

SUNIL KUMAR AND OTHERS
V/S
STATE OF HARYANA AND OTHERS

Present: Mr. Shivendra Swaroop, DAG, Haryana,
for the applicant-respondent(s).

Dr. Suresh Kumar Redhu, Advocate,
for the non-applicant/petitioners.

Vide this application under Order 47 Rule 1 of the Code of Civil Procedure, the applicants (respondent-State) seek review of the order dated March 15, 2018, whereby the writ petition preferred by the non-applicants/petitioners was disposed of, in terms of an order of even date, passed in CWP-7767-2016 (Birender Singh and others Vs. State of Haryana and others).

Learned State counsel submits that in the petition filed by the non-applicants/petitioners, they had prayed for a Certiorari to quash the order dated 14.10.2015 (P-7), whereby, the earlier orders passed by the authorities as regards re-fixation of their pay were withdrawn, reducing their basic pay and recovery was sought to be caused from their salary. Further, for a direction to the respondents that non-applicants/petitioners be paid salary, as per pay fixation orders issued earlier, i.e. 24.08.2015 (P-6). He submits that in the index of the petition, where particulars of a similar case, if any, are required to be mentioned, the non-applicants/petitioners had referred to CWP-7767-2016 (*ibid*). Accordingly, while issuing notice of motion on 02.06.2016, their petition was ordered to be heard with CWP-7767-2016. It is submitted that eventually CWP-7767-2016 was disposed of by this Court on March 15, 2018, and in terms of the said order, the petition filed by the non-applicants/petitioners too was decided/disposed of.

In reference to the averments set out in the review application, he submits that the non-applicants/petitioners had joined the Police Department between 1989-1992, on the posts of Constable Messengers/Drivers. Accordingly, their pay was fixed and they were also granted ACP-I scale, as per their entitlement. And they continued as such, for a period of 11 to 16 years. Subsequently, on passing the requisite tests, they were converted into Wireless Operators (Technical post) between

2003-2005. Whereas, he asserts that petitioners, in CWP-7767-2016 (*ibid*), rendered service as Wireless Operator (technical post), from the day they joined the Telecommunication Wing, Police Department. It is urged that non-applicants/petitioners never rendered service as Wireless Operators (technical post) for the first 11 to 16 years of their service. Thus, he submits that there was/is decisive difference between the matter at hand and the claim of the petitioners in CWP-7767-2016. In fact, in reference to paragraph No.4 of the application, he submits that non-applicants/petitioners, intentionally/deliberately to draw an unlawful advantage, succeeded in getting their matter tagged with CWP-7767-2016. He also regrets the lapse on part of the State, as neither any such difference was pointed out when the matter was disposed of, nor the State chose to file any written statement.

Notice of the application was issued to the non-applicants/petitioners, and a response thereto has been filed.

Dr. Suresh Kumar Redhu, learned counsel for the non-applicants/petitioners, vehemently opposes the review application and submits that claim of the non-applicants/petitioners was/is identical to the petitioners in CWP-7767-2016 (*ibid*). He asserts that the State Counsel having conceded the claim of the non-applicants/petitioners before this Court, pursuant whereto the petition filed by them was disposed of, on March 15, 2018, the State could not be permitted to resile from its stand at such a belated stage. And even otherwise, he asserts that non-applicants/petitioners were/are entitled to the relief prayed for in the writ petition.

I have heard learned counsel for the parties and perused the records.

CWP-7767-2016 (*ibid*), was disposed of by an order dated March 15, 2018:

“Vide this order and judgment, I shall dispose of a batch of 11 petitions, for, the issue involved is common.

A few of the petitioners were appointed as Constable messengers/drivers etc. And, after they qualified the requisite test, they were re-designated as Constable Wireless Operators, which is a technical

post. Whereas, rest of them were appointed Wireless Operators by way of direct recruitment. But, for the petitioners were not granted the 'technical scale', for the post they held, they approached this Court, vide CWP No. 8401 of 2011 (Sumitra Devi and others v. State of Haryana and others) and other connected matters, which was allowed vide order and judgment dated 22.05.2012 (Annexure P-9), and they were held entitled to the technical scale, w.e.f. 01.05.1990. And, subsequently, after the petitioners became eligible, they were awarded ACP scale, from the date of their initial appointment, alongwith consequential benefits. But later, the respondents sought to withdraw the said benefit as regards few of the petitioners. For, the respondents were of the view; that benefit of ACP scale could only be granted w.e.f. 01.05.1990, and not from their initial entry into service, which necessitated filing of these petitions.

But, there indeed has been a significant development during the pendency of these petitions, for, the respondents have accepted the claim of the petitioners. And a decision has been reached to award ACP scale to the petitioners from the date of their initial appointments. In the case of few of the petitioners, even the necessary orders have since been passed. Learned State counsel submits; that formal orders as regards each of the petitioners shall be issued and communicated, within four weeks from today. And, the consequential benefits, if any, shall also be released. That being so, learned counsel for the petitioners submit that these petitions have been rendered infructuous, and be disposed of as such.

The petitions are accordingly disposed of in the above terms."

It is not disputed either, as indicated above, that writ petition

filed by the non-applicants/petitioners was simply disposed of, by a short order, in terms of the order extracted above:

“For orders, see order and judgment of even date, passed in CWP No.7767 of 2016 (Birender Singh and others v. State of Haryana and others).”

The State has filed a detailed application, supported by an affidavit of the Superintendent of Police, Telecommunication, Haryana, Panchkula, seeking review of the order dated March 15, 2018. As indicated earlier, per the grounds set out in paragraph Nos.3,4,9 and 10 of the application, a distinction is drawn as regards claim of the non-applicant/petitioners vis-a-vis the petitioners in CWP-7767-2016 (*ibid*). It is alleged that the petitioners in both the petitions were not similarly situated and circumstanced. Thus, both the petitions were dissimilar.

A bare analysis of the order under review reveals that this Court never examined/determined the *lis* on merits, as the matter was disposed of only on the statement of the learned State counsel. For, there was no occasion for this Court to examine the matter on merits, it would not be expedient to delve into the respective claims of the parties and determine the dispute in the review proceedings. Particularly, when even the written statement on behalf of the State had not been filed. Thus, in the given circumstances, I consider it expedient and appropriate, least interest/rights of any of the parties suffer, to recall/review the order dated March 15, 2018.

Accordingly, in the wake of the position sketched out above, the application is allowed. The order dated March 15, 2018, (in CWP-11853-2016) is reviewed. The writ petition is restored to its original number. Needless to assert, the non-applicants/petitioners as also the State shall be free to substantiate their respective claims and argue the matter on merits. Further, it is clarified that this order shall not constitute an expression of opinion on the merits of the case of either party.

CWP-11853-2016

To be listed as per roster.

(ARUN PALLI)
JUDGE

05.05.2023/AK Sharma