

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

Reserved on 20.04.2023

**CWP No.6680 of 2017(O&M)
Date of Decision: 19.05.2023**

Shamsher Singh Patter

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. S.K. Nehra, Advocate
for the petitioner.

Mr. Jagbir Malik, Addl. A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 18.10.2016 passed by the Additional Chief Secretary, Haryana, Administration of Justice Department, declining the claims of the petitioner for pay protection and benefit of past increments. The petitioner has also prayed for

issuance of a writ in the nature of mandamus, directing the respondents to grant the pay scale to the petitioner as was being drawn by him on 30.11.2009 after protecting his basic pay as on 30.11.2009 in the pay band IV of Haryana Civil Services (Revision of Pay Scales) Rules, 2008 and also by granting the benefits of annual increments as earned by him upto 30.11.2009 as per Punjab Civil Services Rules applicable to the State of Haryana along with arrears and interest by fixing the pay of the petitioner at the stage of Rs.50,100+10,000 G.P. i.e. Rs.60,100/- and Rs.700/- NPA in pay band IV of Rs.37,400-67,400+10,000 G.P+ Rs.700/- NPA as was being drawn by the petitioner as on 30.11.2009 along with pay protection by granting the benefit of annual increments earned by the petitioner from 01.01.2006 to 30.11.2009 and also to grant the next increment, which was due from 01.07.2010 by taking into consideration the judgments of the High Court in CWP No.2426 of 2012 and LPA No.1758 of 2014.

[2]. The petitioner was appointed as Senior Deputy Advocate General, Haryana on 02.05.2005 in the pay scale of Rs.18,400-22,400+Rs.700/- NPA. The first annual increment of Rs.500/- was granted on 01.01.2006. The second annual increment of the same amount was granted on 01.01.2007 and third annual increment was also granted to the petitioner on 01.01.2008. The State Government revised the pay scales vide

notification dated 30.12.2008 and framed revised pay Rules, 2008. The revision of pay scales were made applicable w.e.f. 01.01.2006. The pay scale of the petitioner i.e. Rs.18,400-22,400 was revised to pay band IV of Rs.37,400-67,400+10,000 G.P.+ 700 NPA w.e.f. 01.01.2006. The pay of the petitioner was revised w.e.f. 01.01.2006 and the petitioner was being paid the pay scale of Rs.37,400+10,000 i.e. Rs.47,400/- as on 01.01.2006 and was granted four increments w.e.f. 01.07.2006, 01.07.2007, 01.07.2008 and 01.07.2009 in the revised pay scale. Thus on 01.07.2009, the petitioner was drawing Rs.60,100/- (revised pay scale) after granting the benefit of four annual increments by the respondent-State. The petitioner continuously worked on the post of Senior Deputy Advocate General upto 30.11.2009 without any break and was drawing Rs.53,370/- (which was revised to Rs.60,100/- after the implementation of judgment in CWP No.2426 of 2012) as salary from the State Government. The petitioner continuously worked on the post of Senior Deputy Advocate General upto 30.11.2009 without any break.

[3]. On 30.11.2009, the petitioner was drawing a salary of Rs.50,100+10,000 GP i.e. total emolument of Rs.60,100/- on the basis of pay band IV of Rs.37,400-67,400+10,000 GP+ Rs.700/- NPA. The petitioner along with other similarly situated Law Officers were asked to resign on 30.11.2009 (Afternoon).

The petitioner was again re-appointed as Senior Deputy Advocate General, Haryana w.e.f. 01.12.2009 without any intimation regarding acceptance or rejection of the resignation. On 01.12.2009, the petitioner and other similarly situated Law Officer again granted fresh initial pay scale of Rs.37,400-67,400+Rs.10,000/- GP+Rs.700/- NPA with initial pay of Rs.37,400+10,000 GP. The petitioner was not granted the pay protection i.e. increment earned by the petitioner till 30.11.2009 on the ground that the appointment was fresh in nature.

[4]. The grievance of the petitioner is that the grant of fresh initial pay protection is in total violation of Haryana Revised Rules, 2008 and schedule attached to these Rules, prescribing fitment table of corresponding fixation of pay w.e.f. 01.01.2006 of unrevised pay scale. The *modus operandi* adopted by the respondents in seeking the resignation and after accepting the same, issuing fresh appointment is only to deny the benefit of previous service for pay and other benefits. The petitioner was working on a regular permanent sanctioned post of Senior Deputy Advocate General, Haryana. The salary of the petitioner was being drawn out of consolidated fund of the State Government against the permanent gazetted sanctioned post. Even though, the recital of the appointment letter is suggestive of the fact that the appointment of the petitioner is purely contractual in nature, but the fact remains that the appointment

of the petitioner was made against the sanctioned post of Senior Deputy Advocate General and the appointment was a regular appointment for all intents and purposes.

