

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

207

**CWP No.33462 of 2018
Date of Decision : 26.2.2024**

*Dr. Monish Gupta**..... Petitioner**versus**Kurukshetra University, Kurukshetra and another* *..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Anurag Goyal, Advocate, for the petitioner

Mr. Ajay Sharma, Advocate, for the respondents

TRIBHUVAN DAHIYA J.

The petitioner is seeking a writ of *mandamus* directing the respondents to fix his basic pay in accordance with the fitment table, Annexure P-4, provided under the Sixth Pay Commission recommendations, and release due arrears on that account with interest.

2. The petition has been filed with the averments that the petitioner was working as Senior Lecturer in Electronics and Communication Engineering Department in Haryana Engineering College, Jagadhri (for short 'the College'), affiliated with the respondent/ University, in the pay scale of ₹10000-325-15200. Two posts of Lecturer, Electronics and Communication in the University Institute of Engineering and Technology, Kurukshetra (for short 'the UIET') were advertised. The petitioner submitted his application form dated 22.4.2006, Annexure P-1, through proper channel, and sought pay protection by mentioning so in column no.18; which reads as under:

18. Basic Pay acceptable: As per rules of Salary Protection or with min.10000/-.

2.1. He was duly selected as Lecturer in UIET by the selection committee in its meeting dated 27.6.2006, Annexure P-2, granting salary protection as per rules. Pursuant thereto, he was issued letter of appointment dated 24.7.2006, Annexure P-3, in the pay scale of ₹8000-275-13500, and joined as such on 4.8.2006. Based on the recommendations of selection committee, his pay was protected as under:

On 4.8.2006 = ₹9925+75 and on 1.9.2006 = ₹10200.

And he continued drawing the monthly salary accordingly.

2.2. Later, on 21.7.2011 the State Government notified the Sixth Pay Commission’s recommendations giving higher/revised pay scales to the University employees with effect from 1.1.2006. A fitment table was provided therein, relevant part whereof reads as under:

Pre-revised Basic Pay	Revised Pay		
	Pay in the Pay Band	Grade Pay	Revised Basic Pay
8000	15,600	6,000	21,600
xxx	xxx	xxx	xxx
9925	18,470	6,000	24,470
10,200	18,980	6,000	24,980

The petitioner, who was drawing basic pay of ₹10,000 at the time of joining the service on 4.8.2006, was entitled to be placed in the pre-revised pay scale of ₹9,925 (closest to his basic pay as the table did not provide for basic pay of ₹10,000) and, accordingly, was to be given basic pay of ₹24,470 (18470 basic pay+6000 grade pay). The University, however, did not follow the fitment table in revising the petitioner’s pay, and fixed his salary on basic pay of ₹8,000, i.e., beginning of the pre-

revised pay scale ₹8000-13500, giving him the revised pay of ₹21,600 (15600 basic pay + 6000 grade pay) .

2.3. Aggrieved by this wrong fixation of pay, the petitioner represented to the University on 26.9.2012, vide Annexure P-5. The matter was placed for examination before a specially constituted committee. The committee vide its report dated 20.10.2012, Annexure P-16, recommended in the petitioner’s favour as under:

... But in the instant case the pay drawn by Sh. Munish Gupta w.e.f. of his date of joining i.e. dated 4.8.2006 was ₹10,000 hence his pay needs to be revised as per fitment table no.1 provided in the State Government instructions dated 21.7.2011. As per this table the pay fixation of those whose basic pay is ₹9925 in the pay scale of ₹8000–13500, their pay is to be fixed at ₹24470 i.e. ₹18470+6000=24470/-.

