually got it, before his further promotion in cadre in which his senior had already been promoted.*
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> *Since there are several such like cases, it was advised on 26.6.2016 that the matter entails policy-decision and be placed before the DPC.*
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> *Office has now suggested that it is not necessary to refer the matter to DPC as there is already a decision dated 6.6.2010 by a committee of two Hon'ble Judges laying down the guidelines for stepping-up the pay.*
>
> *I have gone through the decision of the Committee which is reproduced at Page 41 of the office noting and has no relevance on the point in issue.*
>
> *Be that as it may, the perceived anomaly has not been caused on account of wrongful action of the High Court establishment. The grant of ACP to the junior employee, for which he became entitled to under a separate scheme, was an incidence of service. The eligibility or entitlement of the junior employee is not in question. However, having regard to the fact that after the junior employee has been promoted and the*

> *representationist as well as his junior both are working in the same cadre and the senior employee is getting lesser pay than his junior, which is truly a cause of heart burning, it may be treated as an "anomalous situation" as for the limited purpose of stepping up of senior's at par with his junior. Let the said pay be stepped up w.e.f. 30.7.2008 but only on notional basis. The actual benefit be granted from1.10.2016 only."*

16. However, in the case of Sh. Narinder Singh, Superintendent Grade-1 there was delay of eight years in making of the claim for upgradation of his pay to the level of pay of his junior. Sh. Narinder Singh did not make any further representation on administrative side or file any petition on judicial side for payment of arrears with the consequence that the question as to whether in case of upgradation of pay of senior employee to the level of pay of his junior, such senior employee will be entitled to payment of arrears with effect from the date of such notional upgradation to the level of pay of his junior or from the date of the order for such upgradation or the date specified therein was not specifically considered and order dated 27.10.2016 cannot be considered to be an administrative precedent for deciding the same.

17. The instructions issued by Punjab Government vide letter No.6/46/2010-1FP-II/327 dated 12.08.2010 by necessary implication mandate stepping up of the pay of a senior employee, whose pay gets fixed at a level lower than his junior employee due to normal operation of the provisions of Rule11-A of the 2009 Rules, up to the level of the pay of his junior employee from the date of such fixation of the pay of the senior employee at a level lower than his junior employee and not from any subsequent date. Allowing such notional upgradation with denial of actual financial benefits from the date of such notional upgradation is not only mutually contradictory but also wholly opposed to the very reason of such notional upgradation. It inevitably

follows that such senior employee, on notional upgradation of his pay up to the level of the pay of his junior employee, will be entitled to payment of arrears from the date of such notional upgradation, subject to law of limitation, when order for such notional upgradation of pay of the senior employee is passed on any later date.

18. In ***M.R.Gupta Vs. Union of India : 1995 (5) SCC 628*** where the appellant therein had filed an application before the Central Administrative Tribunal after 11 years for proper fixation of pay as on the date of his joining the Railway Service, Hon'ble Supreme Court observed as under:-

> *"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."*

19. In ***State of Madhya Pradesh Vs. Yogendra Shrivastava : 2010 (12) SCC 538*** where the respondents, who were appointed from 1982 onwards, approached the Tribunal in1998 or thereafter for proper fixation of quantum of non-practising allowance which was objected to on the ground of limitation, Hon'ble Supreme Court observed as under:-

> *"14. The appellants contended that the claims were therefore barred by limitation. It was pointed out that the respondents were paid NPA at a fixed rate as stipulated in the appointment orders and NPA was increased only when it was revised by Government orders from time to time; that respondents accepted such NPA without protest; and that therefore, they cannot, after periods varying from 5 to 15 years , challenge the fixation of NPA or contend that they are entitled to NPA at a higher rate, that is 25% of their pay. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore, the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See:* ***M.R. Gupta v.Union of India - 1995 (5) SCC 628, and Union of India v. Tarsem Singh 2008 (8) SCC 648****]"*

20. It follows from the above discussion that the petitioner made claim for upgradation of his pay to the level of the pay of his junior within the period of three years and his claim is not barred by limitation/delay/latches. Therefore, on notional upgradation of his pay to the level of pay of his junior with effect from 30.05.2014, the petitioner is entitled to payment of arrears for

the period from 30.05.2014 to 04.10.2016 and the impugned order allowing the same does not suffer from any illegality and the Letters Patent Appeal being devoid of any merit is liable to dismissed.

21. Accordingly, the present Letters Patent Appeal is dismissed with no order as to costs. The appellants are directed to calculate the amount and disburse the same to the petitioner within three months.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

06.03.2020
kothiyal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No