[5]. Learned counsel for the petitioner submitted that the issue whether the employees appointed in the office of Advocate General on a pay scale as Assistant/Deputy/Sr. Deputy Advocate General came up for consideration in case of **Ms. S.K. Bhatia Vs. State of Punjab, 1997(4) RSJ 735** and it was held in the operative part of the order as under:-

"7. First question which requires adjudication by the Court relates to the nature of the appointment/engagement of the petitioner. Shri S.S. Saron, Shri S.S. Shergill and Shri M.R. Midha strenuously submitted that the appointment of the petitioner as Assistant advocate General and as Deputy Advocate General cannot be equated with an appointment to the Government service but is a purely contractual engagement of personal service and, therefore, the petitioner is not entitled to be reinstated as Deputy Advocate General. They relied on para 2(vii) of the order dated 28.4.1986 and 5(a) and (b) of the order dated 11.4.1991 to show that the petitioner was not appointed on a civil post but her service was purely contractual in nature."

[6]. While passing the aforesaid order, the Court has relied upon two Division Bench judgments of this Court and ultimately held that the appointment of the writ petitioners in the said case was not in the nature of contractual appointment of personal

service but the appointment was as regular Government employees. The clause in the appointment letter, showing the appointment to be contractual was also considered by the Court and it was held that the interpretation of the condition of the contractual employment is totally arbitrary, unjust and unconstitutional. In the concluding part, the Court was pleased to make the following observations:-

"The second issue, namely, whether Clause 2 (vii) of the order dated 28.4.1986 and Clause 5(a) and (b) of the order dated 11.4.1991 are unconstitutional and arbitrary need not take long to be decided because in V.P. Prashar's case, similar issue has been considered and decided in favour of the appellant. The Division Bench held that in view of the decision of the Supreme Court in Central Inland Water Transport Corporation Ltd. and another V. Brojo Nath Ganguly and another, AIR 1986 SC 1571, the stipulation made in clause (vii) in the terms and conditions of the letter of appointment is unconstitutional. I may add that in Delhi Transport Corporation Vs. Delhi Transport Mazdoor Congress and others, AIR 1191 (SC) 101, the ratio of two judges bench in Brojo Nath Ganguly's case has been approved by majority of 4:1. Therefore, clause contained in the order dated 28.4.1986 and 11.4.1991 suggesting that the Government has absolute power to terminate the employment of the petitioner without any reason or rhyme of the incorporation of the condition that the employment is contractual in nature cannot but be held as wholly arbitrary, unjust and unconstitutional."

[7]. The Haryana Civil Services (Revised Pay Scale) Rules, 2008 were made applicable w.e.f. 01.01.2006. The corresponding scale of Rs.18,400-22,400 was in the pay band of Rs.37,400-67,400+10,000 G.P. As per the fitment table schedule attached to 2008 Rules, the initial fixation was required to be done at the stage of Rs.43,390+10,000 G.P i.e. Rs.53,390/- in the pay band-IV i.e. Rs.37,400-67,000 being the corresponding scale of unrevised pay scale of Rs.18,400-22,400. The respondents did not grant the aforesaid scale and also did not grant the annual increments already earned by the petitioner upto 30.11.2009.

[8]. Similarly situated Law Officers working as Senior Deputy Advocate General in the same office had filed CWP No.2426 of 2012, claiming the fixation of initial pay scale at the stage of Rs.43,390+10,000 G.P i.e. Rs.53,390/- in the pay band IV i.e. Rs.37,400-67,400+10,000 G.P as per fitment table attached to 2008 Rules, the corresponding pay scale of Rs.18,400-22,400/-. In the said writ petition, the writ petitioners therein had challenged the order dated 09.12.2010 passed by the respondent-State, declining to grant the revised pay scale to the Deputy Advocate General and Senior Deputy Advocate General in the office of Advocate General, Haryana on the ground that as per terms and conditions of their appointments, they were given revised pay scale of Rs.37.400-

67,000+10,000+NPA, therefore, there is no justification for grant of pay scale of Rs.43,390+10,000=53,390/-.

