

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

RSA-1457-2021

Date of decision: 20.04.2022

State of Haryana through Collector, Sirsa and others Appellants

versus

Partap Singh Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rohit Arya, DAG, Haryana.

Mr. B.S.Mittal, Advocate
for the respondent.

Manjari Nehru Kaul, J.(Oral)

The appellant-defendants are assailing the concurrent findings recorded by both the Courts below in a suit filed for declaration and mandatory injunction by the respondent-plaintiff, which was decreed in favour of the plaintiff-respondent.

For the sake of convenience, the parties to the lis hereinafter would be referred to by their original position in the suit.

2. In brief the case set out by the plaintiff may be noticed as thus. The plaintiff joined as Store boy in the Transport Department on 23.10.1981. He was promoted as Store keeper on 06.02.2002 and retired from service on 31.12.2008 on attaining the age of superannuation. Suit for declaration was filed on the ground that the plaintiff was entitled to step-up his salary equivalent to that of his juniors. It was pleaded that he was entitled to get his salary fixed alongwith interest @ 18% per annum from

the due date till the payment with consequential relief of mandatory injunction for directing the defendants to step-up his salary equivalent to that of his juniors besides fixing his pay accordingly along with the arrears payable. The grievance of the plaintiff was that he had not been granted the third Annual Career Progression (for short ACP) scale on the ground that he had only served for 27 years 8 days, which were less than the requisite 30 Years and thus, he had been given salary less than his juniors. The plaintiff was also not held entitled to the technical pay scale as per the notification dated 10.12.2013 since it stood subsequently withdrawn on 11.03.2014.

3. On being put to notice, the defendant disputed the claim of the plaintiff and submitted that no technical pay scale could be given to him and if at all it was given to him, after the Haryana Abolition of Distinction of Pay Scale between technical and non-technical post Ordinance, 2013 and the notification dated 11.03.2014, would be violative of law. It was further submitted that no doubt, some employees had indeed been given higher technical pay scale, however, it was in pursuance to the directions given by this Court in a number of writ petitions, which had been preferred by them.

4. On the basis of the material and other evidence led, both the Courts below concurrently decreed the suit in favour of the plaintiff holding him entitled to the relief sought for, however, the interest was reduced to 9 % from 18% per annum.

5. Learned Counsel for the defendants reiterated his submissions and the stand taken by them before the Courts below. Learned counsel further submitted that the technical pay scale, which had been given to the

other employees, was in pursuance to directions of this Court in the civil writ petitions preferred by those employees. He further submitted that the case of the plaintiff could not be kept at par with that of the other employees as the plaintiff had superannuated in the year 2008 and he had raised the issue after eight years of his superannuation. It was submitted that the jurisdiction of the Civil Court to entertain the suit in question was also barred under Section 7 of the Haryana Government Gazette, March 11, 2014.

6. Per contra, learned Counsel for the plaintiff reiterated his pleaded case before the Courts below that he was entitled to the same salary as that of other employees, who were juniors to him. He further submitted that the plaintiff joined the Department in the year 1981 whereas other employees like Nanak Chand, who was appointed two years later on 26.09.1983 on the same post and in the same cadre, was admittedly drawing more salary than the plaintiff. It was further submitted that the plaintiff too was entitled to get his salary fixed and to step-up the salary equivalent to that of his juniors, and further receive the arrears along with interest.

7. I have heard the learned counsel for the parties and perused the relevant material on record.

8. It is a matter of record that some employees, who were junior to the plaintiff were drawing more salary than him. Admittedly, two employees namely Nanak Chand and Dalip Singh were given a higher pay scale, w.e.f 01.05.1990 and 24.04.1991 respectively and had resultantly been placed in a higher pay than the plaintiff. It is also a matter of record

and not disputed that in the year 1990 as well as in the year 1991, the plaintiff was in service when the benefit of higher pay was given to his two juniors i.e. Nanak Chand and Dalip Singh. It is settled law that a junior employee is not entitled to a higher salary than his senior, particularly when the latter was in service when such benefit was given to the junior employees. Furthermore, this Court does not find force in the submissions made by the State Counsel qua the plaintiff not being entitled to a higher salary on the ground that he had failed to approach this Court for the redressal of his grievance.

9. It is the conceded position that certain employees junior to the petitioner in the same cadre were granted the benefit of higher pay scale by the competent Court of law. That being the case, if a junior employee was extended a higher pay scale, even if, on the basis of the directions given by a Court, the same benefit could not be denied to a senior employee, specially in view of the law laid down by the Division Bench in ***Satbir Singh vs. State of Haryana, (CWP No.4382 of 2002) decided on 21.03.2002*** that no employee could be deprived of the benefits, which stood extended to other employees, who were at par with him, merely on the ground that he had not approached any Court for a similar relief. It would be apposite to reproduce the relevant extract from the said judgment, which is as under:

“15. The cumulative effect of the above settled principles is that the State must avoid discrimination in grant of service benefits to the members of the same cadre identically situated. If the employees had not

approached the Court but the judgments otherwise pronounced relating to the same matter have attained finality, the State must show its grace and in fact carry out its implicit duty to grant benefit to the other members of the cadre.”

Still further, the contention of learned State counsel qua the jurisdiction of the Civil Court being barred under Section 7 to entertain the suit in question also is bereft of any merit.

10. As a sequel to the above, this Court finds no reason to differ with the concurrent findings recorded by the Courts below. Accordingly, the present appeal being devoid of any merit, stands dismissed. The judgments and decree passed by the Courts below are affirmed.

20.04.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No