

223 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP- 2799-2017

Date of Decision: 04.04.2022

Ravinder Singh Nandal and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Hooda, Advocate,
for the petitioners.

Mr. Narender Singh Behgal, AAG, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed challenging the order dated 27.04.2015 (Annexure P-9), passed by respondent No.2, vide which the condition No.4 of the order dated 26.09.2013, by which the petitioners were engaged as the Agricultural Development Officers, has been modified with regard to the grant of emoluments.

Learned counsel for the petitioners submits that petitioner No.1 and 2 retired as Block Agriculture Officers from the Department of Agriculture, State of Haryana, on 31.05.2013 and 28.02.2011, respectively. Learned counsel further submits that the respondent-Department issued an advertisement on 14.06.2013 for re-engagement of the retired Block Agriculture Officers in the Department of Agriculture as Agriculture Development Officer (Soil Conservation). As both the petitioners were eligible for the said post, keeping in view the eligibility conditions mentioned in the said advertisement, therefore, they applied for the said post

and underwent the selection process and were ultimately recommended vide order dated 26.09.2013 to be engaged as Agriculture Development Officers (Soil Conservation) for a period of twelve months on the terms and conditions mentioned therein or till the regular candidates join.

A bare perusal of Clause No.4 of the terms and conditions of the letter dated 26.09.2013, on the basis of which the petitioners were appointed, shows that the remunerations shall be calculated as per the Government rules, i.e. the difference between the last pay drawn (Basic Pay+D.A.) and the amount of monthly pension. The said condition being acceptable to the petitioners, they joined the service keeping in view the terms and conditions offered as per the letter dated 26.09.2013. After expiry of one year, the petitioners were granted extension for a period of six months on the same terms and conditions as mentioned in the letter dated 26.09.2013. As there was no change in the said terms and conditions, the petitioners accepted their extensions of service and further discharged their duties for another six months. After the period of six months came to an end, again vide order dated 29.05.2015, the petitioners were granted six months extension on the same terms and conditions as mentioned in the offer of appointment dated 26.09.2013. Thereafter, the petitioners continued working as such. Ultimately, keeping in view the extensions being granted to them on the same terms and conditions as mentioned in the offer of appointment dated 26.09.2013, the tenure of petitioner No. 1 and 2 came to an end on 30.11.2015 and 30.07.2016, respectively.

Before the tenure of service of the petitioners ended, the respondents passed an order dated 27.04.2015, amending the terms and conditions of the offer of appointment dated 26.09.2013 retrospectively,

thereby reducing the financial remuneration, which the candidates were to get on monthly basis.

Though the order was passed on 25.02.2015 but was endorsed on 27.04.2015, which is as under:-

**“ DEPARTMENT OF AGRICULTURE HARYANA
ORDER**

Condition No. 4 of engagement order of Agriculture Development Officer (SC), Issued by Director General of Agriculture, Haryana, Panchkula order endst. No. 5982 6012/E-II (1) , dated 26-09-2013 & No. 6125-27/E-11(1), dated 07-10-2013 is hereby modified as under:

"The amount of remuneration shall be calculated as wages 50% of initial pay (pay + grade pay+D.A.) of fresh entrant and regular employee after 01 - 01 - 20r or on the wages fixed by the concerned Deputy Commissioner under Minimum wages Act, whichever is higher."

The above remuneration of the engaged Agriculture Development Officer (SC) will be drawn from the object head-69 Contractual Service.

Dated: 25-02-2015

*Ramesh Krishan, I.A.S.
Director General of Agriculture, Haryana.*

Endst. No. 1885

Estt.11(1), Dated: 27/4/2015

A copy is forwarded to Additional Director (SC), Haryana, Panchkula for information. You are further requested to make arrangement of funds in object head-69 Contractual Service, so that remuneration will be paid to the ADO (SC)^ prime s engaged on contractual basis.

*Asstt. Director (Admn.)
for Director General of Agriculture, Haryana.*

Endst. No.1896-1924 Estt.II(1), Dated: 27/4/2015

A copy is forwarded to the following:

- 1. All Divisional Soil Conservation Officers in the Haryana State,*
- 2. All Assistant Soil Conservation Officers in the Haryana State,*
- 3. Senior Analyst, Quality Control Lab (Fertilizer), Karnal and Hisar,*
- 4. All concerned Officer*

for information and necessary action.

Asstt. Director (Admn.)

for Director General of Agriculture, Haryana.”

The said order, by which the terms and conditions of the appointment were retrospectively amended, is under challenge in the present petition.

