



CWP-10897-2000 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-10897-2000 (O&M)

Date of Decision: 09.09.2024

P.C. Basak

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.S. Bains, Senior Advocate, with
Mr. Anmoldeep Singh, Advocate and Mr. I.P.S. Deol, Advocate
for the petitioner

Mr. Krishan K. Chahal, Addl. AG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a direction to the respondents to fix the petitioner's basic pay at par with that of his juniors at ₹14,940 with effect from 01.01.1996 in the pay-scale of ₹12000-18300 for the post of Assistant Professor, and grant arrears of salary with all consequential benefits and interest.

2. Facts of the case in brief are, the petitioner was selected as Assistant Professor in the respondent Engineering College by a selection committee constituted by the State Government in August 1992. Considering his past experience, the committee recommended his basic pay at ₹4200 in the admissible pay scale of ₹3700-5700 (pre-revised), as apparent from its proceedings dated 13.08.1991, Annexure R-1. Pursuant thereto, the letter of

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appointment was sent in December 1993. He joined service on 09.05.1994, and was given basic pay of ₹4200 from the date of joining.

2.2. It is claimed that the petitioner was senior most Assistant Professor in Department of Mechanical Engineering, as conveyed to him by the College vide letter dated 03.11.1997, Annexure P-4. Besides, it is apparent from the selection committee proceedings for two posts of Assistant Professor in the Department, dated 13.08.1991, that the petitioner has been placed first in the order of merit, and Dr. Bachcha Kant Khan at the second place.

2.3. The revised scales of pay for teachers in the College were notified in November 1999 with effect from 01.1.1996, and time scale of pay for the post of Assistant Professor was revised to ₹12000-18300. In the revised scales the petitioner's pay was fixed at a stage lower than that of his juniors. As per details of pay drawn by the petitioner as well as his junior Dr. B.K. Khan mentioned in the petition, which have not been disputed by the respondents, the petitioner and Dr. Khan were drawing basic pay of ₹4325 in the pre-revised pay scale of ₹3700-5700 in December 1995. In the revised pay scale with effect from 01.01.1996, initially both were placed at the basic pay of ₹12420. However, with effect from February 1998, the petitioner was given basic pay of ₹13260, whereas his junior Dr. Khan was given higher basic pay of ₹14940. The disparity continued thereafter. In these facts, the petitioner approached this Court.

3. Learned senior counsel contends that as per the settled law pay of a senior employee cannot be lower than that of his junior. In this regard he has referred to Government Note 6 of para 7 in instructions dated 07.01.1998, Annexure P-8, dealing with fixation of initial pay in the revised pay-scale

prescribing that “Where in the fixation of pay under sub-rule(1), pay of a Govt.

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servant who, in the existing scale was drawing immediately before the first day of Jan.1996, more pay than another Govt. servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior ”. Accordingly, it is contended that the petitioner is entitled to stepped up pay with effect from February 1998.

4. Learned State counsel, on the contrary, contends that the petitioner's pay was rightly fixed in the revised pay-scale. He cannot be considered senior most Assistant Professor in the Department as he joined service only in 1994, whereas other teachers joined in 1990, 1992, and 1993. And their pay was fixed at ₹14940 in the revised pay scale after rendering five years of service. Similarly, the petitioner's pay was also fixed at ₹14940 with effect from 09.05.1999 on completing five years of service. He is not entitled to any additional benefit, nor is his past service relevant for fixation of pay in the revised pay scale. He, however, is not in a position to dispute that at the time of joining service, the petitioner's pay was fixed at ₹4200 in the pay scale of ₹3700-5700 by giving him additional benefit, as also the fact that he was selected at number one in the order of merit and was drawing more salary than that of juniors.

5. Heard.

6. As per undisputed facts on record, the petitioner was selected for the post of Assistant Professor in Mechanical Engineering by the selection committee on 13.08.1991. He was placed at number one in the order of merit, and was offered basic pay of ₹4200 in the pre-revised scale of ₹3700-5700.

Dr. Bachcha Kant Khan was placed at number two in the same selection, and was offered basic pay of ₹4075. The petitioner was issued the letter of

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appointment in December 1993, and joined service in response thereto on 09.05.1994. He was given basic pay of ₹4200 also, as determined by the selection committee. In the pre-revised pay scale for the post of Assistant Professor, both, the petitioner and Dr. Khan, were drawing equal basic pay of ₹4325. The pay-scale was revised to ₹12000-18300 with effect from 01.01.1996. Initially, the petitioner as well as his junior Dr. Khan were placed in the same basic pay of ₹12420 with effect from January 1996. Accordingly, Note 6 of para 7 of instructions, dated 07.01.1998, will have no application; and the reliance by learned senior counsel on the same is misplaced. However, after two years, from February 1998, Dr. Khan was given higher basic pay of ₹14940 as compared to that of his senior/the petitioner, whose basic pay was ₹13260. As per settled law, in case a junior employee is drawing more salary than that of his senior, the senior's pay is required to be stepped up to the level of junior's pay. A reference in this regard can be made to the Supreme Court in *Union of India and others v. P. Jagdish and others*, 1997(3) SCC 176; relevant paragraph whereof reads as under:

... This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being senior to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile



cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk. ...

Accordingly, the petitioner is entitled to stepping up of pay equivalent to that of his junior.

6.1. The respondents' contentions that the petitioner cannot be considered senior most Assistant Professor in the Department since he joined service only in 1994 whereas other teachers joined prior in time, is misconceived. It is an undisputed fact on record, that as per order of merit determined by the selection committee in its proceedings dated 13.08.1991, the petitioner was placed at number one, above Dr. Khan. Therefore, even if he joined service later, his seniority determined by the selection committee cannot be disturbed. No Rule or regulation to the contrary could be cited by learned counsel for the respondents.

7. The petition is, accordingly, allowed, and the respondents are directed to step up the petitioner's pay equivalent to that of his junior Dr. Khan with effect from February 1998, with all consequential benefits. The arrears of revised salary and retiral benefits shall be released to the petitioner with interest at the rate of seven per cent per annum from the due date to the date of actual payment, within a period of four weeks of receiving a certified copy of this order.



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8. Pending application(s), if any, also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

09.09.2024

Payal

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