

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.204

CWP No.13318 of 2020

Date of Decision: 30th April, 2021

Harvir Singh

...Petitioner

Versus

Punjab State Cooperative Supply and
Marketing Federation Limited & Ors.

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Amit Sharma, Advocate
for the petitioner.

Mr. T.S. Sidhu, Advocate
for the respondents.

* * * *

MEENAKSHI I. MEHTA, J.

The petitioner, by way of the instant petition, has sought the indulgence of this Court for the issuance of a writ in the nature of certiorari setting-aside the order dated 30.04.2020 (Annexure P-13) and its consequent order dated 08.05.2020 (Annexure P-14) as passed by respondents No.2 and 3 respectively whereby the order passed by respondent No.1 for granting him the higher pay-scale of Rs.1200-2100/-, which was upgraded from time to time upto Rs.10300-34800/-+3800/- (Grade Pay), has been withdrawn and he has also prayed for the issuance of a writ in the nature of mandamus directing the respondents to restore his above-said higher pay-scale and to pay all the consequential benefits to him along-with interest thereon @ 18% per annum and to release the amount of gratuity to him after taking the tenure of service, as rendered

by him on the adhoc basis, into consideration and to pay him the statutory interest on the arrears of pay @ 9% per annum and he has further prayed for directing respondent No.1 to fix the responsibility of the concerned officials in the said illegal withdrawal of his above-said benefit.

2. Bereft of the unnecessary details, the facts as canvassed by the petitioner in the present petition, are that he was employed with Markfed (here-in-after referred to as 'the respondent-Federation') on 28.04.1992 as a Clerk, on adhoc basis, in the pay-scale of Rs.1200-2100/- for a period of 89 days vide the appointment-letter Annexure P-1. Vide letter dated 19.10.1993 (Annexure P-2), the pay-scale of all the Clerks was enhanced to Rs.1200-2130/-. He had been reappointed by the respondents as Clerk, on ad-hoc basis, from time to time. The Government of Punjab framed the Punjab Civil Services (Revised Scales of Pay) Rules, 1998 and the respondent-Federation also adopted the same and consequent thereto, the pay of the employees working with the respondents was revised in accordance with the options exercised by them in this regard. He had been drawing the salary in the so revised pay-scale of Rs.4020-6200/- w.e.f. 01.01.1996 with annual increments as granted to him from time to time. Vide the order dated 18.09.2000 (Annexure P-5), his services as Clerk were regularized in the pay-scale of Rs.3120-5160/-. Later-on, in view of his representation dated 23.09.2000 (Annexure P-6) regarding the said down gradation of his pay-scale, he was granted the pay-scale of Rs.4020-6200/- vide the order dated 17.05.2001 (Annexure P-7). Thereafter, vide order dated 10.04.2008 (Annexure P-9), he was given the benefit of ACP Scheme on completion of eight years of service and then, his pay-scale was further revised to

Rs.10300-34800/-+3800/-(Grade Pay) vide letter dated 05.03.2010 (Annexure P-10).

3. The petitioner has, further, averred that respondent No.3 issued the notice dated 18.12.2018 (Annexure P-11) to him regarding the proposed withdrawal of the pay-scale of Rs.1200-2100/- given to him at the time of his initial appointment and for fixing his pay in the pay-scale of Rs.950-1800/-. He had appeared before respondent No.2 and had made all the necessary submissions to lodge his objections qua the above-said proposed withdrawal of the pay-scale and thereafter, respondent No.2 directed respondent No.3 to withdraw the said notice. He superannuated on 30.04.2020 but vide order Annexure P-13, the said order Annexure P-7 granting him the pay-scale of Rs.4020-6200/- was withdrawn and resultantly, his pay was refixed vide the order dated 08.05.2020 (Annexure P-14). Both the said orders are illegal as respondent No.2 was not competent to pass the order Annexure P-13 and the order for withdrawal of his said pay-scale has been passed after a period of nineteen years. He is also entitled to the retiral benefits, i.e Gratuity and Leave Encashment, calculated on the basis of his last drawn salary by taking the period, during which he remained employed on ad-hoc basis, into consideration.

4. In their short written-reply, the respondents have contested the claim of the petitioner, *inter-alia*, on the ground that the Board of Directors of the respondent-Federation, in its meeting as convened on 26.02.1992, had resolved/decided that the pay-scales as well as the designation of the employees of the respondent-Federation should be ascertained on the same pattern as followed by the Punjab Government

and thereafter, the respondent-Federation had adopted the uniform policy and as a result thereof, all those employees, who were granted salary in the pay-scale of Rs.1200-2100/- prior to the said date, i.e. 26.02.1992, were allowed to retain the said pay-scale and the employees appointed on the post of Clerk after the afore-said date are being given the salary in the pay-scale of Rs.950-1800/-. The petitioner was appointed as Clerk on 28.04.1992 but inadvertently, he was given the benefit of the pay-scale of Rs.1200-2100/- instead of Rs.950-1800/- and the respondents came to know about this fact during the pendency of **CWP No.7841 of 2017** as filed by another employee named Mahender Pal for seeking the grant of the pay-scale of Rs.1200-2100/-. However, before withdrawing the said pay-scale, the petitioner was afforded an opportunity of being personally heard in this regard and he availed the same. No recovery of the excess payment already made to the petitioner due to the erroneous fixation of his salary in the pay-scale higher than the actually permissible one, is being effected from him and hence, this petition deserves to be dismissed.