In view of the above, it is submitted for consideration and orders that the pay of Sh. Monish Gupta may be re-fixed as under:

Date of fixation/ normal increment	Pay in pay band	Normal increment	Increment on promotion/ upgradation	Pay after increment	Grade Pay	Total
4.8.2006	18470	0	0	18470	6000	24470
1.7.2007	18470	740	0	19210	6000	25210
1.7.2008	19210	760	0	19970	6000	25970
1.7.2009	19970	780	0	20750	6000	26750
1.7.2010	20750	810	0	21560	6000	27500
1.7.2011	21560	830	0	22390	6000	28390
1.7.2012	22390	860	0	23250	6000	29250

2.4. Despite the recommendations, the petitioner’s pay was not correctly fixed by the University. Instead, vide letter dated 18.2.2013, Annexure P-7, he was asked to submit last pay certificate mentioning the breakup of allowances from his previous employer showing his pay fixation in the revised pay scale, that he was drawing basic salary in the pay scale of ₹10000-325-15200 w.e.f. 1.1.2006. In fact, the salary certificate had already submitted to the University by the petitioner’s

previous employer/College dated 24.12.2012, Annexure P-21, certifying that he had worked “*as Senior Lecturer, in the scale of 10000-325-15200 p.m., in the Department of Electronics & Comm. Engineering of this college. At the time of relieving i.e. 3rd August, 2006, he was drawing Gross salary amounting to ₹21000. The details of his salary was, Basic-10000, DA-6500, CA-2000, HRA-2500.*” Again, this information was sent vide letter dated 6.5.2017, Annexure P-19. It was also conveyed that the petitioner’s service book record was not available with the College as he left the service long ago in the year 2006. Still, the petitioner’s pay was not correctly fixed in the revised pay scale, nor any reasons for not doing so was given.

2.5. In this situation, the petitioner filed application under the Right to Information Act, 2005, to get reasons regarding his pay fixation. The relevant information was not furnished to him, leading to filing an appeal, bearing Appeal Case No.3836 of 2018, before the State Information Commission, wherein the University’s authorised representative suffered a statement that the pay fixation was done on the basis of 2011 Rules/ notification, and there was no mandatory provision requiring last pay certificate from previous employer. That is recorded in the order dated 10.8.2018, passed by the Commission, relevant part of which reads as under:

Present: 1. Dr. Monish Gupta, appellant.
2. Shri Satish Kumar, SPIO-cum-Assistant Registrar
(Estt. T), Kurukshetra University, Kurukshetra.

The appellant present before the Commission informed that he is not satisfied with the information pertaining to point no.6. He requested that legal position on LPC be told to him as per the rules notified in 2011.

The respondent SPIO present before the Commission informed that the pay fixation is done on the basis of 2011 rules. As far as requirement of LPC is concerned, he informed that no such mandatory provision is there. He has no problem in furnishing the same to the appellant.

2.6. Despite petitioner's requests, the University remained adamant in not correcting its mistake regarding fixation of his pay in the revised pay scale as per the fitment table, leading to filing of the instant appeal.

3. Learned counsel for the petitioner contends that the pay petitioner was drawing as Senior Lecturer in his previous service was protected by the selection committee, and the salary was accordingly fixed taking his basic pay as ₹10,000. He had been drawing pay accordingly, till it was refixed in the revised pay scales notified on 21.7.2011. Although the fitment table had been provided therein, the petitioner's pay was not fixed on that basis, and was given salary of ₹21,600 by taking his basic pay in the minimum of pay scale from the date of joining service. The petitioner's pay was required to be fixed by protecting his last drawn pay in the revised pay scale, as he had been given pay protection. In case the fitment table did not provide the fixation at ₹10,000 for the purpose of pay fixation, the same could not have been denied altogether. Instead, his pay could have been fixed in the nearest lower basic pay of ₹9,925, which was the requirement and acceptable to the petitioner as well. There was no justification for seeking last pay certificate from the previous employer at that stage which is contrary to the University's own stand before the State Information Commission. Although the requisite information was furnished by the petitioner's previous employer again, the University still did not act upon the same by

refixing his pay correctly, which is arbitrary and illegal.

4. Learned counsel for the University, on the contrary, contends that at the time of petitioner's joining the UIET as Lecturer, the University had sought his appointment letter, last pay certificate, date of increment, etc. from the previous employer, but the information was not furnished. He, however, does not dispute that the petitioner's pay was protected in view of the recommendations by the selection committee by taking his basic pay as ₹10,000 in the pay scale of ₹8000-275-13500. He has further submitted that the reason for not fixing the petitioner's pay in the revised pay scale is failure of the previous employer/College to issue the revised last pay certificate despite repeated requests. Therefore, his pay could not be protected. The fitment table could not be implemented in the petitioner's case as he joined the service after implementation of the Sixth Pay Commission recommendations, on 4.8.2006.