[9]. The aforesaid writ petition was accepted vide judgment dated 07.07.2014. Some of the Law Officers who were appointed by the respondent-State in May, 2005 were denied the revised pay scale of Rs.43,300+10,000 G.P and Rs.700/- as NPA in terms of Haryana Civil Services (Revised Pay) Rules, 2008 on the ground that since their terms and conditions were issued whereby the appointments were made in the revised pay structures of Rs.37,400-67,000+GP+NPA, therefore, there is no necessity of fixing the pay scale w.e.f. 01.01.2006 in the pay scale as recommended. The stand of the respondent was that the appointments are contractual in nature. The writ petitioners are not entitled to grant benefit of 2008 Rules. While deciding the aforesaid CWP No.2426 of 2012, this Court was pleased to answer the issue in question in the following manner:-

"I have considered the submissions made by counsel for the parties and with their assistance have gone through the records of the case.

The dispute in the present case is in a very narrow compass. The facts are not in dispute that the petitioners were appointed on contract basis and were granted the then applicable running pay scales of the posts which were held by them i.e. Rs. 18400-500-22400. It is also not in dispute that they were regularly granted the annual increments as per the pay scale

and they continued to earn the same till they worked with the office of Advocate General i.e. 30.11.2010.

The question, which required to be answered is whether the Law Officers in the Office of the Advocate General, Haryana, as the petitioners are, who were appointed on contract basis and were granted the running pay scale of the posts, would be entitled to the pay scales relatable to the posts on which they were appointed, if the said scales are subsequently revised?

The answer to this question apparently has to be in the positive for the reason that the terms of appointment as specified in the contract would determine and govern the rights and liabilities of the parties to the contract and in the contract all Law Officers, including the petitioners, have been granted the running pay scale as applicable then to of the posts on which they were appointed. Since the petitioners were holding the posts and were full time Law Officers of the Government they are entitled to the pay scales of the posts on which they were appointed and were serving the respondents.

It is not in dispute that the pay scales of the posts of Haryana Government employees were revised as per the 2008 Rules vide notification dated 30.12.2008. It is also not in dispute that the said rules came into effect from 01.01.2006. Further, there is no dispute that on the day when the pay scales came into effect and even on the date of issuance of the notification of the 2008 Rules, the petitioners were in service and were being paid the running pay scale of the posts held by them. They being full time employees

and drawing the running pay scale of the post, would be covered by the requirement of the 2008 Rules. Rule 2 of the 2008 Rules provides as to whom these Rules would apply and if covered it would entitle them to grant of revised pay scale with effect from 01.01.2006.

Rule 2 of the 2008 Rules read as follows:-

“2. Categories of Government Servant to whom these rules apply:-

(1) Save as otherwise provided by or under these rules, these rules shall apply to the following:-

Persons appointed to civil services and posts in connection with the affairs of the Government of Haryana, who are under the administrative control of the Government of Haryana and whose pay is debitable to the Consolidated Fund of the State of Haryana.

(2) These rules shall not apply to:-

(a) Members of All India Services working in connection with the affairs of Government of Haryana;

(b) Officers of judicial services working in connection with the affairs of Government of Haryana;

(c) Persons not in whole time employment;

(d) Persons paid otherwise than on monthly basis, including those paid on a piece-rate basis or on daily wages basis or on contract basis;

(e) Persons employed in Government service after retirement;

(f) Persons re-employed in Government service after retirement;

(g) Government servants who are drawing their pay in a pay scale as personal measure (other than the functional pay scale prescribed for the post held by the Government servant) with effect from the date on which he started drawing his pay in the pay scale as a personal measure and till the time he draws his pay in the pay scale as a personal measure;

(h) Any other class or category of persons whom the Government may, by order, specifically exclude from the operation of all or any of the provisions contained in these rules.”

Petitioners would fall under sub rule (1) of Rule 2 and none of the clauses under sub-rule (2) would cover the case of the petitioners. The 2008 Rules, thus, would apply to the Law Officers, including the petitioners. The decision of the Administrative Committee, as constituted by the Advocate General, Haryana, puts the position in right perspective in the light of the 2008 Rules, which reads as under:-

“The file has been examined by the Administrative Committee. Noting dated 15.1.2009 in view of the notification regarding revised pay package formulation and implementation Rules, 2008 was examined by the Committee. After considering all the notification, as well as terms and conditions, Committee has considered and reached the conclusion that there is no need to seek any

