

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-1427-2024
Date of decision : 30.01.2024

Suresh Kumar Sharma and others

... Petitioners

Versus

The State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Ankit Midha, Advocate
for the petitioner.

Mr.Kunal Muthreja, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ, order or direction especially in the nature of certiorari for quashing orders dated 19.12.2023 (Annexure P-14) passed by respondent no.3 rejecting the claim of the petitioners for grant of proficiency step up increments on completion of 4 years, 9 years and 14 years of regular service.

2. Learned counsel for the petitioners has submitted that the petitioners had joined the Irrigation Department as Assistant Design Engineers (SDO) on ad hoc basis during the years 1986 and 1987 and their services were regularised w.e.f. 27.01.1993 by the Punjab Government. Learned counsel for the petitioners has referred to a detailed chart which has been reproduced in paragraph 3 of the writ petition to show the date of regularisation, date of promotion of each petitioner as Executive Engineer,

the date of promotion as Superintending Engineer and also the date of retirement. It is submitted that for the same prayer, CWP-5956-2015 titled as “Manjit Singh Bahra vs. The Principal Secretary, Department of Irrigation, Punjab and another” was filed by an employee who was similarly placed as the present petitioners. It is further submitted that the said writ petition was allowed by a Coordinate Bench of this Court vide judgment dated 10.01.2017 in the following terms:-

“Consequently, the present petition is allowed. The respondents are ordered to grant the proficiency step up to the petitioner on completion of 14 years as on 18.02.1997. Consequently, the pension of the petitioner shall also be revised. The arrears of the revised pay and the pension shall be released to the petitioner within 3 months from the date of receipt of a certified copy of this order. Since, the petitioner approached this Court only in the year 2015, he will not be entitled to any interest on the arrears and interest shall be paid to the petitioner from the date of filing to present writ @ 9% per annum till its payment.”

It is stated that subsequently other writ petitions were also filed including CWP-14913-2015 which was allowed by a Coordinate Bench of this Court vide judgment dated 06.12.2019. The relevant portion of which is reproduced hereinbelow:-

*“Learned counsel for the petitioners submits that the question of law raised in the present writ petition has already been answered by a Coordinate Bench of this Court while deciding **CWP No. 5956 of 2015 titled as Manjit singh Bahra Versus The Prinicipal Secretary, Department of Irrigation, Punjab and Others** on 10.01.2017. The question of law raised in this writ petition is as to whether an employee is entitled for grant of benefit of proficiency increment after 4 and 9 years, of service from the day the required services is completed or from Ist of January of the next year, in which the required services is completed. The petitioners have been granted the benefit of proficiency step up after rendering 4/9 years of service from Ist of January of next year, in which they completed the requisite service. Prayer of the petitioners is that they should be granted the benefit proficiency increment from the date when they actually complete 4/9 years, as the case may be, immediately and not from Ist of*

January of next year as is done in the case of the petitioners.

*Learned counsel for the petitioners argues that the said action was challenged before this Court in **CWP No. 5956 of 2015 titled as Manjit Singh Bahra Versus The Principal Secretary, Department of Irrigation, Punjab and Others** which has been decided on 10.01.2017 wherein, the action of the respondents in granting the benefit of the proficiency step up from January of the next year in which the employees complete the requisite service of 4/9 years of service, has been set aside and a direction was issued to grant the benefit immediately upon completion of requisite service. The relevant paragraphs of the judgment are as under:-*

I am of the view that the guidelines cannot override the notification issued in exercise of the powers under the Constitution of India which has the force of law. The instructions contrary to the said notification having force of law, are to be ignored. The notification dated 19.05.1988 (Annexure P-8) stipulates that 14 years of proficiency step up to be granted to on completion of 14 years of regular service in the entry scale. Since, the petitioner completes 14 years of regular service on 18.02.1997, therefore, the petitioner is entitled to entry scale on completion of 14 years of service from the said date and the guidelines given in Annexure-R-1 reproduced above are to be ignored. Even in case of Jasbir Singh Jhandu, who was junior to the petitioner and was promoted vide same order, he was also granted 14 years ACP scale on completion of 14 years of service w.e.f. 18.02.1997. Therefore, whether the instructions dated 17.04.2000 (Annexure R-1) were brought to the notice of the Court in said case or not, hardly makes any difference.

Consequently, the present petition is allowed. The respondents are ordered to grant the proficiency step up to the petitioner on completion of 14 years as on 18.02.1997. Consequently, the pension of the petitioner shall also be revised. The arrears of the revised pay and the pension shall be released to the petitioner within 3 months from the date of receipt of a certified copy of this order. Since, the petitioner approached this Court only in the year 2015, he will not be entitled to any interest on the arrears and interest shall be paid to the petitioner from the date of filing to present writ @ 9% per annum till its payment.

This writ petition came up for hearing on 09.05.2017 on which date the respondents were directed to file an affidavit as to whether the case of the petitioners is covered by the order dated 10.01.2017 passed in

CWP No. 5956 of 2015 titled as Manjit singh Bahra Versus The Principal Secretary, Department of Irrigation, Punjab and Others. In pursuance to the said direction, the affidavit has been filed by the respondents which is as under:-

That the above mentioned Writ Petition is fixed for hearing before this Hon'ble Court on 01.06.2017.

That the above mentioned Writ Petition was came up for hearing before this Hon'ble Court on 09.05.2017 and the same has been adjourned to 25.05.2017. The Hon'ble Court has passed the following orders:-

"Learned counsel for the petitioner has placed on file a copy of the judgment dated 10.01.2017 passed in CWP No. 5956 of 2015 titled as Manjit Singh Bahra Vs The Principal Secretary, Department of Irrigation, Punjab and others. It is claimed the present writ petition is covered by the said judgment.

