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

1.**CWP-3350-2023 (O&M)**

Kashmiri Lal

....Petitioner

Versus

State of Punjab and others

..Respondents

2.**CWP-3370-2023 (O&M)**

Sh.Sukhvinder Singh and another

....Petitioners

Versus

State of Punjab and others

..Respondents

Reserved on : 27.02.2023
Date of decision: 03.07.2023

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Amrik Singh, Advocate for the petitioners
in both the writ petitions

Mr. D.K.Singal, Addl. AG, Punjab

ANIL KSHETARPAL, J

1. With the consent of the learned counsel representing the parties, two connected writ petitions i.e CWP-3350-2023 and CWP-3370-2023 shall stand disposed of by this common order.

2. The relevant facts are being noticed from CWP-3350-2023. The petitioner joined as a Junior Engineer in the Department of Water Supply and Sanitation on 25.05.1997, and on attaining the age of

superannuation, he retired as a Sub Divisional Engineer/SDO on 30.11.2011. The State of Punjab revised the pay scales of the Government employees in the year 1988 w.e.f 01.01.1986 under the Punjab Civil Services (Revised Pay) Rules, 1988 (hereinafter referred to as 1988 Rules). Under Rule 5 and 6 of the Rules of 1988 an employee has to exercise the option for continuing in the existing scale of pay or revised scale of pay. Rules 5 and 6 of the aforesaid Rules read as under:-

> "***Rule 5: Drawal of pay in the revised scale:-***
>
> *(1) Save as otherwise expressly provided in these rules, a Government employee shall draw pay in the revised scale applicable to the post of which he is appointed:*
>
> *Provided that a Government employee may opt to continue to draw pay in the pay in the existing scale until he vacates his post or ceases to draw pay in that scale.*
>
> *Provided further that the right to exercise option shall not be available to a person appointment to a post on or after the first day of January, 1986 (whether for the first time in Government Service, or by transfer of promotion from another post) and he shall be allowed pay only in the revised scale without any benefit of pay fixation in the revised scale.*
>
> *(2) A Government employee shall have the option to come over to the revised scale from the date of his next increment or subsequent increment falling after the 1st day of January, 1986 but not later the 31st of December, 1987, in respect of the post held by him in the first day of January, 1986.*
>
> *(3) The option to retain the existing scale under this rule shall be available only in respect of on existing scale.*
>
> ***Rule 6: Exercise of Option:***
>
> *(1) The option under rule 5 to elect the existing scale or the revised scale shall be exercised in writing in the form of option appended to the rules, so as to reach the authority specified in sub Rule (2) within a period of four months from the date of publication of*

these rules in the official gazette or where an existing scale has been further revised by any subsequent order, then another option may be exercised within four months of the date of such order.

Provided that:

(i) In the case of a Government employee who is, on the date of such publication or order, as the case may be out of India or on leave or on deputation or on foreign service or on active service, the option shall be exercised in writing, so as to reach the authority specified in sub-rule (2) within a period of four months from the date of his taking charge of his post under the State Government and Explanation "active service" means service abroad with Armed Forces but also does not include service in the Indian Mission abroad.

(ii) Where a Government employee is under suspension on that day, the option shall be exercised within a period of four months from the date of his return to day, if that date is later than the date specified in this sub-rule.

(2) An option exercised under sub-rule (I) shall be final and shall be intimated by the Government employee to the head of his office.

(3) If a person fails to exercise his option for the existing scale within a specified period it shall be deemed that he has opted for the revised scale on and with effect from first day of January, 1986."

3. As is evident, Rule 6 of the 1988 Rules enables an employee to exercise the said option within a period of four months from the date of publication of the Rules i.e 13.09.1988. On 31.05.1989 the State Government issued a notification inserting clause (aa) in Rule 3 of the '1988 Rules'. The petitioner had already exercised his option by the time the clause was inserted, on 13.09.1988. By inserting (aa) in Rule 3 of the 1988 Rules, the pay scales were revised. A new notification was issued on 24.12.1992 (Annexure P-1), by which there was further revision of Master scale, was given effect on 01.01.1993. Some of the

employees who were getting a lesser pay requested the Govt to change their option, however, the aforesaid request was not accepted. As a result, they filed CWP-953-1996, 18537-1995 etc. which were allowed by the Division Bench on 21.03.1996 and directions were given for change of the option upto 31st December, vide judgment dated 17.3.2011. The said judgment was implemented.

4. Again a large number of writ petitions including **Pritam Singh and others vs. State of Punjab and others (CWP-14954-2010)** were disposed of on 17.03.2011 with the following directions:-

> "*In view of the above Finance Department letter and circular dated 7.2.2011, the petitioners are entitled to exercise their options, though, notionally without any arrears.*
>
> *These writ petitions are, accordingly, allowed. The petitioners shall be, however, entitled to the actual benefit as per the re-fixed pay w.e.f 1.3.2010.*"

5. Thereafter, the Govt. issued circular on 25.10.2012 by giving another opportunity to all the employees to change their option within a period of two months.