clarification from the Govt. as point (d) is very clear. Point (d) is regarding payment about those persons who are being paid monthly basis, piece rate basis, daily wages basis or on contract basis. This point (d) is not applicable to Sr.D.A.G., D.A.G. and A.A.G as all the afore mentioned Law Officers, are covered in Sub Rule (i) of Rule 2, in which it has been specifically mentioned that these rules shall apply to those persons, who have been appointed to civil services and posts in connection with the affairs of Govt. of Haryana, who are under the administrative control of the Govt. of Haryana and whose pay is debitable to the Consolidated Fund of the State of Haryana. All the Law Officers i.e. Sr.DAG, DAG and AAGs have been appointed in service in connection with affairs of the Govt. of Haryana and are under the administrative control of the Govt. of Haryana and their pay is debitable to the Consolidated Fund of the State of Haryana. It is further made clear that they are getting their pay in their respective scales alongwith NPA plus usual allowances, as sanctioned by Govt. of Haryana from time to time. Annual increments are being granted to all the Law Officers and dearness allowance is also granted from time to time regularly as granted by the Govt. of Haryana to all the Govt. employees GIS scheme is also applicable to all the Law Officers and premium

is being regularly deducted from their salary. It is specifically mentioned that they are whole time Govt. servants and CSR/PFR is also applicable upon all the afore mentioned Law Officers. Condition of contractual in nature in terms and condition letter is only for the purpose of termination and pension, not for any other purpose. It is very much clear in terms and conditions letter that all the afore mentioned Law Officers will draw the pay of their respective post as long as they will work on the said post and they are whole time Govt. employees. All the Law Officers are getting their pay in a functional pay scale of Sr.DAG, DAG and AAG against sanctioned posts. Pay scales have been revised of every sanctioned scale and post w.e.f. 1.1.2006.

Even earlier pay revisions in the year 1986, 1996 all categories of employees i.e. Sr.DAG, DAG and AAG were already granted revised pay scales simultaneously with other Haryana Govt. employees.

In view of above, there is no need of any clarification from the Govt. on any point. The notification is applicable upon Sr.DAG, DAG and AAG. Revised pay be prepared as per revised scale immediately, so that all the afore mentioned Law Officers may get their revised salary in time as per Govt. directions from the month of January, 2009, due to be paid in February, 2009. File may be sent to Ld.

Advocate General, Haryana for approval.”

The said recommendation of the Administrative Committee was approved by the Advocate General, Haryana, on 21.01.2009 (Annexure P-5), which recommendation was also approved by the Finance Department on 18/19.03.2009 (Annexure P-6).

The subsequent correspondence ensued between the Government and Office of the Advocate General, which was also responded to in the right perspective by the office of Advocate General, Haryana.

However, it appears that when the fresh appointments were given to the Law Officers in the office of Advocate General in the year 2010, the well reasoned and justified proposal, which was duly accepted by the Department of Finance earlier, was sought to be given effect to. At this stage, the communication dated 09.12.2010 (Annexure P-11) addressed to the Advocate General, Haryana from the Financial Commissioner and Principal Secretary, Government of Haryana, Administration of Justice Department, needs to be reproduced:-

“Sub: Refixation of the Revised Pay of the Senior Deputy Advocate Generals and Deputy Advocate General, Haryana as per schedule and fitment table i.e. Rs.43390+10000+NPA.

This is in reference to your letter No.40669 dated 29.10.2010.

2. After new appointments of Dy.Advocate General and Senior Dy.Advocate General, and in view of the terms and conditions issued vide

letter dated 11.2.2010 and 29.3.2010 appointment has been made in the Revised Pay Structure of Rs.37400- 67000+NPA. So there is no any necessity for the proposal of the pay scale of Rs.43390+10000 G.P.=53390.”

A perusal of the above would show that real issue, which was with regard to grant of revised pay scales to the Law Officers of the office of Advocate General, Haryana, with effect from 01.01.2006 and granting them the arrears of the revised pay scales was brushed aside or rather swept under the carpet on the basis of and in the garb of fresh appointments made of the Law Officers, where the revised pay scale was given to the newly appointment Officers in the office of the Advocate General. The claim of the Law Officers who had earlier worked with the office of the Advocate General till the fresh appointments were made was just over-looked and, thus, the petitioners were discriminated against the similarly situated employees. But the fact of the matter is that approval had already been granted by the Finance Department on 18/19.09.2009 (Annexure P-6) to the proposal of the Advocate General, Haryana, dated 21.01.2009 (Annexure P5), which was in accordance with the 2008 Rules and, therefore, should have been given effect to. The grounds assigned while rejecting the proposal of the Advocate General, Haryana, being founded on irrelevant, baseless, unjustified reasons and the same being also contrary to the 2008 Rules, the action of the respondents, denying the Law Officers the benefit of

the said Rules cannot sustain and deserves to be set-aside.

Merely because the Law Officers in the Office of the Advocate General, Haryana, including the petitioners, were not appointed on regular basis but on contract basis cannot be a ground for denying them the benefit of the 2008 Rules, especially when they have been granted the running pay scale of the post on which they were appointed as per the contract and as held above, the 2008 Rules are applicable to them. Even under the contract, they would be entitled to the benefit as claimed. Thus, the consequential benefits, such as revision of the pay scales and added benefits, if any, thereto have to be granted to the Law Officers, including the petitioners, with effect from the date when the 2008 Rules came into force i.e. 01.01.2006.