Let the State examine the said judgment and file additional affidavit as to whether the case of the petitioner is covered by the said judgment or not and if it is covered, then what is the stand of the State.

Adjourned to 25.05.2017".

That it is respectfully submitted that the case of the petitioner is covered under the judgment dated 10.01.2017, which was passed by the Hon'ble Court in CWP No. 5956 of 2015-titled as Manjit Singh Bahra Vs. State of Punjab and others, although the stand of the Government was that the petitioner was not entitled for Assured career progression scheme/4-9-14 on which he complete the span of the service required for placement in the higher scale. It is submitted that the benefit of ACP/4-9-14 was given to the petitioner vide para 7 of notification no. 7/84/98-5PP1/4426 dated 17.04.2000 (Annexure R- 1).

*The bare perusal of the affidavit would show that the respondents have conceded that the petitioners' case is covered by the direction given by this Court in **CWP No. 5956 of 2015 titled as Manjit singh Bahra Versus The Principal Secretary, Department of Irrigation, Punjab and Others** decided on 10.01.2017.*

*Learned State counsel during the hearing also submits that the State has no objection in case, the present writ petition is also disposed of in terms of order passed by this Court in **CWP No. 5956 of 2015 titled as Manjit singh Bahra Versus The Principal Secretary, Department of***

Irrigation, Punjab and Others decided on 10.01.2017.

Keeping in view the above, the present writ petition is also allowed in same terms as CWP No. 5956 of 2015 titled as Manjit singh Bahra Versus The Principal Secretary, Department of Irrigation, Punjab and Others decided on 10.01.2017.

06.12.2019

(HARSIMRAN SINGH SETHI)
JUDGE”

Learned counsel for the petitioners has further submitted that against the said judgment dated 06.12.2019 and other matters, LPA-582 of 2021 and other LPAs were filed by the State of Punjab and the Hon'ble Division Bench of this Court vide detailed judgment dated 24.01.2023 has dismissed the said LPAs and the relevant portion of the said judgment which has been highlighted, is reproduced hereinbelow:-

“The instant LPAs

Assailing the same, these Appeals are filed by the State of Punjab.

Counsel for the State contended that the impugned orders are erroneous and the view taken by the respective Learned Single Judges in the Writ Petitions cannot be sustained. According to him, the benefit of Assured Career Progression scales is admissible to the respondents only from 1st January of the next year of their completing 4/9/14 years of continuous service as per Executive Instructions dt. 17.04.2000.

We do not agree with the said contention because the said executive instructions cannot override the statutory rule notified on 19.05.1998 which grants the benefit of higher scales on completion of the 4/9/14 years of service.

*In **Dhananjay Malik and Others Vs. State of Uttaranchal and Others**, the Supreme Court held, following the Constitution Bench judgement in **Sant Ram Sharma Vs. State of Rajasthan** and the decision in **Union of India Vs. K.P. Joseph**, that Government cannot amend or supersede statutory Rules by administrative instructions; and only if the Rules are silent on any particular point, Government can fill up the gaps and supplement the Rules and issue instructions not inconsistent with the Rules already framed.*

It is further contended by the counsel for the appellants that the benefit of the orders of the respective learned Single Judges be only confined to the respondents/Writ Petitioners, and that in CWP-23932-

2012 (out of which LPA 102 of 2021 arises), the learned Single Judge had granted benefit to others similarly situated erroneously.

The learned Single Judge in his judgement in the said Writ Petition had relied upon the decision of the Supreme Court in **State of U.P. Vs. Arvind Kumar Srivastava** to hold that when a particular set of 5 employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit; not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. He held that this principle needs to be applied in service matters particularly where the judgement pronounced by the Court was judgment in rem. He held that with such a pronouncement, obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons.

Since the decision in the CWP-23932-2012 is in the nature of a judgment in rem, the benefit thereof cannot be confined only to the party therein and has to be extended to all similarly placed employees.

In view of this settled legal position, we find no merit in the Appeals, and the same are accordingly dismissed.

Pending application(s), if any, is disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

January 24, 2023”

Learned counsel for the petitioners has stated that the case of the petitioners is squarely covered by the abovesaid judgments and in the impugned order, the ground taken by the respondent authorities to deny the relief to the petitioners is that they would be filing SLP against the said LPA judgment. It is further stated that no SLP till date has been filed against the judgment dated 24.01.2023 passed in LPA and the judgments of the Coordinate Bench are of the year 2017/2019. It is submitted that the Hon'ble Division Bench of this Court had observed in the judgment dated 24.01.2023, that when a particular set of employees is given relief, then all other identically placed persons need to be treated alike. It is further

submitted that the petitioners are entitled to similar relief as has been given to Manjit Singh Bahra vide judgment dated 10.01.2017 and are also entitled to interest from the date of filing the earlier writ petition i.e., 21.07.2023 which was disposed of by this Court vide order dated 25.07.2023 (Annexure P-13) with a direction to the respondent authorities to consider the case of the petitioners.

Learned State counsel has not been able to dispute the fact that the matter of the petitioners is squarely covered by the abovesaid judgments dated 06.12.2019 and 24.01.2023 but has submitted that the respondent-State is in the process of filing the SLP and has also fairly submitted that no SLP has been filed till date.

Keeping in view the abovesaid facts and circumstances and also the judgments passed by the Coordinate Bench of this Court dated 10.01.2017, 06.12.2019 as well as by Hon'ble Division Bench of this Court dated 24.01.2023, the present writ petition is allowed in the same terms as CWP-5956-2015 titled as “Manjit Singh Bahra vs. The Principal Secretary, Department of Irrigation, Punjab and another” decided on 10.01.2017.

(VIKAS BAHL)
JUDGE

January 30, 2024
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No