219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.24523 of 2017 (O&M)
Date of decision : January 30, 2020

Tarsem Lal and others .... **Petitioner**

Versus

State of Punjab and others .... **Respondents**

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. K.S. Kahlon, Advocate for the petitioners.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

The grievance in the present writ petition is that the pay of the petitioners has not been fixed correctly by the order dated 04.02.2001 as the same has been fixed in the pay scale of ₹3120-5160/- instead of ₹3120-6200/-.

Learned counsel for the petitioners states that the claim of the petitioners, as being raised in the present writ petition has already been considered and allowed by this Court in the writ petition filed by similarly situated employees.

Learned counsel for the petitioner further states that this Court while deciding CWP No.8573 of 2008, titled as ***"Amar Nath vs State of Punjab & Ors.",*** decided on 28.05.2009 has already allowed the benefits of fixation of the pay to the similarly situated employees in the pay scale of ₹3120-6200/-. Further, the Letter Patent Appeal filed by the State of Punjab being LPA No.2003 of 2012, titled as ***"State of Punjab and others vs Constable Amar Nath No.105/HPR (Retired)",*** against the said order has already been dismissed, vide order dated 05.02.2013. The prayer of the petitioner is for granting the same benefit as granted by this Court to the similarly situated employee while deciding ***Amar Nath's*** case (*supra*).

In the reply, the respondents have not disputed the fact that the similarly situated employee, namely, Amar Nath has already been granted the benefit but resisted the claim of the petitioner on the ground that there is an LPA pending against the said judgment.

During the course of hearing, learned counsel for the respondents does not dispute that the LPA has already been dismissed by this Court and the order passed in case of ***Amar Nath****(supra)* has already become final wherein, the similarly situated employees as the petitioner, have been held entitled for the fixation of the salary in the pay scale of ₹3120-6200/- instead of ₹3120-5160/-. The relevant paragraph of the order passed by the Division Bench of this Court is as under:

> *"In order to justify the correctness of the aforesaid order Mr.Sidhu, counsel for the State also referred to the provisions of the ACP scheme. Para 3(iv) of which covers the case of Amarnath, provides that in those cases where an employee continues to serve in the same posts even after 32 years of service, shall be paid in the next higher pay scale in the hierarchy of pay scale as indicated in column 3 of the Ist Schedule annexed to Rule 1998 and his pay shall be fixed as mentioned in sub para (ii) of para 3. It further stipulates that pay of an employee who was in service before 1.1.1996 shall be first fixed in the revised pay scales admissible to him under Rules 1998 and then regulated in the manner provided thereafter. On the basis of this, argument was that the pay was to be first fixed and then regulated under Rules 1998 and that was exactly done in the case of Amarnath and other writ petitioners and on that basis it is argued that pay was rightly fixed. This*

argument appears to be attractive in the first blush, however, it ignores the fundamental aspect. No doubt in this manner pay is to be fixed in the revised pay scale, however, the moot question is where the benefit on the upgradation as per ACP scheme 1998, is provided in this entire exercise?

As already pointed out above both revision in pay scales, pursuant to the recommendations of the Pay Commission, as well as grant of benefit of upgradation of the pay scales became effective from 1.1.1996. Probably this is the cause of confusion in the mind of the appellants. No doubt as per the revision of pay Rules, the revised pay scales for the incumbent was `3120-5160 after old scale `950-1800, however, Amarnath had also become entitled to the benefit of upgradation under the ACP scheme at the same time. Para 3 of the Rules provides for this upgradation after 8/16/24/32 years of service, respectively. When he had become entitled to upgradation, as per para 3(i) he was to be granted pay scales which is next higher in the hierarchy of the pay scales given in column 3 of the First Schedule as is clear from this para which reads as under:

> *"3(i) After a service of 8 years in a post or posts in the same "Cadre" (hereinafter referred as the same post) an employee who is not promoted to the next higher level on account of non-availability of a vacancy at such higher level or non-existence of a promotional level in the cadre shall be granted the pay scales which is next higher in the hierarchy of pay scales given in column No.3 of the "First Schedule",*

annexed to rules,

1998. If on 1.1.1996 or the date opted under Rule 6 of Rule, 1998 an employee becomes entitled to a higher pay scale on account of protection under the sale rules he shall be granted such higher pay scale."

The next higher pay scale as per the Schedule is ₹3120-6200, therefore, on granting the benefit of upgradation, the pay of Amarnath shall be refixed in pay scale of ₹3120-6200. This was not done, instead his pay was fixed in the pay scale of ₹3120-5160 and because of this reason a sum of ₹354 which was beyond `5160/- was treated as personal pay. When pay of Amarnath, as per which fixation, came to ₹5154/- it is to be fixed in the pay scale of ₹3120-6200, which is well within the upper limit of the said pay scale and there was no question of any surplus pay to be treated as personal pay. The learned Single Judge vide impugned order has simply held that these respondents are entitled to upgradation as they had completed 8/16/24/32 years of service in the same cadre. They, therefore, could not be deprived of the benefit of ACP scheme.

We, thus, do not find any merit in any of these appeals which are accordingly dismissed.

Before we part with, it is mentioned that there is an abnormal delay of 400 days in filing the appeal which as per the appellants is beyond their control or because of the review petition filed in some of the cases but even after the dismissal of the review petition the appellants have taken substantial time to file the appeals, however, since we have dismissed the appeals on merits, we are not going into the delay as such the same is also dismissed.

Once, it is not disputed by the learned counsel for the respondents that the similarly situated employees have already been granted the benefits and the claim of the petitioner in the present petition is identical to that of ***Amar Nath's*** case (*supra*), and no point of differentiation between the case of the petitioner and Amar Nath has been pointed out, the petitioner cannot be denied the benefit, as already extended by this Court in ***Amar Nath's*** case (*supra*), which judgment has already been upheld by the Division Bench of this Court.

The claim of the petitioner is allowed in the same terms as of ***Amar Nath's*** case (*supra*).

The present writ petition is disposed of in the abovenoted terms.

(HARSIMRAN SINGH SETHI)
JUDGE

January 30, 2020
sarita
Whether speaking / reasoned Yes
Whether Reportable: Yes