

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

1. CWP No. 21241-2013

Urmila Garg

...Petitioner

versus

State of Haryana and others

...Respondents

2. CWP No. 10363-2015

Sukh Dei

...Petitioner

versus

State of Haryana and others

...Respondents

Date of decision : 20.02.2020

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ravi Verma, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate
for State of Haryana

RITU BAHRI, J.

This order shall dispose of the above two petitions as common question of facts are involved in the above petitions wherein petitioners are seeking quashing of letter dated 09.04.2010 (P-5) and order dated 12.12.2012/02.05.2015 with further prayer for issuance of direction to the respondents to grant/restore one increment equal to 3% of the pay in the pay band. However, for facility of reference the facts are being taken from CWP No. 21241-2013.

Petitioner was initially appointed as Research Assistant on work charge basis w.e.f 31.03.1979 and her services were regularized on the

said post w.e.f 01.01.1987. Thereafter, vide order dated 28.01.2009 (P-1), the pay of the petitioner was fixed in revised pay band of Rs.9300-34800 with 1st ACP Grade of Rs.3300/- w.e.f 01.01.2006 and further fixed in the 2nd ACP pay grade of Rs.3600/- w.e.f 01.01.2007. The petitioner was then promoted as Assistant Director in the pay band of Rs.9300-34800 with grade pay of Rs.5400/- w.e.f 01.02.2009, vide order dated 10.03.2009(P-2) . Vide order dated 23.04.2009 (P-3), the pay of the petitioner was re-fixed in the pay band of Rs.9300-34800 with grade pay of Rs.5400/- w.e.f 01.02.2009 at the stage of Rs.22920/- with next date of increment on 01.07.2009. The petitioner was allowed one increment on account of her promotion as Assistant Director w.e.f 01.07.2009 in addition to annual increment on the said date and her pay was raised from 22920/- to Rs.24220/- on 01.07.2009. The basis pay of the petitioner was further enhanced to Rs.24950/- due to grant of annual increment on 01.07.2010 and further enhanced to Rs.25700/- due to grant of annual increment on 01.07.2011. The petitioner retired on 30.09.2011 on attaining the age of superannuation.

Vide order dated 12.12.2012 (P-4), the pay of the petitioner was re-fixed in the pay band of Rs.9300-34800 with grade pay of Rs.3300/-w.e.f 01.01.2006 and benefit of one increment on account of promotion to the petitioner has been withdrawn. The pay of the petitioner was fixed at the lower stage of Rs.23880/- on 01.07.2009. Hence the present writ petition.

Learned counsel is relying upon Rule 13 (2) of the Haryana Civil Service (revised pay) Rules, 2008 (for short Rules, 2008) as well as Rule 4.4 of Punjab Civil Service Rules, Volume Part I. As per Rule 13 of

Rules, 2008, the Government servant upon his/her promotion on the higher post is entitled for 1 increment equal to 3% of the pay in the pay band and existing grade pay and also entitled to grade pay corresponding to the promotional post from the date of his promotion. Thus, the petitioner was rightly granted the benefit of one increment in the pay band w.e.f 01.07.2009 on account of promotion as Assistant Director w.e.f 01.02.2009, as per fixation order dated 23.04.2009 (P-3).

Learned counsel is further relying upon letter dated 27.07.2009 (P-6) wherein it has been stated that the Government servant is entitled to the benefit of one increment equal to 3% of the pay in the pay band plus the existing grade pay in addition to the grade pay which is attached with the promotion post in case the competent authority certifies that the promotional posts carries higher responsibility and duties.

On the other hand, learned State counsel submits that the pay of the petitioner was refixed in the revised in the 1st ACP scale with pay band of Rs.9300-34800+Rs.3300/-grade pay w.e.f 01.01.2006. Further the pay of the petitioner was fixed in IInd ACP scale with grade pay of Rs.3600/- w.e.f 01.01.2007, vide order dated 16.02.2009. The petitioner was also allowed one increment equal to 3% of the pay w.e.f 01.07.2009 on account of promotion as Assistant Director Research Laboratory in addition to annual increment vide office order dated 16.07.2009 (R-2).

Learned State counsel submits that as per letter dated 09.04.2010, the increment of promotion was to be withdrawn as per provision of Haryana Government instruction mentioned above for the employees who were drawing their pay in any ACP pay scales but the same

could not be withdrawn so she was wrongly drawing enhanced pay of Rs.25700/- at the time of her retirement.

Learned counsel for the petitioner is relying upon judgment passed by this Court in a case of ***Narender Pal Singh Arya and another vs. State of Haryana and others, 2017 (1) S.C.T 254*** whereby challenge was to the letters/instructions dated 13.05.2010/09.04.2010. This Court allowed the bunch of writ petitions and set aside the the letters/instructions dated 13.05.2010/09.04.2010 by observing as under:-

The perusal of the said rule shows that in the said rule, a formula is given as to how the pay is to be fixed. It is to be fixed by granting one increment equal to 3% of the pay in the pay band and the 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. However, vide this clarification dated 9.4.2010 (Annexure-P-6), it has been clarified that if the grade pay of promotional post is higher than that of ACP Pay structure in which the Government employee is drawing his salary prior to promotion, his pay will not be re-fixed and he will only get the difference of pay scale and his date of next increment will continue to be the same as before promotion and it will not be treated as financial upgradation under the Revised Pay Rules of 2008. The effect of the said clarification is that it virtually amends the fixation formula given under Rule 13 of the Revised Pay Rules, 2008, wherein one increment equal to 3% of pay in the pay band is to be given. It is again reiterated that the administrative instructions cannot overrule the statutory rules,

framed by the Government under [Article 309](#) of the Constitution of India and cannot take away what has been provided in the said rules. The result of the notification is that the benefit of fixation of pay granted in Rule 13 above, stands withdrawn, due to which, some of the Lecturers and Principals are adversely affected. The pay of the petitioners has been revised without giving any hearing. It is established law that the pay of an employee, once fixed, cannot be revised without giving him an opportunity of being heard. On this account also, the impugned orders of re-fixation and downgrading the pay of the petitioners are illegal. Hence, the notification dated 9.4.2010 (Annexure-P-6) is also found to be illegal and is also hereby quashed.

LPA No. 2460-2017 filed against the above said judgment also stands dismissed on 31.07.2018 (A-2).

Learned State counsel has not been able to dispute the above judgment whereby instructions dated 09.04.2010 has been quashed.

In the present case, the petitioner was rightly granted the benefit of one increment in the pay band w.e.f 01.07.2009 on account of promotion as Assistant Director w.e.f 01.02.2009, as per fixation order dated 23.04.2009 (P-3). His case was covered under Rule 13 of Rules 2008.

Applying the ratio of the above judgment, the present writ petition is allowed and letter dated 09.04.2010 (P-5) and order dated 12.12.2012/02.05.2015 stands quashed. A direction is given to the respondents to restore the benefit of increment to the petitioner, as granted earlier vide order dated 23.04.2009 (P-3). The petitioner is entitled to all

consequential benefits along with 6% interest.

(RITU BAHRI)
JUDGE

20.02.2020

G Arora

Whether speaking/reasoned	Yes
Whether reportable	No