In view of the above, the present writ petition is allowed. Impugned order dated 09.12.2010 (Annexure P-11) is hereby set-aside. The consequential benefits be fixed and arrears be released within a period of two months from the date of receipt of certified copy of the order.”

[10]. Evidently, the Court has deprecated the stand of the State as regards the contractual appointment of the petitioner. The reference has been made to the decision of the Administrative Committee as constituted by the Advocate General, Haryana, wherein the position has been discussed in its right perspective in terms of 2008 Rules. After considering all the notifications and terms and conditions, the Committee came

to the conclusion that all the Law Officers i.e. Sr. DAG, DAG and AAGs have been appointed in service in connection with affairs of the Government of Haryana and are under the Administrative control of the Government of Haryana and their pay is debitable to the consolidated fund of the State of Haryana. They are getting their pay in their respective scales along with NPA+usual allowances as sanctioned by the Government of Haryana from time to time. The annual increments are being granted to them along with dearness allowance from time to time regularly as granted by the Government of Haryana to all the Government employees. GIS scheme is also applicable to all the Law Officers and premium is being regularly deducted from their salary. They are whole time Government servants and CSR/PFR is also applicable upon all the Law Officers. Condition of contractual in nature in terms of letter of appointment is only for the purpose of termination and pension and not for any other purpose. As per terms and conditions of the appointment letter, all the Law Officers will draw the pay of their respective post as long as they will work on the said post and they are whole time Government employees. Law Officers are getting their pay in a functional pay scale of Sr. DAG, DAG and AAG against sanctioned posts. Pay scales have been revised for every sanctioned scale and post w.e.f. 01.01.2006. Even earlier pay revisions in the year 1986, 1996 all categories of employees

including Sr. DAG, DAG and AAG were also granted revised pay scale simultaneously with other Haryana Government employees.

[11]. In view of aforesaid recommendations of the Administrative Committee, it was observed that there is no need of any clarification from the Government on any point. The notification is applicable to all the Law Officers. The recommendations of the Administrative Committee were approved by the Advocate General, Haryana on 21.01.2009 and the same were also approved by the Finance Department on 19.03.2009. After considering all the aforesaid aspects, this Court in CWP No.2426 of 2012 ultimately came to the conclusion that even though, the petitioners were appointed on contractual basis, but the same cannot be a ground to deny the benefit of 2008 Rules, especially when they have been granted the running pay scale of the post on which, they were appointed as per the contract. 2008 Rules are applicable to the writ petitioners. Even under the contract, they would be entitled to the benefit as claimed in the writ petition along with consequential benefit. In view of above, the writ petition was allowed and it was directed that the benefits be fixed and released to the petitioners.

[12]. The aforesaid order dated 07.07.2014 was unsuccessfully assailed by the respondents in LPA No.1758 of

2014, which was dismissed by the Division Bench of this Court on 11.11.2014. The stand of the respondent-State was that the writ petitioners and other Law Officers submitted their resignations, which were accepted on 30.11.2009 and therefore, terms of service of Law Officers expired on 30.11.2009 and they were engaged in the office of Advocate General again on 01.12.2009 on contractual basis, therefore, the previous terms had expired on 30.11.2009. They were engaged afresh on contract basis w.e.f. 01.12.2009, therefore, claim with regard to the corresponding pay scale on the basis of continuation in service is against the basic principles of contractual employees. The aforesaid stand of the State was negated even in the LPA, which was dismissed on 11.11.2014. The operative part of the order dated 11.11.2014 passed by the Division Bench in LPA No.1758 of 2014 reads as under:-

“Learned counsel for the appellants could not controvert the aforesaid factual position. However, he has argued that all the officers in the Office of Advocate General, Haryana, were given fresh appointments on 30.11.2010. Learned counsel contends that since the fresh appointments were given to all the officers, including respondents No.1 and 2, in the year 2010, therefore, they are not entitled for the revised pay scales with effect from 01.01.2006, when they were working on contract basis.

The aforesaid contention of learned counsel

for the appellants cannot be accepted. Once the officers were granted the running pay scales, irrespective of the fact that they were appointed on contract basis, and they continuously worked till issuance of the notification making the 2008 Rules, and even thereafter, they are entitled for the revised pay scales with effect from the date mentioned in the said notification. The learned Single Judge has rightly held that the action of the appellants is violative of Article 14 of the Constitution of India and that there was no justification for rejecting the recommendation of the Administrative Committee, which was duly approved by the Advocate General, Haryana, as well as the Finance Department. Thus, we do not find any ground to take a contrary view, and do not find any illegality in the order passed by the learned Single Judge.

