

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

CR-4883-2016 (O&M)

Reserved on: 18.04.2023

Date of pronouncement: 25.04.2023

Haryana State Agricultural Marketing Board and others

...Petitioners

Versus

Murari Lal Sharma

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.D. Bawa, Advocate for the petitioners.

Mr. Vikas Chatrath, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Murari Lal Sharma had brought a civil suit seeking a declaration that he is entitled to grant of second ACP scale of Rs.5500-9000/- w.e.f. 01.01.1996 for the post of Mandi Supervisor, w.e.f. 27.11.1997 for the post of Accountant, w.e.f. 12.05.2000 for the post of Assistant Secretary as per Haryana Civil Services ACP Scale Rules, 1998 and further he is entitled for fixation of pay emoluments and other service benefits along with interest @ 24% p.a., thereon from the date of its due till payment.

2. After contest that civil suit No.1526 of 2003 filed on 05.08.2003 was decreed by the Court of Addl. Civil Judge (Sr. Divn.) Narnaul. Resultantly, the defendants were directed to fix the pay of plaintiff w.e.f. 01.01.1996 Rs.7250/- and 01.04.1996 Rs 7425/- at par

with his junior Raghbir Singh, Pritam Singh and Maha Singh, Mandi Supervisors then posted as Assistant Secretaries. The defendants were also directed to pay the arrears to the plaintiff with interest @ 9% p.a. The appeal filed by the defendants against the judgment and decree of trial Court was dismissed on 16.01.2010. However, Regular Second Appeal bearing No.2840 of 2010 filed by the defendants is lying Admitted.

3. As per version of the revision petitioners, in the said RSA while issuing notice of motion, an interim order was passed on 03.08.2010, vide which the recovery of arrears of amount beyond period of 38 months was stayed subject to payment for that span of time within three months. Accordingly, the plaintiff/decreed holder was placed in pay scale of Rs.5500-9000 w.e.f. 01.01.1996 and his pay was fixed at Rs.7250 w.e.f. 01.01.1996, Rs.7425/- w.e.f. 01.04.1996, however, it was re-fixed vide order dated 10.06.2011 in view of further revision of pay scales w.e.f. 01.01.2006. During execution proceedings, the decreed holder sought one increment for higher responsibility under Rule 4.4(c)(i) of Punjab Civil Services Rules, on promotion as Assistant Secretary on 12.05.2000 as well as subsequent benefits.

4. That prayer was resisted by the JDs contending that when an employee who had been granted first and second ACP scales gets promoted and functional pay scale on the promotional post is equal to or lower than the scale in which he is already drawing his pay as a measure personal to him his pay will not be re-fixed and will remain at the same

stage in the same scale in which he was drawing his pay at the time of his promotion in terms of clarification under note 2 of Rule 15 of ACP Rules, 1998. Notification issued by the Finance Department bearing No.5/4/2001-SPR (FD) was pressed into service in support of that contention. However, the prayer was allowed by the Executing Court, vide impugned order dated 07.01.2016, leaving the JDs aggrieved and they have preferred the present revision petition before this Court, notice of which was given to the respondent who has put in appearance through counsel.

5. I have heard learned counsel for the parties besides going through the record.

6. Learned counsel for the petitioners has contended that the executing Court has though noticed the contentions raised on behalf of the JDs but has not dealt with those in any manner rather has passed the order in a mechanical manner without considering the assertions put-forward on behalf of the JDs.

7. On the other hand, learned counsel for the respondent/DH has defended the order as legal and valid stating that no fault can be found therewith.

8. After hearing the rival contentions, I find that the Executing Court has not dealt with the contentions put-forward by learned counsel representing the JDs referring to the relevant rules and notifications issued by the Finance Department. The Court is not only required to notice the contentions made on behalf of the parties but also to consider the same and deal with those in accordance with law. The order in

question does not show due application of mind and without dealing with the objections raised on behalf of the JDs, the order in question has been passed. The Executing Court while dealing with the objections raised on behalf of the JDs could have rejected the same by giving valid reasons but such contentions cannot be ignored in such a manner since they can certainly be not termed to be irrelevant not having any connection with the controversy in the matter. The order under revision comes out to have been passed in a mechanical and arbitrary manner and it cannot stand judicious scrutiny. Therefore, the order is set aside with a direction to the Executing Court to pass a fresh order after affording an opportunity of being heard to both the sides, noticing the submissions made by counsel for the parties and then dealing with those in a proper and appropriate manner. The parties through counsel are directed to appear before the Executing Court on 10.05.2023.

9. In that way, the interim order passed on 03.10.2016 directing the Executing Court to adjourn the proceedings beyond the date fixed by this Court, comes to an end.

25.04.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No