

Date of Decision: 17.07.2024

... Respondents

... Respondents

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... Respondents

... Respondents

**6) CWP No.2860 of 2007**

Jarnail Singh

.... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Jitender S. Chahal, Advocate for the petitioner(s)
in CWP Nos.15291, 15739, 17025 and 17797 of 2010.

None for the petitioners in CWP No.11141 of 1999.

Mr. Vikas Chatrath, Advocate
for the petitioner in CWP No.2860 of 2007.

Mr. Ravinder Singh Budhwar, Addl. A.G. Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

All these petitions are being decided together since common questions of law based on similar facts arise for consideration therein. For brevity, facts are being taken from CWP No.15291 of 2010.

2. The petition has been filed *inter alia* seeking a writ of *certiorari* setting aside the order dated 11.02.2010, Annexure P-12, passed by the fourth respondent whereby, after seven years of superannuation, the following service benefits have been withdrawn; (i) increment granted to the petitioner under Rule 7 of the Haryana Civil Services (Revised Scale of Pay) Rules, 1980 (hereinafter referred to as 'the 1980 Rules'), (ii) additional increment granted at the time of promotion from the post of JBT Teacher to S.S. Master on account of higher responsibility, under Rule 4.4 of the Punjab Civil Services Rules (Volume I) Part I, as applicable to the State of Haryana (hereinafter referred to as 'the PCS Rules'), and (iii) first Assured Career Progression (ACP) scale granted with effect from 01.04.2001.



2.1. The petitioner was initially appointed as JBT Teacher in grade pay of ₹480-760 in the Haryana Education Department on 25.06.1965. On acquiring higher qualification of B.A., B.Ed., he was given JST grade of ₹525-1050 with effect from 02.07.1973 as per instructions/letter, dated 23.07.1957, issued by the Government of joint Punjab and adopted by the State of Haryana. The grade was later converted into Master's grade by the government.

2.2. The petitioner was also granted the benefit of one additional increment in the revised pay scale with effect from 02.04.1979, by raising his pay from ₹660 to ₹700, as his junior was getting that pay. The grades of pay were revised to ₹1400-2600 with effect from 01.01.1986. Thereupon, his pay was fixed by granting an increment under Rule 7 of the 1980 Rules. The increment was, however, withdrawn by the respondents vide order dated 13.06.2006, Annexure P-11; the order has been impugned by the petitioner in the connected petition, CWP No.2860 of 2007. The order was passed on the ground, since the petitioner was actually holding the post of JBT Teacher in the grade of ₹480-760 in substantive/officiating capacity as on 01.04.1979, and was drawing higher salary in the grade of ₹525-1050 as a personal measure on account of higher qualification, he was not covered under Rule 7 of the 1980 Rules for the benefit of next increment. Accordingly, he would not be entitled to one additional increment erroneously given on 02.04.1979.

2.3. Later, the petitioner was promoted to the post of S.S. Master, though he was already in the pay scale meant for the post. The promotional post of S.S. Master entailed higher responsibilities, accordingly he was given one increment under Rule 4.4 of the PCS Rules at the time of promotion.

These increments were duly cleared by the audit as well.



2.4. He kept on working as such, and was given the benefit of first financial upgradation by granting ACP scale of ₹6500-9900 with effect from 01.04.2001 as per the Haryana Civil Services (Assured Career Progression) Rules, 1998 (hereinafter referred to as 'the ACP Rules 1998') on completion of ten years' service as Master.

2.5. The petitioner superannuated from service on 31.08.2003, and due retiral benefits were released to him. Seven years thereafter, and despite the pending writ petition, CWP No.2860 of 2007, the impugned order, dated 11.02.2010, was passed by the fourth respondent to the effect that the aforementioned benefits were wrongly given to the petitioner in contravention of the rules and the law laid down by the Supreme Court; and the same were, accordingly, withdrawn. It was also ordered that further action regarding re-fixation of his pay and pension would be taken on that basis. The impugned order has been passed on the basis of law laid down by the Supreme Court in *State of Haryana and another v. Partap Singh and others*, 2006 (10) SCC 251. Operation of the impugned order was stayed vide interim order dated 26.08.2010.

3. In this factual background, learned counsel for the petitioner argued that the petitioner was given the benefit of higher scale of pay, i.e., JST/Master grade, based on the higher qualification acquired by him during service, and was entitled to the same in terms of the government instructions, dated 23.07.1957. On being promoted to the post of S.S. Master which entailed higher responsibility, he became entitled to an additional increment in terms of the Rule 4.4 (a) (i) of the PCS Rules. The issue with regard to grant of additional increment on promotion has been settled by a Division Bench of this Court in *Veena Kumari v. State of Haryana*, 2000(4) S.C.T. 1038. Since he was not given any financial upgradation after promotion as S.S. Master with additional increment with effect from



01.04.1991, he became entitled to first ACP scale after ten years of service, and the same was rightly given to him with effect from 01.04.2001. The impugned order passed after superannuation is, accordingly, not sustainable.

4. Learned State counsel, on the contrary, contends that the petitioner cannot justify grant of increment on promotion to the post of S.S. Master in terms of *Veena Kumari* case *ibid*, since he is not entitled to the same as per law laid down in *Partap Singh* case (*supra*), wherein it has been held that benefit of Rule 4.4 of the PCS Rules will not be applicable to the employees on the promotional post if they have already been working in the pay scale meant for it, as that would amount to giving double benefit to such employees. He, however, does not dispute that in view of the law laid down by the Supreme Court in *State of Punjab and others v. Rafiq Masih (White Washer) and others*, 2015(4) SCC 334, no recovery can be affected from the petitioner on re-fixation of pay since he has already retired from service.

