



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

209

CWP-17121-2018 (O&M)
Date of decision: 23.10.2024

Mahesh Chander and Others

....Petitioners

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ravi Verma, Advocate for the petitioners

Ms. Tanisha Peshawaria, DAG Haryana

AMAN CHAUDHARY, J. (ORAL)

1. Prayer in the present petition is for directing the respondents to extend the benefit of refixation of pay to the petitioners after restoring the benefits of adhoc relief and DA cut as on 01.04.1979 in terms of the judgment passed in CWP-16084-1997 titled as **Dharampal Singh vs. State of Haryana and Others**, decided on 27.07.2000, against which SLP was dismissed. Relevant portion whereof read thus:

"We have heard learned counsel for the parties and have gone through the record of the case carefully.

We find that the action of the respondents in denying the similar relief to the petitioner, as has been granted to respondent No. 5 on the basis of the decision in the writ petition filed by him, amounts to nothing but discrimination. Once this court has quashed the impugned condition, as referred to above, in respect of making any deductions, the said decision impliedly covers the case of similarly situated person also. The respondents concede that the discrimination is only on account of the fact that the petitioner is placing reliance, for the decision of the present case, on the said writ petition t which he was not a party. The contention is totally misfounded. A perusal of the letter Annexure P-3, would indicated that the grant of relief of additional D.A. w.e.f. 01.05.1973, 01.08.1973, 01.10.1973 and 01.01.1974 at the rates indicated therein is in addition t the reliefs already granted. It is indicted in the letter, Annexure P-3, itself, which reads as under:-

Sir,



I am directed to say that the Haryana Government has had for some time past under consideration the question of affording further relief to its employees. It has now been decided that further reliefs may be granted to the employees belonging to class II, III and IV services in the form of additional dearness allowance with effect from 01.05.1973, 01.08.1973, 01.10.1973 and 01.01.1974 at the rate indicated on next page.

It is, thus, clear that the government intended to give further relief of Addl. D.A. to its employees and condition No. 3 in the same very letter shows an intention to the contrary and in a way withdraws the benefit earlier granted to its employees by way of letters, Annexure P-1 and P-2. The said condition requires the adjustment of the part of the amount of adhoc relief as indicted in column 5 to 7 in Annexure I to letter Annexure P-3, which show the deduction of the amount of Addl. D.A. paid earlier to the employees on the basis of relief granted vide the said letter ie. the deduction of the payment wherever it is excess to the payment already paid, considering the relief granted earlier by way of Annexures P-1 and P-2. As such, condition No. 3 takes back what is given in the letter, Annexure P-3 and more than that also out of the amount already granted to the employees by way of adhoc D.A. Moreover, this Court in the aforesaid writ petition has already quashed this condition.

It is well settled and a rule of prudence that a senior person is certainly entitled to all these benefits which his junior in the same cadre is getting. The pay of a senior cannot be less than that of a junior in *Chanan Singh & Ors. Vs. Punjab State Electricity Board*, 1992 (2) R.S.J. 451, it has been held by this Court that a senior person is entitled to all those benefits which his junior in the same cadre is getting.

In the light of what has been observed above, these petitions are allowed and the respondents are directed to re-fix the pay of the petitioner with effect from the date the pay of respondent No. 5 has been re-fixed ignoring condition No. 3 in the government letter, Annexure P-3 with all consequential benefits i.e. to say that the petitioner shall be granted the same benefits as have been granted to the petitioner in CWP No. 13300 of 1990 with all consequential benefits. However, payment of arrears shall be restricted to 38 months immediately preceding the filing of these writ petitions.”

