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2023:PHHC:166876

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-16792-2018

DECIDED ON: 11.12.2023

RAJINDER SINGH RAGHUWANSI

PETITIONER

VERSUS

PRESIDING OFFICER LABOUR COURT II, FARIDABAD &
OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Kewal Singh, Advocate
for the petitioner.

Ms. Safia Gupta, Addl. AG, Haryana.

Mr. Jasmeet Singh Bedi, Advocate
for respondents No.2 and 3.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* for quashing the impugned order dated 12.03.2018 (Annexure P-13) passed by respondent No.2 with further prayer for issuance of a writ in the nature of *Mandamus* directing the respondents to fix the pay of the petitioner at par with his colleagues, who were appointed w.e.f. 14.12.1983.

2. The petitioner was appointed as a salesman in the then Super Bazar on 23.5.1973. His services were terminated on 28.7.1975.

Subsequently, he was reinstated on 14.12.1982. While working as salesman in the Super Bazar, his services were transferred to Haryana State Federation of Consumer Co-operative Store (For short "CONFED") vide order dated 01.04.1983. After re-instatement, The petitioner had not been paid his salaries and arrears in the pay scale of Salesman i.e. 110-210/- and the petitioner was constrained to file a complain before the Labour Officer-cum-Conciliation Officer, Faridabad, which was disposed off as the Managing Committee of the Central Cooperative Stores Limited, Faridabad had allowed the pay scale of Rs.110-210/- to the petitioner and arrears of the salaries were also ordered to be released in monthly instalments (Annexure P-2). There was issue relating to furnishing of LPC by the Super Bazar to the CONFED. Consequently, there was internal correspondence between them. Super Bazar proceeded to revise LPC while fixing the petitioner's scale as Rs.110-210. The petitioner was being illegally paid the fixed salary of Rs.225/- per month, as Salesman and consequently at the time of his transfer to CONFED, the last pay certificate (LPC) was issued by showing his salary as Rs.225/- per month. The petitioner was not paid the entire amount of back wages w.e.f. 29.07.1975 to 15.12.1982 by Faridabad Central Cooperative Stores and, therefore, the petitioner was constrained once again to move the Labour Court, Faridabad for recovery of the arrears of the salaries in the pay scale of Rs.110-210, which was finally disposed off vide order dated 08.09.1988 and the petitioner was granted the relief by him. At the time of transfer of the petitioner to CONFED as Salesman, the other similarly situated employee who were posted as Salesman were getting either a fixed salary of Rs.350/-

pm or the pay scale of Rs.110-210/- and as per the LPC, the petitioner was being paid fixed salary of Rs.225/-. Further the petitioner was paid a fixed salary of Rs.500/- pm vide order dated 14.08.1986.

3. It has been contended on behalf of the petitioner that the Salesman of CONFED like the petitioner were given revised pay scale w.e.f. 01.07.1983 and w.e.f. 01.12.1983 and the petitioner is also entitled of wages/salaries on the basis of the grant of these pay scales to other similarly situated Salesman including one junior Banu Ram Khatri in pursuance of the notifications/instructions dated 06.09.1983 and 27.02.1990 (Annexures P-8 and P-9). The petitioner had earlier approached this Court vide CWP No. 17933 of 1995 for the same relief, though, this Court has dismissed the petitioner but, however, liberty was given to the respondent to assign pay fixation on par with others who were similarly situated persons who were appointed w.e.f. 14.12.1983 onwards, vide order dated 22.09.2017, a direction was also issued to the respondent, if any representation is submitted by the petitioner, the same shall be considered at the earliest not later than 4 months. Thereafter, the petitioner moved a representation dated 06.11.2017 to respondent No.2, which was finally dismissed by respondent No.2 vide impugned order dated 12.03.2018 stating that since the services of petitioner has already been terminated vide order dated 28.05.1990 and till date he has not been reinstated by any competent court of law and hence, he is not entitled for any benefit so claimed.

4. Upon notice of motion, respondents No.2 and 3 has filed reply seeking dismissal of the present petition firstly on the ground that since the

petitioner was transferred from Super Bazar to Confed on 01.04.1983 on a fixed salary of Rs.225/- per month in Super Bazar, he was taken in by the respondent - department (CONFED) also on the same fixed salary of Rs.225/ month as per the LPC dated 10.05.1983 (Annexure R-1), issued by the Super Bazar and thus since the service condition of the petitioner in the Super Bazar before 14.12.1983 was that of a fixed salary employee and not as that of an employee on pay scale, the same was to be continued in the respondent - department as per the dicta of this Court in CWP 17933 of 1995 dated 22.09.2017 and secondly, the petitioner has totally failed to show either in his representation dated 06.11.2017 (Annexure P-12) as well as in the present writ petition that there were any similarly situated persons like the petitioner meaning thereby a person or persons who came from Super Bazar on fixed salary basis, were taken in by the respondent department on the same basis but were later on converted into employee(s) on pay scale basis and also such persons were appointed w.e.f. 14.12.1983. The petitioner has totally failed to show as to how the alleged similarly situated employee Balram Khatri (name wrongly mentioned in writ as Babu Ram) was infact similarly situated with the petitioner in the sense that he was appointed as a fixed salary employee from Super Bazar by the respondent - department, was appointed w.e.f. 14.12.1983 onwards and further converted later on as an employee on pay scale. Rather, the petitioner himself says that Sh. Balram Khatri was granted the Pay Scale of Rs.110-210/- on his transfer to CONFED whereas it is an admitted fact that the petitioner was granted the fixed salary of Rs.225/- per month on his transfer to CONFED and thus by no stretch of imagination Sh. Balram

