

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-12079-2020 (O&M)
Date of decision : 25.08.2020

Dr. Sikander Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sameer Sachdeva, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India, with following substantive prayers:-

- “i) Issue mandamus to respondents directing the respondents No.2 to revise/refix the pay scale of the petitioner from Rs.37400-67000+10000 grade pay to Rs.67000+79000+no grade pay as granted to his counterpart Engineer-in-Chief as per the true reading and interpretation of the Office Order No.591(2011) dated 08.07.2011 (Annexure P-4) as per which it can be safely deduced that the post Chief General Manager (Marketing) is equivalent to Engineer-in-Chief (Technical) and grant all consequential arrears with interest arising therein.*
- ii) With prayer to issue a writ of mandamus directing the respondents to allow and release the increments of the petitioner as per the Punjab Govt. Instructions dated*

03.11.2006 relating to 4/9/14 years of service benefit increments as per the Annual Career Progression (ACP) Scheme from the date of accrual i.e. the actual due admissible dates and also the release of the 14 years service benefits increment which has not been released till date along with the consequential benefits with arrears and interest per annum arising therein.”

The petitioner is working in the Punjab State Agricultural Marketing Board, which is also known as Punjab Mandi Board. It has been pleaded that he was appointed as a District Mandi Officer on 24.11.1987. Thereafter he was promoted as a Deputy General Manager on 20.08.1999. It may be significant to note that in para 4 of the writ petition, it has been pleaded that he was promoted as Deputy General Manager (Enforcement) on 20.08.1999, by referring to Annexure P-2. In fact, Annexure P-2, is an order of promotion of the petitioner to the post of General Manager (Marketing), from the post of Deputy General Manager. However, this confusion would not have any relevance to the decision of the present writ petition. Thereafter, the Government of Punjab amended the Punjab State Agricultural Marketing Board (Group-A) (1st Amendment) Service Rules, 2016 while making a provision for promotion to the post of Chief General Manager by creating a post at Sr. No.1-A in Appendix A to the Rules. Pursuant thereto on 20.07.2016, he was promoted as the Chief General Manager.

The State of Punjab vide Notification dated 27.12.2016, also amended the Punjab State Agricultural Marketing Board (Group-A) Service Rules, 1988 and created a post of Engineer-in-Chief in the Punjab Mandi

Board.

The petitioner has also pleaded that the State Government has vide Office Order No.591(2011) Annexure P-4, took a conscious decision of equating the non-technical post of Punjab Mandi Officer with that of Executive Engineer. Whereas non-technical posts of Deputy General Manager, Chandigarh/Jalandhar/Ludhiana Circle/Estates, have been equated with technical post of Superintending Engineer and non-technical posts of General Manager (Enforcement/Marketing/Projects) have been equated with the technical post of Chief Engineer for the purpose of pay scale payable.

Now through this writ petition, the petitioner calls upon this Court to issue a writ of mandamus directing the respondents to equate the non-technical post of Chief General Manager, with the technical post of Engineer-in-Chief for the purpose of pay scale. It may be noted here that the incumbent working on the post of Engineer-in-Chief is entitled to pay scale of Rs.67000-79000 whereas a Chief General Manager, as per the Rules, is entitled to the pay scale of Rs.37400-67000+10000.

Second prayer is that the directions be issued to the respondents to direct the respondents to grant the petitioner benefits under the Assured Career Progression Scheme on completion of 4/9/14 years from the actual date of accrual, as per the Government of Punjab Instructions dated 03.11.2006.

This Court has heard learned counsel for the petitioner at length and with his able assistance gone through the paper book.

The equivalence of the post for the purpose of pay scale is a specialized job. The Court does not have the wherewithal to assess and

grant declaration with regard to equivalence of two different posts in entirely different cadres. For the purpose of equivalence, the nature of duties, powers, responsibilities and various other factors are to be taken into consideration. The petitioner who is working on a non-technical post and wants the Court to declare that the post held by the petitioner i.e. Chief General Manager is equivalent to that held by a Engineer-in-Chief for purpose of pay scale. The argument of learned counsel for the petitioner is based upon the fact that the posts of District Mandi Officer, Deputy General Manager and General Manager have been equated with the posts of Executive Engineer, Superintending Engineer and Chief Engineer, respectively. Therefore, consequently, the next promotional post i.e. Chief General Manager is required to be equated with the post of Engineer-in-Chief. Learned counsel has submitted that it is a natural corollary to the order of equivalence passed by the Punjab Mandi Board vide order dated 08.07.2011 (Annexure P-4).

This Court has considered the submissions. However, expresses its inability. As noted above, equivalence of two different posts of entirely different cadres is a specialized job in itself, which can only be carried out either by the Pay Commission or the Employer. The Court can neither be expected to have the expertise nor the wherewithal to carry out the afore-said job. The petitioner has only pleaded that since certain posts have been equated for the purpose of fixing pay scale, therefore, the next promotional post would have to be equated as a natural corollary. In the considered opinion of this Court, the equation of a next promotional post in two different cadres cannot be a natural consequence of the fact that the posts

from which the promotions are being made in two different cadres stand equated for the purpose of pay scale. Hence, this Court does not find it appropriate to issue any writ in this regard.

Before proceeding to examine the next relief claimed by the writ petitioner, at the outset, it is pertinent to note here that the petitioner has not chosen to annex the Instructions dated 03.11.2006, relied upon by the petitioner, with the writ petition. Anyhow, this Court has examined the Instructions dated 03.11.2006. It is clear from the reading of the instructions issued by the State of Punjab on 03.11.2006, that an employee shall be granted the pay scale which is next higher in the hierarchy on completion of certain period. Before the grant of the next higher pay scale, an employee shall be required to meet with certain conditions envisaged in the instructions. Thus, it is provided that a decision has to be taken by the competent authority after examining the service record of an employee. In the present case, decisions were taken by the employer on 01.01.2010 and 01.01.2015. The petitioner has also not annexed the aforesaid orders. The reasons why the orders were passed to grant benefit of the instructions of 2006 in the year 2010 and 2015, have also not been disclosed. In absence thereof, this Court find that the petitioner has not placed on file the sufficient material to adjudicate the dispute.

The Instructions for grant of Assured Career Progression, specifically provide that the provision has been made to remove stagnation. In the present case, it is not disputed that the petitioner was given the benefit of first Assured Career Progression w.e.f. 01.01.2010, which was due after lapse of a period of four years. Second Assured Career

Progression benefit was released to the petitioner on 01.01.2015. Now the petitioner claims that he was not granted the benefits under Assured Career Progression at an appropriate time when these became due. In the considered view of this Court, once the petitioner has not, at that point of time, assailed the validity of the orders passed on 01.01.2010 and 01.01.2015, granting first and second benefit under the Assured Career Progression scheme, the petitioner, now in the year 2020, can not be permitted to challenge the same. Similarly, the third Assured Career Progression increment is available after a period of 14 years. Keeping in view the facts of the case, this Court leaves it open to the employer to take a decision thereon. The petitioner has already sent two legal notices. The appointing authority would take appropriate steps for decision thereon within a period of two months from the date of receipt of certified copy of this order.

Keeping in view the aforesaid facts, the board is directed to take a decision with regard to entitlement of the petitioner under the instructions dated 03.11.2006 on completion of 14 years of service within a period of two months from the date of receipt of a copy of this order. With these observations, the present writ petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the above-said judgment.

25.08.2020*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**