2. This Court while following the aforesaid judgment, had disposed of CWP-12583-2002 titled as **R.S. Khanna and Others vs. The State of Haryana and Others**, vide judgment dated 08.05.2019, which reads thus:



1. Prayer in the instant writ petition is for the issuance of writ of certiorari to quash the deduction/cut ordered vide the offending parts of paragraph Nos.3 and 4 of Annexure P-3 in respect of the ad hoc relief allegedly paid in excess as also to strike down the offending part of the definition of the terms existing emoluments with regard to “minus excess payment of adhoc relief” as contained in Rule 3(d) (ii) of the Haryana Civil Service (Revised Scale of Pay) Rules, 1980. Prayer is also for the issuance of a writ of Mandamus directing the respondents to restore the deduction made from the payment of additional dearness allowance w.e.f 1.5.1973 as also to restore the deduction made from the payment of additional dearness allowance. Prayer is also for issuance of a writ of Mandamus commanding the respondents to refix the pay and pension of the petitioners in the revised scales as introduced w.e.f. 1.4.1979, 1.1.1986 and 1.1.1996 after restoring the deduction/cut of alleged excess payment of ad hoc relief and after inviting fresh options from the petitioners. Lastly, prayer is to direct the respondents to pay to the petitioners the arrears of pay/pension accruing due to the restoration of the cut/deduction alongwith interest @ 18%.

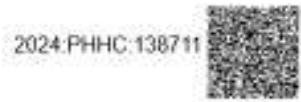
2. Learned counsel appearing on behalf of the petitioners contends that the claims in the writ petition are covered by the decision of a Division Bench of this Court in CWP No.4518 of 2000 in case titled as 'R.K. Gupta and others versus State of Haryana and others' which in turn was allowed in the light of the decision in CWP No.16084 of 1997 in case titled as 'Dharam Pal Singh versus State of Haryana and others' and decision of Hon'ble the Supreme Court in Civil Appeal No.8661 of 2009 in case titled as 'State of Haryana and others versus R.K. Gupta and others'.

3. Learned Senior Deputy Advocate General, Haryana contends that the writ petition is liable to be allowed as the petitioners are entitled to the benefits as allowed in the decision referred to above.

4. The same satisfies learned counsel for the petitioners.

5. In view of the statement of learned counsel for the parties, the writ petition is allowed. The petitioners are held entitled to the benefits as per the decision in R.K. Gupta's case (supra) as referred to above.

3. Learned State counsel has not been able to distinguish either the factual aspects or the judgment aforesaid, however, refers to the judgment in **State of Haryana and Another vs. O.P. Sharma and Another**, 1993 Supp (2) SCC 386, regarding which learned counsel for the petitioner submits that the same has also been dealt with by Hon'ble the Supreme Court in **State of Haryana and**



Others vs. R.K. Gupta and Others in Civil Appeal No.8661 of 2009, decided on 08.12.2015, which reads thus:

- “1. Heard Ms. Nidhi Gupta, learned counsel appearing for the State of Haryana and Mr. M. C. Dhingra, learned counsel appearing for the respondents.
- 2. The State is aggrieved by the Judgment dated 11.08.2003 in Civil Writ Petition No. 4518 of 2000, in the matter of additional Dearness Allowance, wherein the High Court followed an earlier judgment in CWP No. 13300 of 1990, however, limiting the monetary benefits to 38 months immediately preceeding the filing of the Writ Petition.
- 3. It is seen that the relied on judgment was pursued before this Court in SLP (C) No. 2578 of 1996 and by order dated 09.05.1997, the same was dismissed on the ground of delay. The State filed Review Petition (C) No. 2246 of 1998. There was a delay in filing the Review Petition as well. However, this Court dismissed the Review Petition observing ".....both on the ground of limitation as well as on merits." Thus, the relied on Judgment has become final at the hands of this Court.
- 4. We also find another order dated 09.10.2001 of this Court in the appeal filed by the State of Haryana itself in Civil Appeal No. 923 of 1992, wherein also, this Court took the view that the orders passed by the High Court did not call for any interference.
- 5. Though Ms. Nidhi Gupta, learned counsel for the State, made a persuasive attempt inviting our attention to the earlier Judgment of this Court titled as "State of Haryana and Anr. Vs. O. P. Sharma & Ors" and other connected matters, reported in (1993) Supp. 2 SCC 386, we are afraid we cannot take a different view than what has been taken in the relied on Judgment, which has attained finalty before this Court on merits.
- 6. In view of the above, the Civil Appeals are dismissed with no order as to costs.”

4. In wake of the aforesaid, the present petition is disposed of in terms of the judgment passed in **Dharampal** (supra).

(AMAN CHAUDHARY)
JUDGE

23.10.2024

M.Kamra

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