

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

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LPA-1901-2023 (O&M)
Decided on 30.11.2023

State of Punjab and others

... Appellants

Versus

Raj Kumar Mahajan and another

... Respondents

**CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Ms.Lavanya Paul, DAG, Punjab

AMAN CHAUDHARY, J.**CM-4772-2023**

For the reasons stated in the application, delay of 310 days is hereby condoned, subject to all just exceptions.

Main Appeal

1. Challenge in the instant Letters Patent Appeal is to the judgment dated 20.12.2022 passed by the learned Single Judge, vide which the writ petition filed by respondent No.1 was allowed.
2. Learned State counsel would submit that an error has crept in while allowing the writ petition by basing its decision on a judgment passed in the case of **Anil Kumar and others vs. State of Punjab and others**, CWP-22422-2010, decided on 16.05.2012, inasmuch the same involved distinct facts, as it related to those employees appointed/placed in the cadre of Junior Assistant on 01.01.1996 and were accordingly held entitled to protection of pay etc., whereas respondent No.1 was placed in the said cadre/scale, lateron i.e. w.e.f. 11.03.1996.

3. We are not convinced to accept the aforesaid contention having been canvassed on behalf of the State.

4. Succinct facts first. Respondent No.1 joined on the post of Clerk on 11.03.1986 in the pay scale of Rs.400-600/- and thereafter his scale was revised to Rs.950-1800/- with initial start of Rs.1000/- and he was placed in the scale of Rs.1200-2100/- as Senior Clerk and later on w.e.f. 11.03.1996, placed in the scale of Junior Assistant Rs.1500-2640/- with initial start of Rs.1500/-. Significantly, the State of Punjab vide notification dated 16.01.1998, in exercise of powers conferred by proviso to Article 309 read with clause (3) of Article 187 of the Constitution of India notified that the Punjab Civil Services (Revised Pay) Rules, 1998 deemed to have been come into force w.e.f. 01.01.1996, whereby the above pay scales were further revised, by virtue of which the scale of Rs.950-1800/- was made Rs.3120-5160/-, Rs.1200-2100/- as Rs.4020-6200/- and Rs.1500-2640/- as Rs.5000-8100/-. Consequently, respondent No.1 became entitled to the scale of Rs.5000-8100/- w.e.f. 11.03.1996, the date on which they were placed as Junior Assistant. However, subsequently, the First Amendment to the Punjab Civil Service Revised Pay Rules, 1998, was made vide notification dated 19.05.1998 providing the pre-revised and revised scales of the clerical cadre whereby, the categories of clerks in the ratio of 20% Clerks, 40% Senior Clerks and 40% Junior Assistants were converted into two categories in terms of the designation and scales i.e. Clerks 50% and Junior Assistants 50% in the scales of Rs.3120-5160/- and Rs.4400-7000/-, respectively. The pay of Junior Assistants as on 01.01.1996 was to be protected and in future, new posts of junior assistants would be created on the basis of actual requirement.

5. The sole thrust being of appellant-State on the incorrect reliance by learned Single Judge upon the judgment in the case of **Anil Kumar and others** (supra), it would be apposite to refer the same, so as to move further in this matter. The petitioners therein had filed the writ petition claiming the same benefit of pay protection as granted to those placed in the scale of Junior Assistant prior to 01.01.1996, which the State denied them on the premise that they had come into the said scale on 01.01.1996 and not prior thereto. The learned Single Judge decided the issue in their favour by rightly reading down the amendment that the clear meaning of the rule would not lend itself to the interpretation that only those in service/scale prior to 01.01.1996 would be entitled to the same. The State unsuccessfully challenged the judgment in appeal before the Division Bench, wherein the plea was once again not accepted by making a further observation that the intention of the authorities was to grant higher pay scale and protection of pay etc. even to those employees, who were in scale on 01.01.1996. Aggrieved State, preferred SLP which also came to be dismissed by Hon'ble the Supreme Court on 07.01.2015.

6. Pertinently, all those who were in the scale of Junior Assistants before the notification dated 19.05.1998, such as the ones placed prior to 01.01.1996 or on the said date or respondent No.1 w.e.f. 11.03.1996, form a homogeneous class, he being in the pre-revised scale of Rs.1500-2640/- and in terms of the notification dated 16.01.1998 were entitled to the revised scale of Rs.5000-8100/- w.e.f. 01.01.1996 or the date of placement as Junior Assistant whichever was later. In wake of this, the right of respondent No.1 cannot be eclipsed by the notification dated 19.05.1998, as by it, an artificial classification was sought to be created amongst equals, as existed prior to the issuance of the same. Hon'ble the Supreme Court in **Maharashtra State Financial Corpn.**

Ex-Employees Assn. vs. State of Maharashtra, 2023 SCC OnLine SC 100, held that those employees, who worked during the period from 01.01.2006 to 29.03.2010 and those who continued thereafter, fell in the same class, and a further distinction could not be made for their entitlement to arrears based on pay revision.

7. A vested right that stood accrued in favour of respondent No.1 on 16.01.1998 w.e.f. 11.03.1996, on being placed as Junior Assistant entitling him to the revised pay scale of Rs.5000-8100/-, which continued till the issuance of notification dated 19.05.1998, whereafter this scale was not to be available, could not have been taken away by retrospective operation. With regard to this, the judgment of Hon'ble the Supreme Court in **Railway Board vs. C.R. Rangadhamaiah**, (1997) 6 SCC 623, can be gainfully referred wherein it was observed that, "In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution of India. We are unable to hold that these decisions are not in consonance with the decisions in "Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni & Ors., (supra)." It was held that, "It can, therefore, be said that a rule

which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.”

8. In **Man Singh vs. State of Haryana**, (2008) 12 SCC 331, it was observed and held by Hon’ble the Supreme Court that, “We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness.”

9. It is trite that all employees similarly circumstanced have a right to be treated alike and there exists no inherent right in the employer to fix different dates regarding the grant of revised pay scale/pay protection, as is being sought to be done in the present case, which amounts to an invidious discrimination being meted to respondent No.1 and those of who got the designation of Junior Assistants between 01.01.1996 and 19.05.1998 and thus, had become entitled to

the scale of Rs.5000-8100/- in terms of the initial notification dated 16.01.1998.

Reference can be aptly made to **E.P. Royappa vs. State of T.N.**, (1974) 4 SCC 3, a case where Hon'ble the Supreme Court had observed that, "The basic principle which informs both Articles 14 and 16 of the Constitution of India is equality and inhibition against discrimination. From a positivistic point of view, equality is antithetic to arbitrariness."

10. The present case having been considered in light of the explication of law referred to hereinabove, we find the action of the authorities to be marred by discrimination and arbitrariness. There is, thus, no patent illegality or perversity in the impugned judgment. As such, the appeal sans merit and is hereby dismissed.

11. Pending application(s), if any, shall be rendered as disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

30.11.2023

gsv/ashok

Whether speaking / reasoned: YES / NO

Whether Reportable: YES / NO