

2023:PHHC:127355

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3510-2017 (O&M)
Date of Decision:- 3.10.2023

Bhajan Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. R.K.Arora and Ms. Saguna Arora, Advocates
for the petitioner.

Mr. Aman Dhir, DAG Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 13.7.2016 (Annexure P-11) passed by respondent no. 3 whereby benefit of increments which had been granted to the petitioner on 1.2.1989 and on 1.11.1995 at the time of his promotion to the post of Assistant Foreman (Special) and as Foreman (Special) respectively have been withdrawn after more than 10 years of his retirement which have a consequential effect of reduction in pensionary benefits. The petitioner also assails letter dated 23.9.2016 (Annexure P-15) i.e. the reply to the legal notice which had been sent by the petitioner.
2. A few facts necessary to notice for disposal of this petition are that as per petitioner's case, he initially joined 'Beas Dam Project' as a Welder on 1.11.1965 and was subsequently retrenched from the said Project on 10.6.1977 vide Discharge Certificate dated 20.6.1977 (Annexure P-1)

wherein the remarks as regards his work and conduct are recorded as 'Excellent'. Thereafter, the petitioner was appointed on work-charge basis at 'Ranjit Sagar Dam', Shahpur Kandi, Department of Irrigation, Punjab, Pathankot on 26.4.1979 (Annexure P-2) as Welder where he continued working and was granted a regular pay scale of Rs. 120-250 and was also granted promotion as Assistant Foreman Special (work-charge) on 1.2.1989 and later on was promoted as Foreman Special (work-charge) on 1.11.1995 and wherein his work and conduct was recorded as hard-working, obedient and dutiful. It is further the case of the petitioner that his services were regularized w.e.f. 13.3.1996 in the pay scale of Rs. 1640-2925 vide order dated 8.6.1996 (Annexure P-4). The petitioner, upon attaining the age of superannuation, retired from service on 28.2.2006.

3. It is the specific case of petitioner that two increments had been granted to him on 1.4.1992 and another three increments were granted on 1.3.1995 which had been granted in lieu of his good performance and keeping in view the tough and hazardous conditions in which the work was being done on account of which as many as 300 employees of the State Project had already lost lives at the Project site. It is further the case of the petitioner that he had also been granted four promotional increments at the time of his promotion as Assistant Foreman (Special) on 1.2.1989 and another four increments on 1.11.1995 at the time of his promotion as Foreman (Special), which had been given to him as per his entitlement as per Rule 4.4 of the Punjab Civil Services Rules on account of higher responsibilities.
4. The learned counsel for the petitioner submits that subsequently after his retirement on 28.2.2006, the case of the petitioner for grant of pension was

forwarded to the Accountant General where objections had been raised with regard to the grant of special increments to the petitioner and without any notice to the petitioner, his basic pay had been reduced from Rs. 10,025/- to Rs. 7,440/- and PPO had been issued on the basis of the reduced pay and a recovery of Rs. 4,02,988/- is shown against the petitioner (Annexure P-6 and Annexure P-7). Subsequently, pursuant to decision of Hon'ble Supreme Court in an identical matter, the benefit of four increments out of 13 special increments earlier granted to petitioner was restored and pay was revised vide impugned order dated 13.7.2016 (Annexure P-11). Thereafter, the petitioner served legal notice dated 5.8.2016 (Annexure P-14) for restoration of all the increments to which the respondent no. 3 sent a reply dated 23.9.2016 (Annexure P-15) stating therein that the special increments had been withdrawn as per decision of Hon'ble Supreme Court of India.

5. Learned counsel for the petitioner submitted that the increments which had been granted to the petitioner way back in the year 1992 and 1995 i.e. more than 10 years prior to retirement have been withdrawn while calculating his pension without issuing any notice to the petitioner. The learned counsel submitted that the said increments had been granted to the petitioner having regard to his exceptional hardwork and while also keeping in view the hazardous nature of the job which the petitioner was rendering at the Hydel Project where as many as 300 persons had lost their lives.
6. The learned counsel further submitted that the petitioner cannot be attributed any role in the matter of grant of increments and he had never ever asked or demanded for the same or had done any overt act which could suggest that the said increments had been granted to him on account of any mischief on

his part. The learned counsel submits that the withdrawal of the said increments after such a long period cannot be justified by any means and is violative of the ratio of judgment rendered by Hon'ble Supreme Court in 2015(2) SCC (Civil) 608 – State of Punjab and others etc. v Rafiq Masih (White Washer) etc.