No merit. Dismissed.”

[13]. After dismissal of the aforesaid LPA, the respondents have granted the pay scale of Rs.43,390+10,000 G.P. i.e. Rs.53,390/- to all the Law Officers working as Sr. Deputy Advocate General w.e.f. 01.01.2006 and the arrears from 01.01.2006 to 30.11.2009 have already been paid in the month of May, 2015 in the tabulated form, which is reproduced hereasunder:-

Date	Pay in pre-revised scale	Pay fixed w.e.f. 01.01.2006 in pay band-IV-Rs.37,400-67000+10000 GP	Pay re-fixed w.e.f. 01.01.2006 in pay band-IV as per table(4) & as per direction of the Hon'ble High Court.
01.01.2006	Rs.18400	37400+10000=47400	43390+10000=53390
01.07.2006		38830+10000=48830	45000+10000=55000
01.07.2007		40300+10000=50300	46650+10000=56650
01.07.2008		41810+10000=51810	48350+10000=58350
01.07.2009		43370+10000=53370	50100+10000=60100

[14]. The petitioner along with Law Officers had also submitted the representation to the respondents for pay protection by giving details viz-a-viz their pay as on 30.11.2009 and also claimed benefit of earned annual increment by treating them in continuous service instead of initial pay scale of Rs.37,400+10,000 G.P w.e.f. 01.12.2009.

[15]. The petitioner and others filed COCP No.1041 of 2015 in respect of violation of order dated 07.07.2014 passed by the learned Single Judge, which is applicable to all the Law Officers. The contempt petition came up for hearing on 04.05.2015. Learned Advocate General made a statement that consequential benefits would be granted to the petitioners within

a period of two weeks. In the light of statement made by learned Advocate General, Haryana, the contempt petition was disposed of as infructuous on 04.05.2015.

[16]. After passing of the aforesaid order dated 04.05.2015, the respondents proceeded to grant pay scale of Rs.43,390+10,000=Rs.53,390/- as on 01.01.2006. Thereafter by including the annual increments, the petitioner was held entitled to the pay scale of Rs.50,100+10,000=60,100/- as on 01.06.2009. Despite the fact that the petitioner was allowed the pay scale of Rs.43,390/-+10,000, the respondents did not grant benefit of protection of pay scale to the petitioner and other similarly situated persons w.e.f. 01.12.2009. The petitioner and other similarly situated persons were not granted benefit of pay protection of the last pay drawn of Rs.60,100/- and served a legal notice dated 16.05.2015 upon the respondents, but the same was not adverted to for the reasons best known to the respondents. The petitioner and other similarly situated Law Officers were entitled to running pay scale along with admissible usual allowances from time to time on the post in question. The service conditions will be governed by Punjab Civil Services Rules as applicable to State of Haryana along with other usual allowances like TA, DA, Medical, HRA etc as applicable to other Government employees of the State of Haryana.

[17]. After the initial appointment of the petitioner w.e.f.

02.05.2005, the petitioner was being granted regular increments as per Rule 4.7 of the Punjab Civil Services Rules, Volume-I, Part-I after completion of 12 months service upto 30.11.2009 at par with other regular Government employees. In this context, Rules 4.7 and 4.9 of the Punjab Civil Services Rules, Volume-1, Part-1 are relevant to be quoted and the same are reproduced hereasunder:-

"4.7. An increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld from a Government employee by a competent authority if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.

*4.9. The following provisions prescribe the conditions on which service counts for increments in a time-scale:-
a) All duty in a post on a time scale counts for increment in that time-scale;*

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment."

[18]. Perusal of Rule 4.9 would show that all duty in a post on a time scale counts for increment in that time-scale. The petitioner was working on a regular and permanent sanctioned

post and only as a procedural matter as and when the Government changes in routine, stereotype resignations are being obtained by the Government to deny the benefits of previous service and thereafter, fresh appointments are being made some time with notional breaks or some time without any break.

