

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:066919-DE



(103)

LPA-1292-2023 (O&M)
Decided on :14.05.2024

Raj Pal Singh

.....Appellant(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICELAPITA BANERJI

Present:- Mr. Sudhanshu Sharma, Advocate for the appellant.
Mr. Deepak Balyan, Addl. AG, Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-3300 & 3301-LPA-2023

Applications for condonation of delay of 37 days in re-filing and 64 days in filing the appeal, are allowed, in view of the averments made in the applications, duly supported by affidavit of the appellant. Delay of 37 days in re-filing and 64 days in filing the appeal is condoned.

CMs stand disposed of.

LPA-1292-2023 (O&M)

Consideration in the present letters patent appeal is sought of the judgment of the learned Single Judge dated 23.11.2022 passed in CWP No.8521 of 2001, whereby the writ petition was dismissed and the order dated



LPA-1292-2023 (O&M)

07.02.2001 (Annexure P-5) was upheld, whereby the request of the writ petitioner to remove the anomaly inasmuch as in the pay scale of feeder post and promotion post w.e.f. 01.01.1986 instead of 01.05.1990 was rejected. The learned Single Judge noticed that the order passed by the official respondents was a considered and lengthy order dealing with all aspects. The fact that there was a Division Bench judgment of this Court in **S.K. Bishnoi Vs. State of Haryana, 1993 (4) SCT 127** holding the field and in such circumstances, the relief has been denied. The learned Single Judge while dismissing the writ petition has also noticed that if there was some non-payment of arrears in accordance with the impugned order, he had accordingly directed the competent authority/department to pass appropriate orders within a period of 3 months. We are, however, not concerned with the said aspect.

2. The counsel for the appellant has only argued that the benefit should have been given from the earlier point of time i.e. 01.01.1986. It is submitted that the writ petitioner was appointed as Zileadar and post of Zileadar was higher in pay scale than Revenue Clerk. The writ petitioner being Zileadar had been granted higher scale of Rs.1640-2900 w.e.f. 01.05.1990, whereas the Revenue Clerks had got pay scale of Rs.1400-2600 w.e.f. 01.01.1986. At that point of time Zileadars' were also receiving the same pay scale and, therefore, the prayer as such on the simple principle that on promotional post the employee could not be granted the same emoluments, since the post of Zileadar is a superior post to the feeder cadre post of Revenue Clerk.

3. The stand of the State in the written statement was that there was a notification dated 23.08.1990 and reference of judgment in **S.K. Bishnoi**



LPA-1292-2023 (O&M)

(supra) was also given. The Government had noticed the anomaly and revised the pay scale on the representations of the employees and revised the pay scale including that of Deputy Collector which is a higher post and was receiving scale of Rs.2000-3500. It was also mentioned that there were as many as 48 categories of posts in the Group-D/Class-IV and there were not more than 4 standard pay scales prescribed for this category by the 5th Pay Commission. The State Government was faced with a gigantic task of fitting 70 existing pay scales in the reduced scales numbering 33 in total while revising the pay scales of its own employee with the working of the Central Government, which was quite different in respect of many services specially in respect of those which are in the domain of the States alone. A natural consequence of such bunching of scales was that there were a number of posts in respect of which same pay scale had been prescribed for the feeder post as well as the promotional post in a particular cadre. The anomaly had thus been removed from a particular date.

4. The learned Single Judge, thus, has accepted the stand of the State by noticing that there were 150 categories of posts in 40 departments/organizations. Vide the administrative order dated 23.08.1990, redressal had been done but only from 01.05.1990. The Division Bench in the case of **S.K. Bishnoi (supra)** while dealing with the said proposition framed the question whether modification in the pay scale ought to have been allowed w.e.f. 01.01.1986 and not from 01.05.1990 and whether reduction in the pay scale from the earlier date suffers from the vice of arbitrariness. It was noticed that the Pay Anomalies Commission as such was constituted to look into the

**LPA-1292-2023 (O&M)**

representations of the employees and had travelled beyond the jurisdiction and made recommendations to grant higher pay scales. After that the Officers' Committee was constituted to look into the recommendations of Pay Anomaly Committee. Resultantly, it was held that recommendations were accepted by the Council of Ministers on 14.05.1990 and it was only on account of clubbing of 58 existing pre-revised pay scales into 25 revised pay scales. Relevant portion of the said judgment reads as under:-

