

103

2023:PHHC:159707

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP-30943-2018
DECIDED ON: 13.12.2023

MAHABIR SINGH TANWAR AND ORS.

.....PETITIONERS

VERSUS

STATE OF HARYANA AND ORS.

.....RESPONDENTS

2. CWP-4304-2019

EMPLOYEE ASSOCIATION OF HARYANA STATE
COOPERATIVE AGRICULTURE & RURAL
DEVELOPMENT BANK

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. A.S. Tewatia, Advocate
for the petitioners in CWP-30943-2018.

Ms. Mehak Sawhney, Advocate for
Mr. Jagdeep S. Rana, Advocate
for the petitioners in CWP-4304-2019.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

Mr. Sanjiv Gupta, Advocate
for respondent No.4.

SANDEEP MOUDGIL, J (ORAL)

1. Vide this common order, the Court intends to dispose of both the petitions together as on similar set of facts and common question of law is involved.
2. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus

seeking direction to the respondents to decide representations dated 09.08.2018 (Annexure P/3) and dated 16.08.2018 (Annexure P/4) and to extend the benefits of revised pay scales to the petitioners as per 7th Pay Commission w.e.f. 01.01.2016 as per decision of the Board of Directors of the respondents Bank vide resolution No.4 passed in its meeting held on 28.06.2017 (Annexure P/1) forthwith and to pay the arrears from 01.01.2016 till today with interest.

3. The contention raised on behalf of the petitioners to the effect that Government of India revised the pay scale of its employees, which was adopted by all the Board/ Corporations and other institutions as per 7th Pay Commission notified with effect from 01.01.2016 which stands adopted by respondent No.2 vide a notification dated 28.10.2016 to grant the benefit of revision of pay scale as such to all its employees including the petitioners. It is submitted that subsequently the matter was sent to Haryana Bureau of Public Enterprises, Finance Department for necessary approval after the Board of Directors of respondent-Bank vide resolution No.4 in its meeting held on 28.06.2017 (Annexure P-1) resolve to grant pay scale on the pattern of the State Government implementing the notification dated 28.10.2016 in toto. The respondent No.4, in reference to the letter of Registrar Cooperative Societies – respondent No.3, relating to implementation of the revised pay scales as per 7th Pay Commission, asked for certain clarifications from the respondent-Bank and vide letters dated 10.10.2017 and 12.01.2018 (Annexures P7 & P8, respectively) gave details regarding implication on account of pay revision to mete out the extra burden and the gap, if any, in the marginal increase will be handled by chalking out new strategy to increase recoveries as well as advancement of loans.

4. In the meanwhile, on 09.08.2018, the petitioner No.2 retired from the service on 31.05.2018, who submitted a detailed representation for extending the

benefit of revised pay scales as per 7th Pay Commission being fully eligible and entitled to the same. Since the request of the petitioners was not adhered to and the respondents were sitting tight over the matter, a common reminder by all the petitioners except petitioner No.2 was submitted on 26.10.2018 to respondent No.4 claiming the relief, relying upon a judgment of this Court dated 06.04.2016 (Annexure P-9), passed in CWP No.194 of 2007 titled as ***“Sanjiv Ojha and others versus State of Haryana and others”***, which was subsequently upheld by the Division Bench of this Court vide LPA No.1383 of 2016 (Annexure P-10).

5. Despite filing of the aforesaid representation, the matter was kept pending by the respondents for unreasonable long period and accordingly, the petitioners have been compelled to approach this Court by way of instant writ petition, wherein notice of motion was issued by this Court on 06.12.2018.

6. Upon notice, respondents No.1, 2 and 4 filed a collective reply with a specific plea that though the respondent-Bank has adopted the notification issued by the Government of Haryana for grant of revision of pay scale as per 7th Pay Commission with effect from 01.01.2016 but the matter was also considered vide Agenda item No.6 Board of Directors meeting held on 08.01.2021, wherein the following decision was taken:-

“Agenda Item No. 6: Haryana State Cooperative Agriculture & Rural Development Bank Ltd. (HSCARDB).

Revision of pay scales of the employees of Haryana State Cooperative Rural Development & Agriculture Bank Ltd. as per 7th Pay Commission.

Administrative Department has informed that the total financial liability on account of implementation of 7th CPC is Rs. 24.85 crore approximately. The additional financial implication of the proposal will be Rs. 7 crore annually. The proposal was considered and the following decisions were taken:

- i) The revised pay structure will be on the pattern notified by the State Government vide Notification No. 1/20/2016(RP)-5PR(FD) dated 28.10.2016. Accordingly, levels in the pay matrix corresponding to the existing sanctioned functional pay structure as on 31.12.2015 as at Annexure 'A' were approved for the HSCARDB w.e.f. 1.1.2016.*
- ii) The revised Assured Career Progression (ACP) pay structure for the HSCARDB will be on the pattern notified by the State Government vide Notification No. 1/20/2016(ACP)-5PR(FD) dated 28.10.2016.*
- iii) Fixation of pay w.e.f. 1.1.2016 and other related matters will be in accordance with the provisions contained in State Government Notification No. 1/20/2016(RP)-5PR(FD) dated 28.10.2016 and Notification No. 1/20/2016(ACP)-5PR (FD) dated 28.10.2016.*
- iv) Dearness Allowance, House Rent Allowance, Medical Allowance and all other allowances admissible to the employees of the HSCARDB will not exceed those admissible to the State Government employees as per instructions issued from time to time and should not be made effective/applicable from a date earlier than the date of such instructions.*
- v) The revised pay scales will be given from the date of issue of proceedings and the liability on account of implementation of pay scales will be met by the HSCARDB from its own resources.*
- vi) In case of arrears, it will be ensured by HSCARDB that arrear on account of implementation of 7th CPC to be paid by the HSCARD after first clearing the outstanding dues of NABARD and no budgetary support will be provided by the State Government.”*

7. The specific stand taken in para Nos. 5 and 6 of the written statement filed by respondents No.1, 2 & 4 to the effect that the pay scales of its employees have been revised as per 7th Pay Commission w.e.f. 01.01.2016 and in support thereof Annexure R-3/1 is attached with the written statement filed on behalf of

respondent no.3. A perusal of the same reveals that the revised pay scales will be given from the date of issue of proceedings and the liability on account of implementation of pay scales will be met by the HSCARDB from its own resources and no budgetary support was to be given by the State Government.

8. It is against the said resolution, the instant petition came to be filed that the 7th Pay Commission benefits are to be granted to the petitioners w.e.f. 01.01.2016 instead of 08.01.2021, as has been done in the case of other employees of the State Government.

9. Learned counsel for the petitioners relied upon **Sanjiv Ojha's** case (supra), which was also identical on facts and circumstances, wherein the petitioners were granted the benefit of pay scale w.e.f. 01.01.1996 and direction was issued to release the benefit within a period of three months from the date of receipt of the certified copy of this order. The said judgment was upheld by a Division Bench in LPA No.1383 of 2016, further relying upon a decision of Apex Court in ***Haryana State Minor Irrigation Tubewells Corporation and Others versus G.S. Uppal and others, 2008(7) SCC 375***, it was held that financial constraints or the fact that Corporation is running into losses is not a valid ground to deny revision of pay-scale and in the light of cited decision, the Division Bench refused to interfere into the orders passed by the Single Bench and Federation was granted two months time to give effect to the orders passed by learned Single Judge.

10. Learned counsel for respondent No.4 is not in a position to controvert the aforesaid fact and the case law, rather candidly admit that the instant petition is squarely covered with the ratio of **Sanjiv Ojha's** case (supra).

11. Reference is also worth noticing to the decision taken by HSCARDB while drawing attention to the Clause 4 and 5 of the resolution dated 08.01.2021,

proceedings passed by HSCARDB and not from the date of implementation of the notification by the State Government.

12. This Court is also sanguine of the fact that respondent No.4 had paid the arrears of revised pay scales to one Sh. Satbir Sharma, Ex-M.D. who was Class-I employees of the Bank (on deputation from Cooperation Department Haryana) from 01.01.2016 to 30.11.2016 (date of his transfer/retirement) i.e. much prior to the decision of the Board of Directors of the Respondent-Bank and the present Managing Director Sh.Naresh Goyal, who is also Class-I employees of the Bank (on deputation from Cooperation Department) and another one Smt. Ranjna Sharma, Audit Officer, (on deputation from Cooperation Department) a Class-II employee of the Bank have been given the benefit of revised pay scales w.e.f. 01.01.2016 they are drawing their salaries as per revised pay sales as per 7th Pay Commission but the petitioners who are Class-II, Class-III and Class- IV employees of the Bank have not been given the same treatment at par with the above-mentioned employees who have been given the benefit of revised pay scales as per 7th Pay Commission, in spite of the decision of the Board of Directors of the Bank (Annexure P/1), by the Respondents without assigning any cogent reason and in this way the petitioners have been discriminated in the matter of payment of their salaries as per revised pay scales as per 7th Pay Commission.

13. This argument is also of no help in the light of judgment referred by this Court in Sanjiv Ojha's case (supra) and LPA No.1383 of 2016 and even otherwise this Court will go a step further to say that once the Haryana Bureau has absolved the State of any financial liability to be borne, the approval or sanction

cooperative society having no control over it of the State Government which is crystal clear from the resolution/proceedings dated 08.01.2021 itself as has been recorded by the Standing Committee of the Finance Department, Government of Haryana.

14. Hence, both the petitions stand allowed with a further direction that the arrears to which the petitioners are entitled w.e.f. 01.01.2016 shall bear the interest at the rate of 6% per annum from the date it became due till the date of its actual realization. It would be nevertheless required to mention but at the cost of reputation, learned counsel for the petitioners has insisted for absolving the respondent-Bank to pay interest, no fault of the petitioners has been pointed out and can be attributed to them and this Court does not find any reason to deny such benefit to the petitioners which is not only their legitimate due but the statutory right accruing to them by way of Government of Haryana instructions having the force of law as has been adopted by Service rules of the respondent-Bank.
15. Ordered accordingly.

13.12.2023
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No