[19]. In the instant case, there was no break in service of the petitioner and therefore, there was no occasion to treat the petitioner as a fresh appointee for the purposes of granting initial pay scale. The action of the respondents in granting initial pay scale in pay band IV is not legally sustainable. It has been clearly mentioned that the petitioner will be a whole time Government employee, therefore, mere use of word that the appointment is contractual in nature, does not have any justified reason not to treat the earlier period for grant of annual increments, particularly when in the terms and conditions, it has been clearly mentioned that for all intents and purposes, the service conditions of the petitioner will be governed by the Haryana Civil Services Rules, therefore, the petitioner is entitled for running time pay scales with all other usual allowances as admissible to other Government employees. The action of the respondents in granting initial pay scale of Rs.37,400+10,000 G.P on 01.12.2009 without considering the annual increments earned by him upto 30.11.2009, is wholly illegal and arbitrary

and is in violation of rules, governing the service conditions of the petitioner. The petitioner is entitled to pay protection of basic salary and annual increments on 01.12.2009 as he was drawing on 30.11.2009 as the petitioner worked continuously without there being any break in service.

[20]. As per decision rendered in CWP No.2426 of 2012, initial pay on 01.12.2009 is required to be fixed at the stage of Rs.43,390+10,000 G.P in pay band IV and grant of initial pay Rs.37,400+10,000 G.P is thus deprecated as the same is in violation of Haryana Civil Services (Revised Pay Scale) Rules, 2008 and schedule attached to these Rules.

[21]. Throughout the State of Haryana, the old scale of Rs.18,400-22,400 has been revised to pay band IV i.e. Rs.37,400-67,400+10,000 GP with initial start at Rs.43,390+10,000 GP i.e. Rs.53,390/- as upheld by this Court in LPA No.1758 of 2014 decided on 11.11.2014, therefore, grant of lesser pay to the petitioner is wholly illegal. No different treatment can be given to the petitioner. The State of Haryana is already granting the revised pay scale of Rs.43,390+10,000 GP for the unrevised pay scale of Rs.18,400-22,400 in pay band IV and this analogy has already been adopted not only for the post 01.01.2006 retirees, but also pre 01.01.2006 retirees, therefore, impugned action is illegal. This Court has already held that wherever the Law Officers are appointed against a sanctioned

post on a pay scale, then merely use of the word contractual in nature cannot deny the benefit of service, benefit of pension etc to such employees for all intents and purposes. Reference can be made to **LPA No.56 of 1985** titled **V.P. Prashar Vs. State of Punjab** decided on 01.12.1989. Subsequently this issue came up for consideration in this Court in case of **Ms. S.K. Bhatia's case (supra)**, in which earlier precedents were also cited.

[22]. One more Law Officer namely Satish Bhanot also filed writ petition i.e. **CWP No.8435 of 2014** titled **Satish Bhanot Vs. Sate of Punjab and another**, challenging the order dated 05.03.2014 passed by the respondents, wherein the claim for grant of pensionary benefits was rejected. State Government raised a ground that the petitioner had submitted his resignation on 21.04.1997, which was accepted and thereafter, re-engaged on 22.04.1997, therefore, with the resignation of the petitioner, his past service was forfeited and there was a break in his contract. The writ petition was accepted by this Court and State Government was directed to grant pensionary benefits and other benefits to the aforesaid Law Officer within the time bound manner vide order dated 06.04.2015. The aforesaid order was passed with reference to the case law decided earlier on the issue.

[23]. The petitioner in the present writ petition has quoted the

precedents in para No.23 of the writ petition in the following manner:-

“23. That one similarly situated person Sh. Jaswant Singh Phogat (now Hon'ble Judge of this Hon'ble Court), who was working as Senior Deputy Advocate General, was re-appointed on 02.05.2005 alongwith the petitioner on contractual basis, copy of which is annexed as Annexure P/14. Sh. Jaswant Singh Phogat was granted annual increment on 01.07.2005 by taking into account his previous service, before his re-appointment on 02.05.2005 vide memo No.2/7/2005-5JJ(I) dated 01.08.2008, copy of which is annexed herewith as Annexure P/15. Similarly, the petitioner and others were again re-appointed on 01.12.2009 similar benefits were also granted to Sh. Sanjay Vashisht. Therefore, it is clear that the respondents are arbitrarily and discriminatory not taking into consideration the previous service of the petitioner on the same post in the same pay scale and not granting him the benefit of the previous service towards pay fixation/protection.”

[24]. The corresponding reply filed by the respondents in para No.23 reads as under:-

“23. That in reply to para no.23 of the writ petition, it is submitted that there is nothing on the record to show whether the resignations were submitted by Sh. Jaswant Singh and Sh. Sanjay Vashist or the same were accepted by the government or not. Still further, if any benefit had been granted without any force of Law, it was an inadvertent administrative error and the same cannot be a ground for claiming the similar benefit

specially when such benefit is not admissible as fully explained above. The claim of petitioner to give him the benefit of revision of pay scales/higher emoluments w.e.f the date of this fresh appointment in the year of 2010 onwards till November 2014, is clearly inadmissible as meanwhile, he had been issued fresh appointment and as such he was governed by the fresh appointment terms and his claim to this effect are liable to be rejected as inadmissible.”