5. In the replication, the petitioner has reiterated his earlier averments as put-forth in the instant writ petition besides controverting the assertions as advanced by the respondents in their short written-reply.

6. I have heard learned counsel for the petitioner as well as learned counsel for the respondents in this petition and have also gone through the file thoroughly.

7. Learned counsel for the petitioner has contended that the short written-reply on behalf of respondents No.1 to 3 has been filed by the Law Officer of the respondent-Federation whereas as per the letter dated 08.09.2015 (Annexure P-15), the Board of Directors had taken the

decision in its meeting as held on 23.07.2015, for authorizing the officers to represent the respondent-Federation in the eventuality of any litigation initiated by or against it, as specified therein and in view thereof, it becomes clear that the Law Officer was not competent to file the said reply on behalf of the respondents.

8. However, this contention does not hold much water because a perusal of Resolution No.11, annexed with letter Annexure P-15, reveals that the Board of Directors had also resolved that the Managing Director would have the power to issue the directions and to delegate the powers mentioned in Clauses (ii) and (iii), pertaining to the signing of the power of attorney, petition, complaint, written statement and engaging advocate, to any officer of the respondent-Federation or to withdraw the same from any such officer. Thus, it is quite explicit that the said powers can even be delegated to the Law Officer of the respondent-Federation and therefore, the short written reply, as filed by the Law Officer, cannot be brushed aside at all.

9. Learned counsel for the petitioner has referred to Annexure P-17, i.e the copy of the office-note as approved for granting the pay-scale of Rs.1200-2100/- to one Raghbir Singh, Clerk instead of the pay-scale of Rs.950-1800/- as initially granted to him at the time of his appointment and he has pointed out that it has been clearly mentioned therein that the Board of Directors, in its meeting held on 03.02.1993, took the decision for the down gradation of 50% posts of the Junior Assistants to those of the Clerks in the pay-scale of Rs.950-1800/- and the Registrar, Cooperative Societies, had accorded his approval to the said decision vide the order dated 20.09.1993 (now annexed as P-19) and

he has contended that the petitioner had been employed by the respondents on 28.04.1992, i.e much prior to the afore-said decision regarding lowering the pay-scale of the post of the Clerk and its approval by the competent Authority and it being so, the petitioner was entitled to the pay-scale of Rs.1200-2100/-.

10. Per contra, learned counsel for the respondents has argued that though the afore-said office-note recommending the grant of the pay-scale of Rs.1200-2100/- to said Raghbir Singh Clerk had been approved but as specifically mentioned in Annexure R-1, i.e the copy of the order dated 13.12.2016 passed by respondent No.2, the order dated 04.09.2008 passed to this effect, had never been implemented and rather, the same had, subsequently, been withdrawn vide the order dated 31.08.2016 in view of the objections raised by the Audit Department and therefore, the said office-note cannot be taken by the petitioner as a ground to stake his claim as put-forth in this petition.

11. Admittedly, the Punjab State Cooperative Supply and Marketing Federation Employees (Common Cadre) Service Rules, 1990 (for short, 'the Service Rules, 1990') are applicable to and would govern the terms and conditions of the service of the petitioner as the same were in force at the time of his appointment with the respondents on the afore-said date, i.e 28.04.1992. Rules 1.5 (b) and (c) of the said Rules provide as under:-

“(b) The Board of Directors shall, however, be competent to add or enhance or reduce the strength of any such category of service or add and prescribe, qualifications for direct recruitment and promotion. This power shall be exercised by the Board of

Directors with prior approval of the Registrar, Cooperative Societies.

(c) The Managing Director on the analogy of the grades approved by the Punjab Government for its employees, may adopt these and revise pay scales of comparable categories of employees, both in respect of nomenclature and scales, on the rolls of the Federation.”

The afore-referred Rules make it crystal clear that so far as the powers of the Board of Directors qua adding or enhancing or reducing the strength of any category of the service as well as adding and prescribing the qualification for direct recruitment and promotion are concerned, the same are subject to the prior approval of the Registrar, Cooperative Societies but the Managing Director has been given the discretion to adopt the grades on the analogy of the grades approved by the Punjab Government for its employees and to revise the pay-scales of the comparable categories of employees both in respect of nomenclature and scales, accordingly.