After notice of motion, the respondents have filed a reply, wherein they have stated that though initially while offering the appointment to the petitioners, as per Clause No.4 of the appointment order dated 26.09.2013, the petitioners were given appointment on particular terms and conditions regarding their monthly salary but as the said offer was not in consonance with the policy decision taken by the Government, the same was altered by the impugned order dated 25.02.2015, and therefore, no grievance can be raised by the petitioners in this regard as the policy decision taken by the Government will prevail over the terms and conditions of the appointment order.

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

In the present case, the petitioners were found suitable for appointment after they applied in pursuance of an open advertisement dated 14.06.2013 and after being found suitable, the petitioners were offered appointment on particular terms and conditions as enumerated in the letter dated 26.09.2013. The letter dated 26.09.2013 also envisaged the monthly emoluments/remunerations, which the petitioners were supposed to get and as the said offer was acceptable to the petitioners, therefore, they joined the service and continued working as such. It is a matter of fact that the initial offer for appointment as Agriculture Development Officers (Soil Conservation) was for a period of one year and the said offer was extended

by the respondents for a period of six months, vide order dated 28.10.2014 and thereafter again for a period of six months, vide letter dated 28.05.2015.

It may be noticed here that on one hand the respondents unilaterally changed the terms and conditions and enumerations to be paid to the petitioners by passing order dated 25.02.2015 having endorsement dated 27.04.2015 (Annexure P-9) retrospectively, but on the other hand, the same very officer, while granting extension to the petitioners on 28.05.2015, which is subsequent to the order dated 27.04.2015 (Annexure P-9), granted the extension to the petitioners on the same terms and conditions as envisaged in the offer letter dated 26.09.2013.

That being so, it is a clear case that despite the policy decision taken by the Government, the petitioners were allowed the extensions on the terms and conditions as per their initial appointment.

Further, even the impugned order dated 27.04.2015 (Annexure P-9) was never brought to the notice of the petitioners prior to the date when their terms ended, which is clear from the averments made in paragraph No.10 of the petition. The same has not been denied specifically by the respondents. This is probably for the reason that even after passing of the impugned order dated 27.04.2015 (Annexure P-9), the same officer granted the extensions to the petitioners on the same terms and conditions of their initial appointment dated 26.09.2013. It is for the respondents to ascertain as to why the same officer passed two different orders, which were contradictory to each other.

Further the question which arises for consideration before this Court is that whether once the petitioners have worked and discharged their duties under the particular terms and conditions, then the same can be

changed after terms of service of the petitioners are over, or not. Once the petitioners have worked on the terms and conditions prescribed by the respondents, the respondents are also under obligation to honour those terms and conditions and the same cannot be changed unilaterally and that too retrospectively.

In the present case, it is a contract of service between the petitioners and the respondent-Department because the petitioners are the retired employees and once the contract was entered into between the parties and extended on the particular terms and conditions, the same are to govern the parties, unless and until both agree to the change of the terms and conditions.

Unilateral change in the terms and conditions to the disadvantage of the employee is not permissible by passing an order having retrospective effect. In the present case, the change is unilateral by the respondents, which is not permissible at all.

Further, the executive order cannot be passed with retrospective effect. It always has to be prospective in nature. Once the petitioners have discharged their duties under the particular terms and conditions then on expiry of the tenure, the conditions of appointment cannot be changed unilaterally and that too with retrospective effect. Nothing has been brought to the notice of this Court that as to which rule governing the service gave the jurisdiction to the respondents to pass an executive order retrospectively changing the terms and conditions of the initial appointment letter and that too unilaterally.

Keeping in view the above, the amendment of condition No.4 in the letter dated 26.09.2013 is not at all permissible and is beyond the

jurisdiction of the respondents, and therefore, the same is accordingly set aside.

This Court has been informed that keeping in view the dispute, as raised in the present petition, even the salaries of the petitioners, for the period for which they have discharged their duties as Agriculture Development Officers (Soil Conservation), have not been released to them.

Learned counsel for the respondents submits that as per the averments made in paragraph No.7 of the Affidavit of the Additional Director (Administration), Agriculture and Farmers Welfare Department, Haryana, Panchkula, the petitioners have been paid their salaries in accordance with the terms and conditions of their appointment letter dated 26.09.2013.

Once, the impugned order dated 27.04.2015 (Annexure P-9) has been set aside, the petitioners become entitled for the grant of their complete salaries as per the terms and conditions which were entered into between the petitioners and the respondent-Department on 26.09.2013. In case the petitioners have not been paid their salaries so far in accordance with the said terms and conditions, the respondents are directed to calculate the arrears and release the same in favour of the petitioners within a period of two months from the date of receipt of the copy of this order.

Allowed in the above terms.

04.04.2022

Apurva

(HARSIMRAN SINGH SETHI)

JUDGE

1. Whether speaking/reasoned : Yes

2. Whether reportable : Yes