[25]. As per stand taken by the respondents, only an evasive reply has been given and the same amounts to acceptance of the claim of the petitioner. The respondents cannot be allowed to breath hot and cold at the same time by allowing the benefit to similarly situated Law Officers without any force of law.

[26]. As per quoted pleadings in para No.23 of the writ petition, the named Law Officer who was subsequently elevated to the Bench of this Court was re-appointed on 02.05.2005 along with the petitioner on contractual basis. He was granted annual increment on 01.07.2005 by taking into account his previous service before his re-appointment on 02.05.2005 vide letter dated 01.08.2008. Similarly, other Law Officers were also granted similar benefit as mentioned in the aforesaid paragraphs.

[27]. The petitioner filed CWP No.3185 of 2016 for claiming the same benefit as was granted to similarly situated persons.

The writ petition was disposed of vide order dated 23.02.2016

with a direction to the respondent No.1 to take decision on the representation of the petitioner dated 09.10.2014 by passing a speaking order within a prescribed period.

[28]. In compliance of the order dated 23.02.2016, the respondents have rejected the representation of the petitioner vide order dated 18.10.2016, that is how, the present writ petition has been filed, assailing the order dated 18.10.2016 on the grounds mentioned in the writ petition.

[29]. Learned counsel for the petitioner has placed reliance upon V.P. Prasher's case (supra), S.K. Bhatia's case (supra), State of Punjab and another Vs. Suresh Kumar Sharma, (2010) 11 SCC 667, CWP No.1599 of 2003 titled Harpal Singh Baidwan Vs. State of Punjab decided on 21.12.2013, Satish Bhanot's case (supra), CWP No.2426 of 2012 titled Madan Gopal Gupta and another Vs. State of Haryana and others decided on 07.07.2014, State of Punjab and another Vs. Balwant Rai, 1991(2) SCT 256, CWP No.14014 of 2012 titled Satish Kumar Vs. State of Haryana and others decided on 05.02.2016 and Dr. Narinder Kaur Vs. Central Administrative Tribunal and others, 2016(2) SCT 775 in support of his contentions.

[30]. In my considered opinion, the petitioner has made out a case for grant of protection of his pay protection and for grant of

benefit of past increments legally and on the basis of discrimination meted to the petitioner viz-a-viz the benefits granted to the other Law Officers who were also re-appointed along with the petitioner. The objection taken by the respondents cannot sustain in the light of judgment rendered in **Madan Gopal Gupta's case (supra)** and decision rendered in **CWP No.21363 of 2013** titled **ER. Suchitra Chaudhary Vs. State of Haryana** decided on 11.01.2016, wherein the concept has been discussed in detail to the effect that even if a person is treated as new entrant as per appointment, which has been allowed to an employee who continues in service without break, still the employee will be entitled for pay protection in case, the pay scale is the same and on the earlier post, the employee was getting a higher basic pay. **ER. Suchitra Chaudhary's case (supra)** in my considered opinion is no more *res integra* and is covered by number of precedents on the issue.

[31]. For the reasons recorded hereinabove, this writ petition is allowed. Order dated 18.10.2016 passed by the Additional Chief Secretary, Haryana, Administration of Justice Department is quashed. The petitioner is entitled for pay protection and past increments. The respondents are directed to grant pay scale to the petitioner as was being drawn by him as on 30.11.2009 after protecting his basic pay as on 30.11.2009 in the pay band IV of

Haryana Civil Services (Revision of Pay Scales) Rules, 2008 and grant annual increments as earned by him upto 30.11.2009 as per Punjab Civil Services Rules applicable to the State of Haryana along with arrears and interest @ 6% per annum from the due date till final realisation by fixing the pay of the petitioner at the stage of Rs.50,100+10,000 G.P. i.e. Rs.60,100/- and Rs.700/- NPA in pay band IV of Rs.37,400-67,400+10,000 G.P+ Rs.700/- NPA as was being drawn by the petitioner as on 30.11.2009 along with pay protection by granting the benefit of annual increments earned by the petitioner from 01.01.2006 to 30.11.2009. The respondents are also directed to grant next increment, which was due from 01.07.2010 by taking into consideration the judgments of the High Court in CWP No.2426 of 2012 and LPA No.1758 of 2014. Let the needful be done within a period of two months from the date of receipt of certified copy of this order.

19.05.2023*Prince***(RAJ MOHAN SINGH)
JUDGE****Whether Reasoned/Speaking****Yes/No****Whether Reportable****Yes/No**