7. The learned counsel in order to hammer forth his contentions also places reliance upon judgments of Hon'ble Supreme Court rendered in 2014(4) SCT 361 – State of Punjab and others versus Tarlok Chand and others and 2014(16) SCC 444 – Sushil Kumar Singhal versus Pramukh Sachiv Irrigation Department & Ors.
8. The learned State counsel, on the other hand, submits that the petitioner could not have been granted any promotional increments while serving on work-charge basis and as a matter of fact all such increments were special increments and the petitioner is trying to mislead the Court by referring to such increments as promotional increments. It has been submitted that pursuant to judgment of Hon'ble Supreme Court in Tarlok Chand's case (supra), there is no justification in grant of pension at a higher rate by working out the same on the basis of the excessive pay which the petitioner had been drawing and that the State is well within its right to calculate the pension by taking the actual reduced pay as the guiding factor.
9. This Court has considered rival submissions addressed before this Court.
10. As far as the factual matrix, particularly the dates of employment and grant of increments to the petitioner are concerned, there is no dispute with respect to the same. The relevant dates are stated herein-under:-

Date	Event
01.11.1965	Petitioner joined as Welder at 'Beas Dam Project'.
10.06.1977	Petitioner was retrenched from the said Project.
26.04.1979	Petitioner was appointed at 'Ranjit Sagar Dam' as Welder on work-charge basis and was granted regular pay scale of Rs. 120-250.
01.02.1989	Petitioner was promoted as Assistant Foreman (Special) and was granted four increments.
01.04.1992	Two special increments were granted to the petitioner.
01.03.1995	Three special increments were granted to the petitioner.
01.11.1995	Petitioner was promoted as Foreman (Special) and was granted four increments.
13.03.1996	The services of the petitioner were regularized.
28.02.2006	The petitioner retired from service upon attaining the age of superannuation.

11. While the case of the petitioner is that the four increments which had been granted at the time of his promotion as Assistant Foreman (Special) on 1.2.1989 and another four increments which had been granted at the time of his promotion as Foreman (Special) on 1.11.1995 were promotional increments but the State in its reply has categorically denied the said increments to be promotional increments and has taken a stand that the same were in the nature of special increments and that out of the total of 13 increments which had been granted to the petitioner, 4 had been restored while the remaining have been withdrawn in view of judgment of Hon'ble Supreme Court in Tarlok Chand's case (supra). The relevant paragraphs from the written statement filed by respondent No. 3 i.e. paragraphs 8 and 13, indicating the stand taken by State, are reproduced herein-under:

"8. That para No. 8 of the writ petition is admitted to the extent that the pay of the petitioner was rightly reduced as he was inadvertently allowed special increments and retrenched increments, but the 4 Nos special increments as well as retrench increments were restored to the petitioner in compliance to the order dated 16-07-2014 of Hon'ble Supreme Court of India and award dated 27-05-2009 in CWP No. 9909/2008 in Hon'ble Punjab & Haryana High Court, Chandigarh. The revised pay fixation allowing special increments as well as retrenchee increments is annexed as Annexure P-11 with this writ petition.

13. That para No. 13 of the writ petition is denied being wrong. The petitioner was granted 5 Nos special increments during his workcharge period, the 4 Nos special increments each granted to the petitioner at the time of his promotion as Assistant Foreman Special and Foreman Special on 01-02-1989 and 01-11-1995 are not allowed as promotional increments as there are no things like promotional increments. The petitioner termed the special increments as promotional increments to mislead the court. In workcharge capacity, only Certified Standing Order are applicable in which it is clearly stated that no increments in any form is granted to the workcharge employee, only change of scale of grade is allowed such as 8 Nos special increments granted to the petitioner as the time of his promotion have been withdrawn in accordance to Hon'ble Supreme Court of India dated 16-07-2014."
12. At this stage, it is apposite to refer to the judgment of Hon'ble Supreme Court rendered in Tarlok Chand's case (supra) wherein also the issue pertained to grant of special increments. The relevant extract is reproduced herein-under:-