“8. On the other hand, it was submitted by the learned Advocate-General appearing for the State of Haryana that it had accepted the recommendations of the Fourth Pay Commission of the Central Government and according to the terms thereof, it involved exercise of creation of posts after identification with comparable posts, which would naturally take some time. The respondent, in order to obviate hardship to the employees, decided to club 58 existing pre-revised pay scales into 25 revised pay scales and the petitioners were allowed the benefit accordingly. Keeping in view the nature of duties performed by them which involved extra labour and skill, the Officers' Committee recommended higher revised pay scale for officers of various Departments. Its recommendations were accepted by the Council of Ministers on May 14, 1990 and were made effective from May 1, 1990. Allowing them the benefit of higher revised pay scale with effect from May 1, 1990 does not suggest that any anomaly in the pay scale of the petitioners was detected, but the higher revised pay scale was allowed to them keeping in view the nature of duties performed by them.

9. The petitioners are not correct in saying that the PAC or the Officers' Committee had detected any anomaly in their pay scale. Even at the time of hearing, none was pointed out. The official record produced at the time of hearing does not point out that either the PAC or the Officers' Committee found any anomaly in the pay scale of the petitioners or other similarly situated employees. To us, it appears that the respondent allowed them the higher pay scale of Rs. 2000-3500 keeping in view the nature of duties performed by them. It is for the Administrative Department to identify the comparable posts occupied by the petitioners in the Central Government. For allowing the revised pay scales as suggested by the Fourth Pay

**LPA-1292-2023 (O&M)**

Commission of the Central Government, identification or creation of posts has to be made by the respondent. The Administrative Department may take time to identify the posts or to create new posts and it may decide to allow the benefit of revised pay scales only after identification of comparable posts or creation of comparable posts. An employee cannot urge that since the State has failed to identify the comparable post or create a new post for implementing the Pay Commission's recommendation forthwith, he should be allowed the benefit of revised pay scale with retrospective effect, viz., from the date the Pay Commission's report was made applicable. This conclusion of ours finds support from the judgment of the apex Court rendered in **Union of India and others v. The Secretary, Madras Civil Audit & Accounts Association, etc., 1992(1) SCT 419 : 1992(1) SLR 667(SC).**”

5. Thereafter, the Division Bench examined the issue under the principle of law that it is not within the power of judicial review and the Court is not to tinker with such equivalence issues unless it is shown that it was made with extraneous consideration and it was the exclusive prerogative of the executive wing of the Government which had to be assisted by expert bodies. It is, thus, apparent that the issue already stood decided by the Division Bench much prior to when the writ petitioner approached this Court. Rather a perusal of the impugned order would go on to show that some Deputy Collector and Zileedars had filed CWP-1323-2000, wherein directions had been issued to decide their legal notices, on the basis of which the impugned order was passed by the Financial Commissioner & Secretary for the Government of Haryana, Finance Department.

6. A perusal of the order dated 07.02.2001 further goes on to show that on account of clubbing of seven pay scales and substitution by one pay scale of Rs.1400-2600 as on 01.01.1986, the pay scale of the post of Revenue



LPA-1292-2023 (O&M)

Clerk, Assessment Clerk, Head Revenue Clerk and Zileedarhad become the same and the pay scales of feeder post and the pay scale of the promotional post being the same, benefit of one increment certainly would have accrued to the employee in the next higher scale. Illustration as such were given. Resultantly, it was held that the State had granted two benefits to its employees subsequently and employees from Group C and D never stagnate on reaching the maximum of his pay scale and would be granted annual increments even after reaching that stage. The benefits, thus, were held over and above as granted by the 4th and 5th Pay Commission in the Central Government. In such circumstances, relief had been denied by the State.

7. Resultantly, keeping in view the above discussion, we are of the considered opinion that the reasoning given by the learned Single Judge while upholding the order of the State does not suffer from any infirmity, as he was bound by the binding precedent of the Coordinate Bench. Accordingly, there is no merit in the present letters patent appeal and same is hereby dismissed in *limine*. All pending civil miscellaneous application(s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

14.05.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No