

118.

2023:PHHC:048299

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

CWP-3542-2023

Date of Decision: 22.03.2023

MEHAR CHAND

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Rahish Pahwa, Advocate,
for the petitioner.

JAISHREE THAKUR.J

1. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ, order or direction in the nature of mandamus directing the respondents to grant the petitioner all the retiral benefits by taking his salary payable as Sewer Inspector (Grade-III) with effect from the year 2005.

2. In brief, the facts as stated are that the petitioner was appointed to the post of Sewerman in the year 1972 and came to be promoted as Safai Jamadar (Sewer) against a vacant post in the pay scale of Rs.90-3-120/1-140 vide office order dated 21.03.1978. Thereafter, he was promoted to the post of Head Sewerman in the functional pay scale of Rs.4000-6000 vide office order No.MCF/E-6/2005/4523, dated 23.12.2005. He was allowed higher standard pay scale of Rs.800-15-1010-EB-20-1160 w.e.f. 01.01.1994 after

completion of 20 years regular satisfactory service. He retired from service on 30.11.2009 upon attaining the age of superannuation by rendering services of 37 years 12 days. Later, he came to know that his pay scales were lowered from Grade-IV to Grade-III without any reason. He visited the department repeatedly for redressal of his grievance, but to no avail. Thereafter, he served a legal notice dated 10.05.2022 demanding that the State was under an obligation to grant him salary of the post i.e. Sewer Inspector but as the same was not decided, he approached this Court by way of CWP No.160 of 2022, which was disposed of with a direction to the State to decide the legal notice in a time bound fashion. It is thereafter that vide communication dated 30.09.2022 of the respondents, the petitioner has been informed that his two increments had been stopped in the year 1992 and he had been supplied all the documents when an application had been preferred under the RTI Act 2005 in the year 2018. In the reply, it was stated that his pay had been correctly fixed as per the rules and notification, issued by the Haryana Government from time to time.

3. Learned counsel appearing on behalf of the petitioner herein would contend that the petitioner was never issued any show cause notice or given any opportunity of hearing before lowering his grade. He came to know that his two increments were stopped in the year 1992 in a departmental inquiry on account of remaining absent from duties, only when his legal notice was replied to, on 30.09.2022. It is submitted that one cannot be punished twice, one by stopping two increments and another by lowering

the grade. It is contended that the petitioner was working as a Sewer Inspector, however, he was being given the salary and other benefits of Head Sewerman.

4. I have heard learned counsel for the petitioner and find that there is no merit in the writ petition and the same deserved to be dismissed being highly belated. It is an admitted fact that the petitioner retired in the year 2009 and on his retirement, all retiral benefits were duly released to him. It cannot be the case of the petitioner that he was unaware of what his salary was at the time when he retired and on the basis of which, the retiral benefits were calculated. If the increments of the petitioner had been stopped as far back as in the year 1992, even at that point in time, he would have become aware of the disparity in his pay scale. The increments were stopped on account the departmental inquiry, which the petitioner must have faced. At the relevant time, the petitioner did not choose to raise any objection that his salary and retiral benefits, as due to him, have not been calculated correctly. It is for the first time in the year 2022, that the writ petition filed claiming reduction in pay scale. The petitioner cannot plead ignorance especially when he accepted all the retiral benefits. He ought to have approached the appropriate authority at the relevant time for his grievance and if not satisfied, then to the higher forum. He slept over the matter for such a long time. He was even supplied all documents under the RTI Act in 2018 and still slept over the matter for a long. There is also no mention in the writ petition that he had the necessary knowledge about the stoppage of two

increments, which also becomes a ground to dismiss the writ petition for concealment of facts. One must be aware of his rights. The claim of the petitioner being highly belated, the writ petition cannot be entertained at this stage.

5. Present petition is dismissed accordingly.

(JAISHREE THAKUR)
JUDGE

22.03.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No