"9. Be it stated, as far as the grant of retrenchment increment is concerned the same has attained finality and the employees shall be entitled to the same. As far as other regular increments are concerned every employee is definitely entitled to get the annual increments. But, as far as special increments are concerned the learned Single Judge has opined that it has been done in an inappropriate manner. Initially in the course of arguments there was a debate whether such kind of increments could be granted on rational basis or not, but on hearing further arguments, we have thought it appropriate to put the controversy to rest from all spectrums and accordingly we direct that all the respondents shall get the annual increment for the years of service they have rendered prior to regularisation and that apart four special increments for the period they have served prior to regularisation. Be it clarified that the grant of retrenchment increment conveys that when they were out of service they would be granted by virtue of the order passed by the learned Single Judge. They have been granted that and hence, it would have come within the compartment of annual increment. Be it noted that if someone has got less than four increment he will not claim that he has a right to get four increments. The grant of four special increments applies to those employees who have got more than four increments. At the cost of repetition let it be stated that the respondents shall get their annual increment plus four special increments and the same shall be computed for the purpose of pay fixation

and accordingly the increments received during the course of employment regular pay shall be fixed and on that foundation pension shall be re-fixed.

Needless to say, there will be no recovery on any score.”

13. A perusal of the aforesaid extract makes it amply clear that while retrenchment increments could be fully protected, the special increments could be protected only to the extent of four increments. Although, the learned counsel has vehemently argued that the increments which were given to the petitioner at the time of his promotion i.e. four increments at the time of his promotion as Assistant Foreman (Special) and another four increments at the time of his promotion as Foreman (Special) were in the nature of promotional increments, but the learned counsel could not show anything to this Court as to under which rule or under which standing order the said increments were granted to him. Rule 4.4 of the Punjab Civil Services Rules does provide for grant of promotional increments but the said rule would be applicable only in case of a regular employees and is not applicable to work-charge employees. Thus, the said increments having been granted to petitioner prior to his regularization cannot be said to have been granted under Rule 4.4 of the Punjab Civil Services Rules so as to be protected.
14. Consequently, it follows that the increments which had been granted to the petitioner at the time of his promotion were in the nature of special increments. Thus, the petitioner having been granted as many as a total of 13 special increments, the respondents were fully justified in withdrawing 9 out of the said 13 increments while restoring four increments only which is in tune with the ratio of judgment of Hon'ble Supreme Court in Tarlok Chand's case (supra). A perusal of the impugned order dated 13.7.2016

(Annexure P-11) would show that the petitioner despite being on work-charge basis has been given the benefit of annual increments even for the period of service rendered by him prior to his regularization. In these circumstances, the petitioner apart from annual increments could have been given a maximum of four special increments only in view of ratio of Tarlok Chand's case (supra), as have been restored.

15. Though, during the course of arguments, the learned counsel for the petitioner vehemently argued that there has been a delay in re-fixation of pay as has been re-fixed vide order dated 13.7.2016 (Annexure P-11) whereas the petitioner had retired in the year 2006 and has also raised a plea that for computing pension, it is the average emoluments of the last 10 months which have to be taken into account, as is provided under Rule 9.4 (b)(iii) of the Punjab Civil Services Rules whereas in the present case the respondents have chosen to revise the pay in respect of the period of about 10 years prior to retirement by withdrawing the increments which has been granted in the year 1989 and 1995, but this Court is unable to accept the said contentions inasmuch as it was right at the time when the petitioner retired from service i.e. in the year 2006 that the matter regarding re-fixation of pay of the petitioner has been raked up on account of excessive increments. Some other similarly situated persons had approached this Court by way of filing a writ petition i.e. CWP No. 9909 of 2008 decided on 27.5.2009, which was partly accepted to the effect that withdrawal of retrenchment increments were held unjustified. The employees filed several LPAs in this Court and which were decided in favour of the employees, the lead case being LPA No. 1161 of 2009 titled as Tarlok Chand versus State of Punjab. The State of Punjab challenged the said decision by way of filing SLP in the Hon'ble

Supreme Court, which was finally decided on 16.7.2014 i.e. Tarlok Chand’s case wherein certain directions had been issued and on the basis of which the pay was again refixed in the year 2016, though the same had earlier been refixed in 2011. On account of the pendency of the said litigation, it cannot be said that action of the respondents in passing the impugned orders would be hit by delay and latches.

- 16. Consequently, this Court does not find any ground to issue any direction, as prayed for. The petition is sans merit and is hereby dismissed.
- 17. It is clarified that the respondents would be at liberty to refix the pension as per the refixed pay, reflected in Annexure P-11, if not already refixed but the excessive amount of pension, if any, drawn by the petitioner shall not be recovered.
- 18. The petition stands dismissed with the aforesaid clarification.

3.10.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No