5. Arguments advanced by learned counsel for the parties have been considered.

6. The conceded position on record is that the petitioner joined service as Assistant Professor in the University on 4.8.2006 after getting relieved from his College, where he was working as Lecturer and drawing basic pay of ₹10,000 in the pay scale of ₹10000-325-15200. He was duly appointed on recommendations of a selection committee, which protected the salary last drawn by him in the College. Accordingly, on joining University service, his pay was fixed with basic pay of ₹10,000 which he was drawing from the previous employer, instead of ₹8,000, the minimum of basic pay in the pay scale. It was only at the time of re-fixation of pay in the revised pay scales recommended by the Sixth Pay Commission, that

the University placed him in the pay band of ₹15600-39100 plus ₹6,000 grade pay, in total ₹21,600, by taking his basic pay in the pre-revised pay scale as ₹8,000, instead ₹10,000, that he was actually drawing at the time of joining the University and was given protection of pay as well on that basis. In this manner, the pay protection given to the petitioner stands withdrawn in the guise of re-fixation of pay in the revised pay scales. This has been done after more than five years of his getting salary with pay protection, that too without passing/conveying any order to that effect or citing any reason. This is sheer high-handedness and arbitrary exercise of administrative powers vested with the University.

7. The ground for denying pay protection to the petitioner in the revised pay scales, as canvassed before this Court, i.e., non-issuing of revised last pay certificate by the College, is also not sustainable. The revised pay scales were notified on 21.7.2011, whereas, the petitioner left service in the College much prior, on 3.8.2006. Although the scales were given with effect from 1.1.2006 and the petitioner joined the University on 4.8.2006, he could not have been denied pay protection in the revised pay scales for want of fresh last pay drawn certificate from his previous employer as his pay had already been protected. Only his pay, that already stood protected, was required to be refixed in the revised pay scale as per the fitment table, which the University failed to do without any justifiable ground. Revised last pay certificate could not have been asked nor was it required, as admitted by the University itself before the Information Commission. Such a certificate can be asked for fixation of pay at the time of joining the service, and not on revision on pay scales. No rule or instruction to the contrary could be cited by learned counsel for the

University. Still, despite the certificate having been issued again by the College on 24.12.2012, the refixation with protected pay was not given. This also shows the University not only acted arbitrarily in denying due benefit of pay fixation to the petitioner on the basis of pay protection given by the selection committee, it has tried to justify its illegal actions on baseless and illogical grounds, which has only compounded the illegality committed by it.

8. Besides, in doing so the University has gone back on its decision to protect the petitioner's pay based upon which he accepted the offer of appointment and joined as Lecturer in the UIET. Instead of honouring its decision, which was implemented and remained in force for more than five years when the petitioner was given benefit of pay protection, the University decided to conveniently ignore it on a specious ground, in a high-handed and arbitrary manner, as discussed hereinabove. This is atrocious and appalling, to say the least. The University is stopped from taking back its decision giving pay protection to the petitioner once it has been acted upon by both the parties; the petitioner, by accepting the offer of appointment; and the University, by giving the benefit for over five years. The action has resulted in uncalled for harassment to the petitioner, rendering the University liable to be saddled with exemplary costs.

9. The writ petition is, accordingly, allowed, directing the respondents to fix the petitioner's pay with effect from the date of his joining, i.e., 4.8.2006, in the revised pay scale as per the fitment table dated 21.7.2011, taking his basic pay at ₹9,925, and granting the revised basic pay of ₹24,470 with all consequential benefits, and pay him arrears

of salary with interest at the rate of seven per cent per annum from the due date till actual payment, within a period of four weeks from the date of receiving a certified copy of this order. The petitioner shall be entitled to costs of the petition, quantified as ₹1,00,000 (Rupees one lakh), which shall also be paid within the stipulated period. After making the payment, the respondents will fix responsibility of the officers/officials concerned for the illegal action and recover the amount of costs from them.

(TRIBHUVAN DAHIYA)
JUDGE

26.2.2024
Ashwani

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