

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104) CM Nos.17494-17495 of 2023 in/and
CWP No.12033 of 2019 (O&M)
Date of Decision : 17.10.2023

Suresh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Raja Ram Kaushik, Advocate and
Mr. Laxman Choudhary, Advocate
for the petitioner.

Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No.17494 of 2023

The present application has been filed for recalling the order dated 04.09.2023 by which, the present petition was dismissed for want of prosecution.

Mr. Harish Nain, Assistant Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondents and raises no objection for the grant of the prayer as made in the present application.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed. The order dated

04.09.2023 is recalled and the petition is restored to its original number and status.

On oral request of learned counsel for the parties, case is taken up for hearing today.

CM No.17495 of 2023

The present application has been filed for bringing on record the legal heirs of deceased Suresh Kumar, who has unfortunately died during the pendency of the present petition.

Notice of the application to the counsel opposite.

Mr. Harish Nain, Assistant Advocate General, Haryana, who is present in the Court accepts notice and raises no objection for the grant of the prayer as made in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The legal heirs of deceased Suresh Kumar, details of whom have been given in para 3 of the application, are brought on record with all just exceptions.

Amended memo of parties is also taken on record.

CWP No.12033 of 2019

In the present petition, the grievance of the petitioner was that he is entitled for fixation of his pay in the cadre of Assistant and thereafter, the pensionary benefits are liable to be computed while taking into consideration the pay which will be fixed in the cadre of Assistant.

From the facts, it transpires that the petitioner was to superannuate while working in the department of Treasuries and Accounts, Government of Haryana on 31.07.2017. On 29.07.2017, the petitioner was promoted to the post of Assistant. In pursuance of the said promotion, the petitioner got himself

relieved from the office of Assistant Treasury in the forenoon of 31.07.2017 and thereafter, joined the post at the Treasury Office, Panipat after lunch. After joining, within a few hours, the petitioner attained the age of superannuation and retired from the Treasury Office, Panipat.

After the retirement, the pensionary benefits of the petitioner were computed keeping in view the Rules governing the service and thereafter, a grievance was raised by the petitioner by filing the present petition that the pensionary benefits have been calculated keeping in view the salary which the petitioner was getting on the post of Clerk and not that of Assistant on which post, the petitioner was duly promoted and he had also joined prior to the retirement.

In reply to the claim raised in the present petition, the respondents have filed reply and have placed reliance upon the Rule 68 of Haryana Civil Services (Pay) Rule, 2016 according to which, the pay of the promoted post can only be allowed in case, the employee relinquish the charge of the post in forenoon and also joins on the post in the forenoon. Whereas, in the present petition, the petitioner had joined the post of Assistant in the afternoon hence, he could not have been granted the benefit of pay upon joining the post of Assistant in the afternoon keeping in view the said Rule on 31.07.2017 and pay could have been revised on the next day but the petitioner retired from service on 31.07.2017 itself hence, the claim of the petitioner as raised in the present petition be declined.

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

The pay and allowances are to be granted keeping in view the Rules governing the service and as per the reply filed by the respondents, the

petitioner did not join in the forenoon against the promoted post of Assistant so as to claim the salary of the said post as on 31.07.2017. The salary of the post of Assistant could not be extended to the petitioner w.e.f. 31.07.2017 as the petitioner joined the post afternoon and, thereafter, the petitioner retired on 31.07.2017 and was not in service as on 01.08.2017 on which date only the petitioner became entitled for salary of the post of Assistant.

That being so, the petitioner has to continue in the pay scale of Clerk as on 31.07.2017 keeping in view the facts and Rules governing the service. The Rule governing the service is a conceded fact between the parties. That being so, the claim which is being raised by the petitioner in the present petition, is contrary to the Rule 68 of 2016 Rules and hence, cannot be allowed.

Keeping in view the above, no benefit can be given to the petitioner as claimed in the present petition and the petition is accordingly dismissed.

October 17, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No