

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207

CWP-25581-2016 (O&M)
Decided on : 08.01.2024

Sher Singh

. . .Petitioner

Versus

State of Haryana and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. B. K. Bagri, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioner is that the revised pay scales, which were revised by the respondents w.e.f 01.01.1996 were not granted to the petitioner and that too without any valid justification.
2. Certain facts needs to be mentioned for correct appreciation of the issue in hand.
3. The petitioner was appointed as a helper on 11.01.1996. At the time when the petitioner was appointed as a helper, the pay scale for the post of helper was Rs. 750-940 and the petitioner continued to get the same pay-scale. In order to implementation of recommendation of 5th Pay Commission, which were actually recommended/implemented in the year 1998 but w.e.f. 01.01.1996, the pay-scale for the post of Helper which was initially Rs. 750-940, the same was revised to Rs. 2550-3200. Thereafter, the said pay scale for the post of Helper was further revised in the 6th Pay Commission Report to Rs. 4440-7440 with the grade pay of Rs. 1300/-. The said revised pay scales were not extended to the petitioner.

The petitioner was thereafter transferred from Hisar to Panipat

as a chowkidar and while working on the post of chowkidar in DRDA Panipat, the petitioner was given the revised pay-scale as admissible to post of chowkidar.

4. The grievance of the petitioner in the present petition is that once he was appointed on 11.01.1996 (annexed as Annexure P-2) against the post of helper and the pay-scale for the post of helper was modified/increased keeping in view the recommendation of 5th and 6th Pay Commissions, the petitioner is also entitled for the revised pay-scale.

5. Upon notice of motion, the respondents have filed the reply wherein the respondent have stated that though it is a matter of fact that while appointing the petitioner on the post of Helper, he was appointed in the pay-scale of Rs. 750-940 but, as the petitioner was not appointed against the sanctioned post, his pay could not be revised keeping in view the 5th & 6th Pay Commissions, as the regular pay scale can only be granted to the employees who are working against the regular sanctioned post, hence, the benefit of the recommendation of 5th as well as 6th Pay Commission as being demanded by the petitioner w.e.f. 01.01.1996 is not admissible.

6. Learned State counsel further submits that the day the petitioner started working as a chowkidar in DRDA Panipat against the regular sanctioned post, he has already been given the regular pay scale as admissible to the post of chowkidar keeping in view the recommendation of Pay Commission.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. From the facts which have been stated herein before it is clear that the initial appointment of the petitioner against the post of helper is a regular pay-scale. The said facts stands conceded. Once, even while working

against the unsanctioned post, the petitioner was given a regular pay-scale, which appointing him as helper nothing stops the petitioner to get the revised pay scale for the same post while working in the same capacity as revised in view of the recommendation of Pay Commission. Therefore, once while working against the unsanctioned post, un-revised pay-scale was extended to the petitioner, while considering the case of the petitioner for the revised pay-scale as per the recommendation of the 5th and 6th pay Commissions, no objection could have been taken by the respondents that the petitioner was working on an unsanctioned post. That being the factual position, the petitioner is entitled for the revised pay scale as revised by 5th & 6th Pay Commissions for the post of helper, even if he was working against an unsanctioned post.

Further nothing has come on record as to how a direct appointment can be made against an unsanctioned post. The direct recruitment has been made qua the petitioner on the post of helper and he was extended the regular pay-scale. No direct recruitment can be made and that too in a regular pay-scale without there being any substantive vacancy available, hence, there is a doubt as to whether the petitioner was working against unsanctioned post despite being selected by way of direct recruitment and that too in a regular pay-scale admissible to the post in question. This benefit of doubt has to be extended in favour of the petitioner keeping in view the facts and circumstances of the present case.

9. Let respondents considered the claim of the petitioner for the grant of the revised pay scale and pass an appropriate order granting him the appropriate revised pay scale admissible to the petitioner for the post of helper and grant him the arrears from 11.01.1996 till the petitioner remained working at Hisar on an unsanctioned post.

10. Let the present directions be complied with by the respondents within a period of two months from today.
11. The present petition stands disposed of in above terms.
12. Pending civil miscellaneous application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

08.01.2024
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No