

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(211)

CWP-30609-2018
Date of Decision : 26.02.2024

Bhoop Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.N. Lohan, Advocate for the petitioners.

Mr. Ravi Dutt Sharma, Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the claim of the petitioners is that they are working on the post of Driver and while working on the said post, they have performed overtime duty for which the petitioners are to be paid the overtime allowance on the basis of revised pay scale.
2. Learned counsel for the petitioners submits that the pay scale of the post of Driver on which the petitioners are working was revised vide Notification dated 28.10.2016 (Annexure P-1), which revision of pay scale was made effective from 01.01.2016 hence, the overtime duty performed by the petitioners from 01.01.2016 onward till 28.10.2016, the same has to be calculated on the basis of the revised pay whereas, the overtime allowance has only been given on the basis of un-revised pay, which has caused prejudice to the petitioners. Learned counsel for the petitioners further submits that the same issue had arisen when the pay

scale was revised in the year 2006 and ultimately, the respondents themselves had extended the benefit of the overtime allowance on the revised pay scale but, the same benefit is being denied to the petitioner when the pay has now been revised in October, 2016, w.e.f. 01.01.2016.

3. Learned counsel for the respondents, on the other hand, submits that though, it is a conceded fact that vide Notification dated 28.10.2016 (Annexure P-1), the pay of the employees was revised w.e.f. 01.01.2016 and revised pay scale has already been extended to the petitioners but nothing has been mentioned in the said Notification that the said pay scale is to be taken into account even for granting the overtime allowance for the period 01.01.2016 to 28.10.2016.

4. Learned counsel for the respondents submits that the same benefit already extended to the petitioners in the year 2006, was wrongly granted, hence, the same cannot be made as an example to claim the benefit again.

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

6. It is a conceded fact before this Court that vide Notification dated 28.10.2016 (Annexure P-1), the pay scale of the employees working in the Government of Haryana were revised w.e.f. 01.01.2016. The pay scale of the post of Driver was also revised.

7. The claim of the petitioners is that the overtime allowance, which the petitioners have been paid for the period 01.01.2016 to 28.10.2016 should also be based upon the revised pay scale as extended

by the Government of Haryana. It is a matter of fact that the overtime allowance is to be granted on the basis of the pay scale being drawn by an employee. Once, the respondents had revised the pay scale of the post of Driver w.e.f. 01.01.2016 and the benefit of arrears have been given from the said date of the revised pay scale, the same has to be made applicable even qua the grant of overtime allowance.

8. The said question has already been settled by the Co-ordinate Bench of this Court in CWP No. 15807 of 2008 titled as ***The General Manager, Haryana Roadways, Chandigarh Vs. Azad Singh and others***, decided on 05.03.2009, wherein, it has been held that on revision of the pay scale, the revision of overtime allowance would be automatic. The relevant paragraphs 9 to 12 of the said judgment are as under :-

“9. I have heard learned counsel for the parties and have gone through the records of the case. The position which emerges from the pleadings of the parties is that the over time allowance is granted to the workmen under the Instructions issued from time to time by the Government of Haryana. Although over time allowance does find mention in Rule 2.30 of the Punjab Civil Services Rules Vol.I Part I but the pay as provided under Rule 12.44 of the Punjab Civil Services Rules Vol.I Part 1, as applicable to Haryana does not include over time allowance. It is not in dispute that the instructions did provide for the grant of over time allowance and the rate thereof was also provided under those instructions i.e. the same was to be double the amount of the wages as calculated per hour. For the period from 1.1.1996 to 31.12.1997 also, the workmen were entitled to the over time allowance as per this rate prescribed under the

instructions. It is also not in dispute that the workmen have been granted the over time allowance as per this very rate for the period in question but by calculating the same as per the un-revised pay-scales. The formula for calculating the over time allowance is also not in dispute i.e. the wages drawn by the workmen for that particular period. The entitlement of the workmen for grant of over time allowance is not in dispute. What is in dispute, therefore, is the quantum of the over time allowance the workmen are entitled to.

10. When the basis for calculating over time allowance i.e. the wages for one hour, the formula for determination i.e. double the wages calculated and the period i.e. from 1.1.1996 to 31.12.1997 is not in dispute; then what is left out for the Labour Court to decide is the quantum the workmen would be entitled to for the said period. If that being so, the contention of the counsel for the petitioner that the application under Section 33C (2) would not be maintainable, cannot be sustained. The contention raised by the learned counsel for the petitioner that there are no specific instructions providing for the grant of over time allowance under the revised pay-scales with effect from 1.1.1996 to 31.12.1997, would be of no consequence as the pay-scales were revised with effect from 1.1.1996 and the arrears thereof have been paid to them with effect from the said date. Meaning thereby, the workmen have been granted the revised wages which would become the basis for calculation and for determination of the amount of over time allowance they would be entitled to.