Khatri can be said to be a similarly situated employee, he (Balram Khatri) being an employee on pay scale in super bazar at the time of his very first day of entry into the respondent - department whereas the petitioner was a fixed salary employee in super bazar, was taken in by the respondent - department as a fixed salary employee and is being continued till date as a fixed salary employee only. It is relevant to mention here that there are two set of employees in respondent-department, one, who are on fixed salary like the petitioner and second, who are on pay scale like Sh. Balram Khatri and thus the pay scale employees cannot be called similarly situated like the petitioner as they never came to the respondent - department as fixed pay employees. As a matter of fact, Sh. Balram Khatri was transferred to CONFED before 01.07.1983 and certainly not after 14.12.1983 and further at the time of his transfer to CONFED, he was a pay scale employee serving as a store keeper, a promotional post to the post of salesman in Super Bazar, Rohtak since 11.02.1980 and was not a fixed salary employee working as a salesman like the petitioner. In this regard, a copy of the annual increment granted to Sh. Balram Khatri thereby showing that on 22.07.1983 itself i.e. well before 14.12.1983, he was working as a storekeeper with the respondent-department on pay scale already, is at Annexure R-2 for the kind perusal of this Court. Therefore, since the petitioner came to the respondent - department admittedly on 01.04.1983 as a fixed salary salesman whereas Sh. Balram Khatri came to the respondent - department before 01.07.1983 as a storekeeper on pay scale, the both cannot be equated as similarly situated employees, although both of them came from Super Bazar as one (the petitioner) was transferred as a

fixed salary salesman while the other (Balram Khatri) was transferred as a store keeper on pay scale. On the afore-said grounds the present petition deserves to be dismissed being not maintainable as well as being an abuse of the process of law.

5. No other arguments has been raised by either of the parties.

6. Heard learned counsel for the respective parties.

7. From the record, it is evident that at the time of the transfer of the petitioner to CONFED, the salesman of the CONFED were being paid a fix salary of Rs.350/- per month. The petitioner was being paid Rs.225/- by CONFED on the basis of the last pay certificate issued by the Consumer's Store. The petitioner was further paid a fixed salary of Rs.500/- per month with effect from July, 1986 by the CONFED vide office order dated 14.8.1986 (Annexure P-5). It is also evident that all the employees of the consumer's store like the petitioner who were transferred to CONFED were given their salaries in the pay scale of Rs. 110-210 and not at the fixed rate as has been done in the case of the petitioner. In fact, there were salesman in the CONFED who were getting the regular pay scale besides some of them who were being paid a fixed salaries of Rs.350/-. The petitioner was entitled the pay scale of Rs. 110-210 with effect from 1.4.1983 from the CONFED in view of the revised L.P.C. sent by Consumer's Store, which is evident from the letter dated 20.1.1986 (Annexure P-6).

8. It is not in dispute that the petitioner was transferred to CONFED on 01.04.1983 and on 14.12.1983, a common cadre was abolished. Thus, inter transfer from Super Bazar to CONFED was no more

existing as on 14.12.1983. Even then the CONFED transferred the petitioner to Super Bazar and such transfer has been nullified by the Civil Court. Thus, a status has been given to the petitioner as a permanent employee of CONFED w.e.f. 14.12.1983.

9. Since respondent No.2 himself has accepted the petitioner to be in employment upto 28.05.1990, as such consequent to fixation of pay w.e.f. 14.12.1983, the petitioner in any event is entitled to the said amount between 14.12.1983 upto 28.05.1990. Under these circumstance, respondent No.2 could not shirk his duty of deciding the claim of the petitioner by taking refuge under the order of termination, which is not only subsequent but which is also subject matter of CWP-10183-2012. Furthermore, respondent No.2 has not implemented the order dated 22.09.2017 passed by this Court in CWP-17933-1955.

10. In view of the discussions made hereinabove, the present petition is allowed and the petitioner is entitled for fixation of pay at par with his colleagues, who were appointed w.e.f. 14.12.1983. Respondent No.2 is directed to grant the pay scale of the petitioner at par with his colleagues, who were appointed w.e.f. 14.12.1983.

11. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

11.12.2023

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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |