

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

CWP No.739 of 2013 (O&M)

Date of Decision: 23.03.2021

Sube Singh Deswal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sourabh Goel, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana for the respondents.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the impugned order dated 10.05.2012 (P-4), whereby the claim of the petitioner for re-fixation of his pay in the pay scale of Rs.13500-17250 w.e.f. 01.01.1996 was declined. Further prayer is to direct the respondents to pay the arrears on account of re-fixation along with all consequential benefits.

At the outset, learned Counsel for the petitioner has pointed out that his case is covered in view of the order of Hon'ble Supreme Court, rendered in SLP (Civil) No.39474 of 2013.

Paper-book reveals that petitioner joined the services with the respondent-department as Assistant Engineer on 15.10.1969; thereafter on 10.03.1980, he was promoted to the post of Executive Engineer and subsequently, as Superintending Engineer on 08.02.2000.

State of Haryana, vide Notification dated 16.05.1989 (P-1), revised the pay scale w.e.f. 01.05.1989 and the petitioner was granted selection grade of Rs.4100-5300 w.e.f. 01.05.1989. Thereafter, on 07.01.1998, State of Haryana notified Haryana Civil Services (Revised Pay) Rules, 1998 (*for short 'Revised Pay Rules'*) as well as Haryana Civil Services (Assured Career Progression) Rules, 1998 (*for short 'ACP Rules'*).

It is the case of the petitioner that as per Revised Pay Rules, he should have been granted the corresponding pay scale of Rs.4100-5300 as Rs.13500-17250, but his pay was wrongly fixed in the pay scale of Rs.12000-16500 on the basis of ACP Rules.

Similar issue came up for consideration before this Court in a bunch of petitions and in CWP No.10506 of 2002, '**Dr. K.L.Kumar and others Versus State of Haryana and others**' and Single Bench of this Court while allowing the writ petition on 06.10.2009 observed that in view of the revised pay Rules, the corresponding pay scale of Rs.4100-5300 would be Rs.13500-17250 and not Rs.12000-16500. Relevant part of the judgment reads as under:-

“ The controversy involved in this writ petition accordingly is short and crisp. The petitioners would contend that they were all such persons working in the Animal Husbandry Department, who had been granted selection grade scale entitled to 20% of the posts

in the cadre. By making reference to the selection grade in the unrevised scale, which was Rs.4100-5300, the petitioners would seek fixation of their pay in the revised scale corresponding to this selection grade scale. The respondents, however, would contest this. Rather Mr. Rathee has made a very valiant attempt to justify the fixation of pay of the petitioners in the scale of Rs.12000-16500, being a scale which is entitled to those 20% of the posts in the selection grade. The justifications offered by Mr. Rathee proceeds on the basis that the functional pay scale of the petitioners would correspond to the revised pay scale of Rs.12000-16500 and accordingly they were required to be fixed in the scale. On this the counsel for the petitioner would join issue with State counsel and would say that the selection grade scale, which was granted to the petitioners, could not be ignored while fixing the pay in the revised scale. In fact, Annexure P-4 says so in so very clear terms that selection grade is required to be kept in view while fixing the revised pay scale. Counsel for the petitioners has drawn my attention to the Haryana Gazette notification dated 7.1.1998 and would point out to a particular entry at Sr.No.23 where the existing pay scale in Haryana of Rs.4100-125- 4850-150-5300 is replaced by the scale of Rs.13500-375-17250. Not only that, the petitioners would rely upon the case of Dr.M.P.Mohla (supra), who was also working in the same cadre and was identically placed. Counsel would contend that there is no reason to distinguish the case of Dr.M.P.Mohla from that of the petitioners. Rather, the petitioners would claim to be on better footing on the ground that Dr.M.P.Mohla was the junior-most officer in the Department and if he is said to be rightly fixed in the scale of Rs.13500-17250, the same could not be denied to the petitioners.

