

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(233)

CWP No. 4037 of 2018

Date of Decision : 21.01.2020

Girdhari Lal

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Jyoti Sareen, Advocate for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, petitioner is claiming the benefit of step up of his pay equivalent to that of his juniors w.e.f. 01.01.1996 and further, the grant of consequential revised pensionary benefits on the basis of the said step up of pay.

As per the averments made in the writ petition, petitioner was initially appointed as Distemper man on muster roll on 01.07.1981. He continued working as such till 31.03.1989, when his services were dispensed with by the department. Petitioner challenged the said action of termination of his services before the Labour Court and vide award dated 26.07.1991 petitioner was reinstated by the Labour Court with continuity of service and with full back wages w.e.f. 21.06.1989. After reinstating the

petitioner in compliance of the judgment of the Labour Court, his services were also regularized on 01.09.1992. Petitioner continued working with the respondents till he retired on attaining the age of superannuation on 31.01.2009.

After retirement, petitioner raised a grievance that the employees, who were junior to him, were getting a higher salary and, therefore, he is also entitled for the step up of his salary equivalent to that of his juniors. In para 4 of the writ petition, petitioner has given the names of the juniors, who were appointed on the muster roll after him and were regularized after his service had been regularized, but were getting a higher pay than him.

Petitioner has also placed reliance upon an order, which has been passed by the respondents themselves on 08.06.2018 (Annexure P-10) vide which another person, namely, Sh. Bhupinder Singh Saini, who was also seeking the same relief of step up of his pay equivalent to that of his juniors, has been allowed the said benefit. Sh. Bhupinder Singh Saini was also claiming the same benefit of step up of his salary qua the same set of juniors, as being claimed by the petitioner in the present writ petition.

After notice of motion, respondents have filed the reply. In the reply, they have admitted that the petitioner was senior to some employees, who were getting higher pay than the petitioner. Further, the respondents have not disputed that Sh. Bhupinder Singh Saini, who raised the same dispute as the petitioner has raised in this petition, has been allowed the benefit of step up of pay equivalent to that of his juniors. It is also stated in the reply that Sh. Bhupinder Singh Saini has been granted the benefit of

notional fixation and arrears of 38 months prior to the filing of the writ petition. Despite the admission of all the facts by the respondents, still the claim of the petitioner is being contested on the aspect of delay in claiming the relief.

Learned counsel for the petitioner argues that even Sh. Bhupinder Singh Saini, to whom the benefit has been allowed by the respondents in the year 2018, approached this Court only in the year 2017 by filing CWP No. 17831 of 2017, which was disposed of in November, 2017 and the respondents granted him the similar benefit and, therefore, the objection of delay in filing the writ petition is not a valid objection. Learned counsel for the petitioner states that petitioner will be satisfied in case he is also given the notional benefits as extended to Sh. Bhupinder Singh Saini with arrears restricted to three years and two months from the date of filing of the present writ petition.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, it is not disputed that petitioner was senior to a number of employees, who were getting higher pay than the petitioner, there is no justification given by learned counsel for the respondents that a junior employee can get a higher pay than a senior employee. Further, it has also not been disputed by the learned counsel for the respondents that a similarly situated employee, who was also claiming the same benefit of step up of pay on the basis of the higher pay being drawn by the same set of juniors, have been allowed benefit by the respondents themselves by passing a detailed speaking order on 08.06.2018. That being so, the benefit which has been

extended to Sh. Bhupinder Singh Saini in the year 2018, cannot be denied to the petitioner. All the similarly situated employees are to be treated alike. It is a settled principle of law that in case any junior is getting a higher pay due to any anomaly, the pay of the senior is to be stepped up equivalent to that of his juniors. In the absence of any cogent reason projected by the learned counsel for the respondents to deny the claim of the petitioner, it can be safely held that denial of salary to the petitioner equivalent to that of his juniors was totally arbitrary and illegal. Therefore, the claim of the petitioner for stepping up of his pay equivalent to that of his juniors w.e.f. 01.01.1996 is liable to be allowed and is accordingly allowed.

As far as the objection of delay in approaching this Court, which is being raised by the learned counsel for the respondents cannot be accepted in view of the fact that the benefit to a similarly situated employee, who approached this Court in the year 2017, has been allowed by the respondents themselves by passing a speaking order on 08.06.2018. On the day, when the said benefit was allowed to Sh. Bhupinder Singh Saini, the present writ petition was pending before this Court. Therefore, once the benefit has been extended to a similarly situated employee in June, 2018, when the claim of the petitioner was already pending consideration before this Court, no ground is made out to reject the claim of the petitioner on the ground of delay.

Even otherwise, learned counsel for the petitioner has very fairly accepted that petitioner will not claim the arrears on account of re-fixation of his salary by stepping up of the same equivalent to his juniors except for a period of three years and two months from the date of filing of

the present writ petition in case the said benefit is allowed to the petitioner. Once same benefit has already been extended by the respondents themselves to Sh. Bhupinder Singh Saini, declining the claim of the petitioner on the ground of delay will be unjust and unwarranted.

In view of the above, the present writ petition is allowed. A direction is issued to the respondents to consider the claim of the petitioner for step up of his pay equivalent to his juniors, the details of whom have been given in para 4 of the writ petition and appropriate speaking order in this regard granting the petitioner benefit of step up of salary be passed within a period of two months from the date of receipt of certified copy of this order. After the grant of the benefit, the pay of the petitioner shall be notionally fixed and his retiral benefits shall also be re-computed within a period of one month thereafter. It is made clear that keeping in view the undertaking given by learned counsel for the petitioner, petitioner will only be entitled for arrears for a period of three years and two months before the filing of this writ petition, which was admittedly filed in February, 2018.

Writ petition is allowed in above terms.

January 21, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*