11. When it is not the case of the petitioners that they are not entitled to nor is it their case that they are not to be given over time allowance for the period in question and that they have not been granted the revised pay-scale, how can they be

deprived of the claim of the amount due as per the wages determined under the revised pay-scales received by them for this relevant period? It is also not the case of the petitioners that from 1.1.1996 the mode of calculation for grant of over time allowance to the workmen has been changed or that their entitlement for over time allowance has been curtailed or withdrawn. What has, therefore, been determined by the Labour Court is not the entitlement of the workmen for payment of over time allowance but only the amount they are entitled to on the revision of the pay-scales without violating any of the instructions which entitle the workmen for the payment of over time allowance. The instructions prevalent during the relevant time, provided for the over time allowance and the mode of calculation which admittedly has not been changed by the Government and both these basic features have not been tampered with or changed by the Labour Court while determining the quantum of the amount, the workmen would be entitled to. The Labour has only taken the revised pay-scales, which have been granted to the workmen with effect from 1.1.1996, the actual payment thereof has admittedly also been made in the form of arrears to them, as the basis for determining the average wages per hour for determining the quantum of over time they would be entitled to for the period in question. No fault can be found in this decision of the Labour Court. Therefore, the contentions as raised by the counsel for the petitioner cannot be accepted.

12. The Division Bench of this Court vide its order dated 11.8.2003 in Anirudh's case (supra) in C.W.P. No.12530 of 2003 has held as follows :-

"The workman had made an application under Section 33C (2) of the Industrial Disputes Act, 1947

(hereinafter referred to as "the Act") claiming for payment of overtime allowance in the sum of Rs. 43,241/-. It was argued by the Management before the Labour Court, which has been reiterated in this Court by Ms. Monga, that the Government has not sanctioned payment by difference on account of overtime between the pre-revised amount and the amount which was due after revision. Consequently, there was no pre-existing right which could have been enforced by the workman under Section 33C (2) of the Act. The Labour Court, after examination of the entire evidence has come to the conclusion that the workman was entitled to the payment of overtime allowance in the same ratio as was being paid on the pre-revised pay scale. We are unable to agree with the submission of Ms. Monga to the effect that the Labour Court has no jurisdiction to compute the difference of payment on account of overtime between the pre-revised amount and the amount which was due after revision of the pay scale. In view of the above, the writ petition is dismissed."

9. The said judgment has already been upheld by the Division Bench in LPA No. 858 of 2009. That being the settled position of law and the similar benefit claimed has already been allowed with regard to the revision of the pay scale as done in the year 2006, a contrary stand cannot be taken by the State to deny the benefit.

10. The argument of learned State counsel that the benefit, which was extended to the petitioners for the grant of overtime allowance upon revision of the pay scale in the year 2006 was wrongly granted holds no

merit as nothing has come on record to show that the said benefit was ever withdrawn by the respondent-State. In the absence of any document coming on record that the benefit of overtime allowance given on the revised pay scale even in the year 2006 having been withdrawn, the same pattern should have been followed by the respondents while granting the benefit to the petitioners on account of revision of the pay scale, which was allowed to the employees of the Government of Haryana in the year 2016.

11. Learned counsel for the respondent-State has further relied upon the judgment of a Co-ordinate Bench of this Court in CWP No. 27201 of 2013 titled as ***Sita Ram and others Vs. State of Haryana and others***, to support the contention that without there being specific instructions, the overtime allowance cannot be enhanced on the basis of revised pay scale. The said reliance placed by learned counsel for the respondent-State is misplaced. The question of law raised in the said judgment was with regard to revision of House Rent Allowance and Medical Allowance, whereas the question in the present petition pertains to grant of overtime allowance on the basis of revised pay scale. It is noted here that the question of law with respect to enhancement of overtime allowance on the basis of revised pay scale as decided by Co-ordinate Bench of this Court in the ***The General Manager, Haryana Roadways, Chandigarh (supra)***, has already been upheld by Hon'ble Division Bench of this Court in LPA No. 858 of 2009 and the same being a decision of a Division Bench will prevail over the judgment in ***Sita***

Ram and others case (supra), keeping in view the facts of the present case.

12. Keeping in view the above, the benefit of overtime allowance on the revised pay scale is allowed with effect from the date the revised pay scale was made applicable.

13. At this stage, learned counsel for the petitioners submits that as the benefit which the petitioners were entitled for in the year 2016, has not been given, the arrears for which the petitioners become entitled for be extended along with interest.

14. Learned counsel for the respondents submits that as the claim of the petitioners is being allowed by this Court today, the benefit for the grant of interest may kindly be declined.

15. As per the judgment of a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, any amount for which an employee was entitled for and the same has been retained and used by the department, the employee is entitled for interest.

The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

16. Keeping in view the above, the arrears for which the petitioners will get, also carry interest @ 6% per annum from the date the amount became due till the actual payment of the same.

17. Let the respondents calculate the benefit of arrears for which the petitioner becomes entitled for under this order and the same be paid to the petitioners within a period of eight weeks. Let the order be complied within within a period of eight weeks from the date of receipt of certified copy of this order.

February 26th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No