Once the issue of functional pay scale was raised by Mr. Rathee to justify the fixation of scale of the petitioners in Rs.12000-16500, he was asked to answer as to what is the selection grade scale in the revised pay scale now provided. On proper instructions, Mr. Rathee states that there is no separate selection grade now available in the revised pay scale and this scale has

been merged in the functional pay in the revised scale. That being the position, the functional pay scale now available in the revised scale is to be the one which is corresponding to the scale, which had been allowed to the petitioners in the un-revised pay scale. It is not a matter of dispute that the petitioners were rightly fixed in the pay scale of Rs.4100-5300 in the un-revised pay scale. Whether it was a selection grade or otherwise, their revised scale is now to be fixed by taking this scale into consideration. This would be so, when now there is no selection grade provided under the new revised scale. It is only the functional pay scale now available in the revised scale. A simple method to fix their scale now is to see the corresponding scale available to the un-revised scale drawn by the petitioners. As per the entry in the Gazette notification referred to above, the pay scale of Rs.4100-5300 is now replaced by Rs.13500-17250.

The submission that ACP Rules are to apply to the case of the petitioners would not appear sound. The petitioners are the one who were fixed in the scale on the basis of their promotion as Joint Director. Not only that, their pay had been fixed in the selection grade, which is available only to 20% of the posts existing in the cadre. Once they had been considered and granted promotion or the selection grade, obviously they would not be governed by the ACP Rules. Assured Career Progression basically is to take care of the situation where the one is not able to earn a promotion in the normal course of his service career. Accordingly, the plea that ACP Rules would be applicable to the case of the petitioners can not be accepted. Since there is no selection grade now available, the pay of the petitioners required to be fixed by taking into consideration the scale drawn by them in the un-revised pay scale. This un-revised pay scale clearly is now revised to Rs.13000-17250. This was perhaps the reason for the respondents to take this stand in the case of Dr.M.P.Mohla (supra). This would be an added reason not to distinguish the case of the petitioners in any manner as is being sought to be done. Similarly situated person in the Department has been allowed a scale, which has been up-held

upto the Hon'ble Supreme Court. It would not be fair to treat the petitioners in any different manner. In any case, the case set up by the petitioners is not only based on being equated with the decision in the case of Dr.M.P.Mohla (supra) but is also based on the merits in the writ petitions. The submission made on behalf of the State the judgment of the Supreme Court would not be of any help to the petitioners in view of the observations made in Para 35 of the judgement as reproduced above would also not make much difference. The decision rendered by the Division Bench of this Court in the case of Dr.M.P.Mohla (supra) was taken before the Supreme Court on two occasions. Initially, when the writ petition was allowed, the order was challenged by filing SLP, which was dismissed. Thereafter the review was sought, which was again impugned by filing the Special Leave Petition. The order passed by the Hon'ble Supreme court while dismissing the Special Leave Petition against the order dated 4.12.2000, initially passed by the Division Bench is not placed before me. Obviously, there are no observations in the said order while dismissing the S.L.P that it would not apply to the cases of similarly situated persons. Even on merits, the petitioners have been able to make good their pleas. The respondents have not been able to substantiate the plea that ACP Rules would apply for fixing the pay scale of the petitioner. Once the functional pay scale corresponding to the selection grade pay scale drawn by the petitioners is provided in the revised pay scale, it would be fair to fix the pay scale of the petitioners in the said scale, which was done but is sought to be undone. I am of the considered opinion that the petitioners have made out a case for fixing their pay scale in the scale of Rs.13000-17250. ”

Aggrieved against the above order, State of Haryana filed various appeals including LPA No.930 of 2010, but the same were dismissed by the Division Bench of this Court on 10.08.2010. Ultimately, respondents approached Hon'ble Supreme Court by way of Special Leave to Appeal (Civil) Nos.39474-39475 of 2013 and those were also dismissed on 12.10.2018.

On asking of the Court as to whether the case of the petitioner is covered in terms of **Dr. K.L.Kumar’s case** (*supra*) or not; learned State Counsel candidly acknowledged that factually as well as legally, the controversy involved in the present case is squarely covered by the aforesaid judgment.

In view of the agreed stand taken by both sides, this Court has no option except to allow the present petition.

As a result thereof, this writ petition is allowed in terms of CWP No.10506 of 2002, **Dr. K.L.Kumar’s case** (*supra*), decided on 06.10.2009.

Ordered accordingly.

March 23rd, 2021
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No