

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

220

CWP-20894-2017

Date of Decision : 27.01.2020

Tulsi Ram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr.P,K,Ganga, Advocate
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

NIRMALJIT KAUR, J. (ORAL)

The prayer in the present petition is for quashing of the order dated 20.12.2011 (Annexure P-4) whereby the request of the petitioner for regular pension as per the old pension scheme has been declined by holding that the petitioner had joined service only on 08.11.2006.

Reply has been filed.

As per the said reply also, the petitioner is not found entitled to the relief as he was appointed only on 08.11.2006 and retired after attaining the age of superannuation on 31.01.2016 and since it amounts to only 9 years, 2 months and 23 days, he is not entitled to get pensionary benefits under the new pension scheme.

Heard.

Admittedly, the petitioner had filed CWP No.19100 of 2004.

The said writ petition was decided on 05.11.2007. The operative part of the

said judgment is reproduced as under :-

“We are convinced that the petitioner is not entitled to claim arrears of pay. Counsel for the petitioner has also accepted the said proposition. He, however, states that in view of the fact that petitioner was denied appointment at the relevant time, without his fault, he is entitled to refixation of his pay. Shri Rathee, taking note of the fact that other persons who were selected with the petitioner have been given appointment, states that petitioner will be given the same pay and perks which the aforesaid persons are getting. If that is so, we feel that no grievance of the petitioner remains to be decided. The State is directed to refix his pay as if he had been taken in service along with the persons who were selected with him. However, as observed by us in the foregoing para and accepted by counsel for the petitioner, the petitioner shall not be paid arrears of pay.

Disposed of accordingly.”

It is evident from the perusal of the said judgment that he was entitled to the pension from the date of his selection and appointment of other similarly situated persons who joined their respective service according to their merit i.e. from 24.03.1998. This fact and the above mentioned judgment has been totally ignored by the respondents while denying the petitioner his regular pension as per the old pension scheme and in fact their failure to refix his pay after considering the petitioner's service along with other similarly situated persons who were selected almost amounts to contempt of the order dated 05.11.2007. Moreover, the issue in

hand is further supported by the judgment rendered in case of **Bir Singh. Kadian vs. State of Haryana, 1994(4) SLR 424**, wherein it is specifically held in para 6 and 9 as under :-

6. Still further, it is clear that it is in compliance with directions of their Lordships of the Supreme Court that the orders of promotion have been issued. In fact the controversy regarding the interpretation of rules and instructions had existed which was resolved by their Lordships of the Supreme Court vide Judgment dated August 7, 1990 in Civil Appeal No. 3837 of 1990. Still, the directions were not complied with and various interlocutory applications and contempt petition No. 79 of 1991 were filed. These were disposed of by their Lordships vide order dated November 11, 1992. It was in pursuance to the directions given by their Lordships that the petitioners were promoted. They were thus entitled to be promoted with effect from the dates now assigned by respondents. If the arrears of salary and other consequential benefits are now denied to the petitions, they would have fought and waited in vain. This would be unjust and unfair. Such is not the position of law. We cannot persuade ourselves to hold that even though the denial of promotion, in the year 1980 or thereafter was wholly illegal, the officers shall not be entitled to arrears of salary because they were not permitted to work on the higher posts. It would be adding insult to injury.

7. *X X X X X*

8. *X X X X X*

9. Accordingly, we hold that whenever a person is found entitled to the grant of retrospective promotion, he is entitled to the refixation of his pay and the grant of arrears of salary. The question posed at the threshold is answered accordingly.”

Although, the petitioner is not entitled to the arrears as already held by the Division Bench vide its order dated 05.11.2007, as reproduced above, he is entitled to the refixation of his pension by counting his service from 24.02.1998 when his juniors were promoted till 08.11.2006 by including that period. Needful be done within two months of the receipt of this order.

Petition is allowed and order dated 20.12.2011 (Annexure P-4) is quashed.

27.01.2020
anju

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No