12. In the notice Annexure P-11 as issued to the petitioner qua the proposed withdrawal of the pay-scale of Rs.1200-2100/- as initially granted to him, it has categorically been mentioned that while revising the pay-scales of the employees of the respondent-Federation on the pattern of the Punjab Government, in its meeting convened on 26.02.1992, the Board of Directors had taken a decision to follow the said pattern in respect of the designation as well as the grant of the pay-scales to its employees in future and had granted the pay-scale of Rs.950-1800/- to the Clerks recruited after the said date. It being so, it becomes explicit that the said decision of the Board of Directors fell within the

ambit of Rule 1.5(c) and was, therefore, not subject to and thus, did not require the approval of the Registrar, Cooperative Societies before its implementation and rather, the same could be enforced from the said date, i.e 26.02.1992 itself.

13. Further, a bare reading of Annexure P-19, i.e the copy of the letter dated 20.09.1993 as issued by the Registrar, Cooperative Societies Punjab to the Managing Director of the respondent-Federation, shows that the proposal and the resolution passed by the Board of Directors to downgrade 58 posts out of 116 posts of the Junior Assistants in the pay-scale of Rs.1200-2100/- to those of the Clerks in the pay-scale of Rs.950-1800/- had been approved and Appendix II of the Service Rules, 1990, which pertains to the details of the cadre strength, pay-scales, age limit and recruitment of the employees, was also allowed to be amended accordingly. Since the said decision qua the downgrading of the posts of Junior Assistants to the posts of Clerks, fell within the four corners of Rule 1.5 (b), therefore the approval of the Registrar, Cooperative Societies was required, sought and was granted before implementing the above-said resolution/decision. In view of the afore-discussed facts and circumstances, the petitioner, who had been employed after the said decision as taken by the Board of Directors on 26.02.1992, cannot be held to be entitled to the pay-scale of Rs.1200-2100/-.

14. Learned counsel for the petitioner has, then, contended that the said notice Annexure P-11 had been ordered by respondent No.2 to be withdrawn and moreover, the petitioner had been granted the pay-scale of Rs.1200-2100/- after the same was pre-audited and even vide the order dated 17.05.2001 (Annexure P-7), the pay-scale of Rs.4020-120-4260-

140-4400-150-160-5800-200-6200 had been restored to the petitioner in view of his representation and therefore, the withdrawal of the order Annexure P-7 by the respondents vide the impugned order Annexure P-13 after 19 years was not justified at all.

15. Again, these contentions are not tenable at all because the petitioner has not placed any material on the file to substantiate his averment regarding respondent No.2 having ever ordered for the withdrawal of notice Annexure P-11. Rather, as specifically mentioned in para 5(i) of the petition itself, an opportunity was also afforded to the petitioner of being personally heard on 24.12.2018 in respect thereof and this fact goes to show that the said impugned orders had not been passed by the respondents arbitrarily.

16. To add to it, it has been held by the Hon'ble Supreme Court in "*Union of India & Ors. Vs. Shri Bhanwar Lal Mundan, 2013(8) SCR 559*" that "*the authorities were well within their domain to rectify the erroneous fixation of pay*". In view of these observations, it is explicit that an erroneous order granting the pay-scale higher than the actually admissible one, can be rectified at any time. In these circumstances, the impugned order Annexure P-13 qua the withdrawal of the afore-said order Annexure P-7, as passed for upgrading the pay-scale of the petitioner in view of his representation, cannot be held to be illegal or wrong.

17. Another contention raised by learned counsel for the petitioner is that vide order dated 19.10.1993 (Annexure P-2), the respondents have extended the benefit of the higher pay-scale to the Clerks and several other categories of the employees by revising it to

Rs.1200-2100/- w.e.f 01.01.1986 and further to Rs.1200-2130/- w.e.f 01.01.1993 and hence, the petitioner is also entitled to the same benefit and his pay-scale could not have been downgraded vide the impugned orders but again, this contention is devoid of any merit because as is clear from the afore-discussed contents of the said order itself, it pertains to the Clerks recruited prior to the said decision dated 26.02.1992 qua the adoption of the pay-scale for the post of Clerk on the analogy of the pay-scales as approved by the Punjab Government to pay the salary to its similarly placed/designated employees.

18. Though it has also been averred by the petitioner in the present petition that he is entitled to the calculation of the amount of gratuity, payable to him on his superannuation, while taking the period, during which he remained employed with the respondents on adhoc basis, into consideration but however, he has not placed any document on the file to show that the respondents have passed any order so as to afford any valid cause of action to him to seek such relief.

19. As a sequel to the foregoing discussion, it follows that this petition is *sans* any merit and therefore, it deserves dismissal. Resultantly, the same stands dismissed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

30th April, 2021.

neetu/seema

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No