IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13984-1999 (O&M)
Date of decision: 08.12.2022

Surinder Singh and others ...Petitioners

VS

State of Haryana and another …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vikas Chatrath, Advocate,
For the petitioners.

Mr. R.D.Sharma, DAG, Haryana.

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ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondents to maintain pay parity between Platoon Commander of Home Guards and Sub-inspector of Haryana Police.

2. The controversy herein in fact has already been a subject matter of decision rendered by Division Bench of this Court wherein similarly situated counter parts of the petitioners had sought the following relief:-

> "*Writ Petition under Article 226/227 of constitution of India for issuance of appropriate writ, particularly a writ in the nature of mandamus directing the respondents to remove the anomalies w.e.f. 1.1.1986 instead of 1.5.1990 (P-11) in the pay scales revised w.e.f. 1.1.1986 as the date mention in P-11 as 1.5.1990 is arbitrary, discriminatory and ultra-vires of Articles 14 and 16 of the Constitution of India.*"

3. A bare comparison of relief in the earlier writ petition and relief sought herein in the instant petition would show that the case of the petitioners herein is not different from that of the petitioners in the said CWP-12483-1990 titled "***S.K.Bishnoi Vs. The State of Haryana"*** though learned

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counsel for the petitioners has attempted to argue otherwise with which I am not in agreement.

4. Coming now to the decision rendered by the Division Bench wherein G.R.Majithia, J. (as he then was) speaking for the Court held as below:-

> *"9. The petitioners are not correct in saying that the PAC or the Officers' Committee had detected any anomaly in their pay scale. Even at the time of hearing, none was pointed out. The official record produced at the time of hearing does not point out that either the PAC or the Officers' Committee found any anomaly in the pay scale of the petitioners or other similarly situated employees. To us, it appears that the respondent allowed them the higher pay scale of Rs. 2000-3500 keeping in view the nature of duties performed by them. It is for the Administrative Department to identify the comparable posts occupied by the petitioners in the Central Government. For allowing the revised pay scales as suggested by the Fourth Pay Commission of the Central Government, identification or creation of posts has to be made by the respondent. The Administrative Department may take time to identify the posts or to create new posts and it may decide to allow the benefit of revised pay scales only after identification of comparable posts or creation of comparable posts. An employee cannot urge that since the State has failed to identify the comparable post or create a new post for implementing the Pay Commission's recommendation forthwith, he should be allowed the benefit of revised pay scale with retrospective effect, viz., from the date the Pay Commission's report was made applicable. This conclusion of ours finds support from the judgment of the apex Court rendered in Union of India and others v. The Secretary, Madras Civil Audit & Accounts Association, etc., 1992(1) SCT 419: 1992(1) SLR 667(SC).*
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> *XXX XXX XXX*
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> *14. In Om Parkash Malik's case (supra), the Haryana State Electricity Board (the Board, for short) vide its office order No. 384 dated August 19, 1987, decided to revise the pay scales of various categories of employees (regular, ad hoc and work-charged employees) with effect from January 1, 1986. The petitioners Om Parkash Malik and others working as Upper Division Clerk Cash Audit Clerks and Typewriter Mechanics with the Board represented that their pay scales should have been revised to Rs. 1400-2600*

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> *instead of Rs. 1200-2040/-, because the same grade was given to all other categories of employees who were in the pay scale of Rs. 525-900 prior to the date of revision. The Board constituted a Pay Anomaly Committee to examine the anomalies in respect of pay scales revised with effect from January 1, 1986. The Pay Anomaly Committee recommended that all employees like the writpetitioners be allowed the revised pay scale of Rs. 1350- 2200/- with effect from January 1, 1986. The Board accepted the recommendation, but granted the revised pay scale with effect from May 1, 1990. It was on these facts that the Court had directed that the writ-petitioners be allowed the higher pay scale with effect from January 1, 1986. The facts of that case have no applicability to the instant case. As observed earlier, no anomaly had been detected by the Pay Anomalies Commission or the Officers' Committee in the pay scale of the petitioners and in fact none could be pointed out at the time of bearing."*

5. After making the aforesaid observations, the Division Bench discussed various judicial precedence prevailing at the time of rendering their opinion and concluded as below:-

> *"For the reasons stated above, we find no merit in these writ petitions and the same are dismissed, but with no order as to costs."*

6. Having perused the Division Bench judgment and the various judicial precedents referred to therein, I see no reason why the petitioners' claim herein should not meet the same fate as the ones before the Division Bench. In fact, it is pertinent to note here that some of the petitioners herein (Petitioners No.1 to 3, 6 and 7) were also petitioners in CWP No.12483-1990 decided by the Division Bench way back in 1993 and in any case their relief is directly barred by the principles of *res judicata*. For those who were not before the Division Bench, as already observed, their claim being similar to those of their counter parts, they also have to necessarily meet the *fait accompli.*

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7. In the parting, I may hasten to add here that learned counsel for the petitioners has strenuously laboured to convince me that the petitioners before the Division Bench were not able to point out pay anomaly in the right perspective which led to a wrong judgment rendered by the division Bench and therefore, this Bench by recording its disagreement qua the same may refer the matter to a Larger Bench.

8. As already discussed, being in respectful agreement with the Division Bench, I see no grounds to refer the matter to a Larger Bench on the principle of judicial propriety. I am bound by the decision given by the Division Bench.

9. On a Court query, learned State counsel points out that the Division Bench Judgment has since attained finality as no SLP was preferred.

10. No grounds are made out to interfere. Dismissed.

(ARUN MONGA)
JUDGE

December 08, 2022
Vandana

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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