5. Heard.

6. As per facts apparent on record, the petitioner, who was working as JBT Teacher in the Department, acquired higher qualification during service and was given the next higher grade of JST/Master with effect from 02.07.1973 as per government instructions dated 23.07.1957. He was given one additional increment on revision of pay scale with effect from 02.04.1979. This has been withdrawn vide the impugned order on the ground that he was not entitled to it in terms of the Rule 7 of the 1980 Rules, which reads as under:

7. **Date of Increment in the Revised Scale.-** (1) The date of next increment of Government employee whose pay has been fixed in accordance with Rule 6 with effect from 1st April 1979, shall be 1st April, 1980.

Further more where the pay of a Government employee on the appointed day in the revised scale is fixed at the same stage as



the one fixed for another Government employee in the same cadre drawing pay at a lower stage, than his pay in the existing same scale (provided it is not at the minimum of the revised scale of pay), the date of his next increment, in the revised scale, would be the day following the appointed day.

- (2) In case of employees who opt to come on the revised scale (scale) of pay from a date later than the 1st April, 1979, the date of increment shall be such date, when he completes one year in the revised scale.
- (3) In case a Government employee is held up at the maximum after completing the time scale selection grade or extended scale as the case may be, on or after the first day of April, 1979, he shall be allowed ex-gratia biennial increments, unless it is withheld for specific reasons, not exceeding five such increments in the entire service at the rate of last increment in the relevant scale subject to the condition that in no case the pay shall exceed two thousand and four hundred rupees per month.

6.1. The increment has been sought to be withdrawn on the ground that it was meant to be given to an employee who was actually working in the existing scale of pay, and it was required to be given on fixation of pay of a senior employee when his pay was equal to that of his junior. Accordingly, it was not admissible to the petitioner since the Master grade had been given to him as a personal measure. The reasoning is flawed since the Rule makes no such distinction. Further, it has been specifically averred by the petitioner in para 8 of the petition that his juniors with similar qualifications, as those of his, in the same cadre were getting lesser pay than him; on revision of pay scales with effect from 01.04.1979, these juniors were brought at par with the petitioner. There is no denial to these factual averments. Therefore, as per Rule 7 of the 1980 Rules, the petitioner was entitled to one additional increment with effect from 02.04.1979, and the same had been rightly given by the respondents.



7. The other benefit of additional increment granted to the petitioner on promotion as S.S. Master under Rule 4.4 of the PCS Rules has also been wrongly withdrawn, as it stands settled that the promotional post entailed higher responsibilities as he was required to teach higher classes. Accordingly, in terms of Rule 4.4 of the PCS Rules, he becomes entitled to the same. This has been so held in *Veena Kumari* case (*supra*), the relevant paragraphs whereof read as under:

13. The position herein as is apparent from the plea of the respondents is that earlier the petitioners were teaching to Class 1 to 5. As Social Study Masters, they were teaching class 6th to 10th. Therefore, they must be taken to be holding the post of higher responsibility. This is also apparent from the fact that the scale of J.B.T. teachers is lower than that of the post of Social Study Master. That is why the State has provided the higher scale for Social Study Master. To the same effect was the decision of this Court in the case of *Lekh Raj Khera and others v. State of Punjab and others*, 1986(3) *Services Law Reporter* 410 with which we respectfully agree. We must hold, therefore, that the petitioners in the present cases were promoted to a post of higher responsibility and duty. Consequently, they were entitled to the increment.

The SLP filed against the judgment was also dismissed by the Supreme Court, vide order dated 26.03.2001. Resultantly, there is no basis to contend that the petitioner was not entitled to the additional increment.

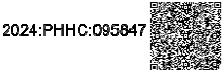
7.1. The reliance on the judgment in *Partap Singh* case (*supra*) is misplaced. The judgment was rendered by the Supreme Court on 22.09.2006, whereas the benefit of additional increment was given to the petitioner on 01.04.1991, and he superannuated from service on 31.08.2003



as well. There is no basis of rationale to give retrospective effect to the law laid down in *Partap Singh* case *ibid*. Besides, the judgment has not been made effective retrospectively by the Court. It is a settled proposition that law declared by the Supreme Court has prospective effect, and applies to the cases in future. A reference can be made in this regard to the judgment rendered in *Sarwan Singh and another v. Madan Lal Aggarwal*, 2003(4) SCC 147; the relevant paragraph whereof reads as under:

15. ... The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising the future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. Invocation of doctrine of "prospective overruling" is left to the discretion of the court to mould with the justice of the cause or the matter before the court....

8. So far as eligibility under the ACP Rules 1998 is concerned, every government servant is entitled to grant of first ACP scale after regular satisfactory service of ten years, if he has not been given any financial upgradation during the period in terms of grant of pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995. There is no dispute that after promotion as S.S. Master with effect from 01.04.1991, the petitioner was not given any financial upgradation higher than that of his functional pay scale, nor is there any dispute that his service was satisfactory during the period. Accordingly, grant of first ACP scale to him cannot be termed illegal or contrary to provisions of the ACP Rules, 1998. Besides, in



the connected petition, CWP No.17025 of 2010, the respondents have specifically stated in the written statement that they are not withdrawing the first ACP scale granted to the petitioner in compliance of Court’s order.

9. In view of the aforesaid discussion, the writ petitions are allowed. The impugned order(s), dated 11.02.2010 in CWP No.15291 of 2010; dated 15.02.1999 in CWP No.11141 of 1999; dated 02.06.2010 in CWP No.15739 of 2010; dated 08.09.2010 in CWP Nos.17025 and 17797 of 2010; and dated 13.06.2006 in CWP No.2860 of 2007, are set aside.

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

11. A photocopy of this order be placed on the connected files.

(TRIBHUVAN DAHIYA)
JUDGE

17.07.2024
Maninder

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