6. Once again on 10.07.2019, a circular was issued which reads as under:-

> "*Regarding the above subject, I have been instructed to write to invite your attention to the instructions issued by the Finance Department no.10/34/2010-1FB.2/518 dated 25.10.2012 stating that the instructions issued by the Finance Department regarding change of scales, two months more time is granted to change the option due to the change in the scales issued by the instructions no.1/155/92-F.P.1/8186 dated 24.12.1992 on the*

> *condition that this benefit will be on notional basis and will be given from the date which the application for change of option has been given. No arrears from this date for the earlier period will be given.*
>
> *2. This letter will be applicable from the date of issuance."*

7. The petitioner is stated to have given his option on 14.09.2020. Thereafter, he sent a notice on 04.09.2022 and filed CWP-23511-2022 which was disposed of by directing the competent authority to consider and decide the claim/representation. The Executive Engineer after considering all aspects of the matter has passed two similar orders on 30.12.2022 which are the subject matter of challenge in these two writ petitions. The operative part of the order reads as under;-

> "*In view of the facts indicated by the petitioner and also in view of the directions of the Hon'ble Court, relevant record has been examined. The Hon'ble High Court vide its judgment dated 17.03.2011 in CWP No. 14954 of 2010 while allowing the petitions, had directed the State to allow the petitioners therein to re-exercise their option for the Revised pay scales which became effective from 01.01.1986. The said relief had been granted by the Hon'ble Court in view of the changed circumstances created due to change in the master scale notified by the State vide Notification dated 24.12.1992. A number of writ petitions on the issue were subsequently allowed on the basis of said judgment dated 17.03.2011. Thereafter, Department of Finance Personnel vide its Circular No.10/3412010-1F.P2/518 dated 25.10.2012, generalizing the issue in respect of employees of other departments also, granted a period of 2 months to all the employees/retirees to re-exercise the option. Vide said circular it has been categorically stipulated that no person shall be allowed to re-exercise option after the expiry of period of 02 months. Again, Department of Finance vide its letter no.10/34/2010-1 FP.2/1520096/1 dated 10.07.2019 granted a period of 2 months from the date of issue of this letter to re-exercise the option in*

> *view of the change circumstances created due to change in the master scale notified by the State vide notification dated 24.12.1992 with the condition that the financial benefit will be given from the date of option given by the employee/retiree. As per record of this office, no application for change of option given by the petitioner has been received in the office of Executive Engineer, Water Supply & Sanitation Division No.2 Ropar.*
>
> *In view of the above circular dated 10.07.2019 issued by Department of Finance Personnel, since the period of 02 months had already expired and the petitioner has failed to apply for re-exercising of his option within the prescribed period, it is not possible for this office to accept the request of the petitioner at this stage. Hence, the same is rejected.*
>
> *These orders are issued with the approval of competent authority."*

8. Challenging the correctness of the aforesaid order, these writ petitions have been filed.

9. Learned counsel representing the petitioner submits that if the option is not given to the petitioner in both the writ petitions, they will continue to suffer financial loss throughout their life and the cause of action in this case is continuing cause of action as per Section 22 of the Limitation Act, 1963.

10. He further submits that the State was duty bound to permit the petitioner to change his option once repeated extensions are being given by the State to other employees.

11. This Court has considered the submissions of the learned counsel representing the parties. In substance, the petitioners are seeking the benefit of notification dated 24.12.1992. Whereas the writ petition has been filed in 2023. Even the previous writ petition was filed by the

petitioners in 2022. Moreover, the question that arises for adjudication is, "whether the cut off date/last date fixed by the State to allow the change of option to the interested employees is arbitrary or not?" It is evident that pursuant to the directions issued by the High Court vide judgment dated 21.11.1995, such options were given to the employees. Subsequently, a Division Bench vide judgment dated 21.03.1996 again allowed a batch of writ petitions directing all the competent authorities to call upon all similarly situated persons to exercise their right of choosing the revised option for the fixation of their pay within a period of 15 days. Once again in 2011, the directions were issued by the High Court. Accordingly, a circular was issued by the Govt. on 25.10.2011 by giving options to the employees to change their option within a period of two months. After a passage of nearly 7 years, vide instructions dated 10.07.2019, again an opportunity was given to change the option within a period of two months, which expired on 10.09.2019 whereas the petitioner gave his option on 14.09.2019. In such circumstances, the question that arises for consideration is, "whether the retired employee can be given the right to exercise an option till eternity or not?" While exercising the writ jurisdiction, the High Court is required to examine the matter in exercise of power of judicial review. Unless and until the Court comes to a conclusion that the decision of the Govt. is arbitrary, illegal or in violation of the Act or the Rules, the Court is not expected to interfere. The cut off date for exercising any option is a well known concept. The cut off date fixed by the competent authority is not required to be interfered with in the absence of any illegality or perversity. Despite the opportunity, learned counsel representing the petitioner failed to draw the attention of the Court to any circumstance which makes the cut off date arbitrary, in violation of law or perverse. The petitioner has also failed to furnish any plausible explanation for failing to exercise his option despite repeated opportunities being given.

12. Keeping in view the aforesaid facts and discussion, finding no merit, the writ petitions are dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

03.07.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No