



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

211

CWP-19760-2021 (O&M)
Date of decision: 17.01.2025

Om Parkash Grover

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. C.L. Sharma, Advocate for the petitioner

Mr. Charanpreet Singh, AAG Punjab

AMAN CHAUDHARY, J. (ORAL)

1. The prayer made in the present in the present petition is for grant of ACP on completion of 14 years of service w.e.f. 28.10.2007, which has been denied only on account of the fact that he was entitled for it on 1st January of the succeeding year, on which date he was not in service, having superannuated on 31.12.2007.

2. The issue with regard to the same, has been decided by this Court in **Dr. Rajesh Gupta vs. State of Punjab and Others**, CWP-23932-2012, decided on 31.07.2018, against which the LPA-102-2021 was dismissed on 24.01.2023, which learned State counsel despite best efforts has been unable to controvert regards the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law, relevant paras whereof read thus:

“ In the instant case, upon accepting the recommendations of the Pay Commission, the Government of Punjab in exercise of the powers conferred by the Proviso to Article 309 read with Clause (3) of Article 187 of the Constitution of India, notified the Punjab Civil Services (Revised Pay) (First



Amendment) Rules, 1998, notified on 19.05.1998 vide Notification No. 7/1/97-FPI/7370 by providing for “The Second Schedule” to the Rules wherein the existing and revised Pay Scales of various common categories of employees was notified including the post of 'Veterinary Officer' held by the petitioner and in Schedule-II the pay scales for the Department of Animal Husbandry for the post of 'Veterinary Officer', provided that Pay Scale of ` 7880-13500/- (Entry Scale with a start of ` 8000/-), ` 10025-15100/- [after four (04) years of the Regular Service in the Entry Scale], ` 12100-15500/- [after nine (09) years of Regular Service in the Entry Scale], ` 14300-18150/- [after fourteen (14) years of Regular Service in the Entry Scale].

Once the recommendations of the Pay Commission were notified and framed in forms of Rules, the same were binding on the Government and created a right in favour of the employees including the petitioner in terms of the benefits provided in Schedule-II of the aforesaid Rules and the Respondent-State had no authority to modify or deprive such right by issuance of executive instructions. In **State of Maharashtra & Another Versus Chandrakant Anant Kulkarni & Others** reported in AIR 1981 SC 1990, Hon'ble the Supreme Court had the occasion to consider the effect of modification of Rules framed under Proviso to Article 309. In that case the question arose whether the State Government by its resolution and memorandum could effect a change in the Recruitment For Subsequent orders see LPA-102-2021 Rules by an executive order. After considering all aspects, Hon'ble the Supreme Court observed that there can be no dispute with the proposition that a rule framed under the Proviso to Article 309 of the Constitution cannot be modified by an executive order.

17. The Instructions dated 17.04.2000 (P-1) towards the implementation of the benefits under Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998 regarding “ACP” and in granting the placement in the higher pay scales on completion of 04, 09, 14 years of service have overridden the statutory provision contained Schedule-II, which results in deferring the placement of the set of concerned employees in higher pay scale contrary to and against the provision incorporated in the statute. The Notification dated 19.05.1998 has been framed under Article 309 of the Constitution of India is not in dispute and it is well settled that the statutory rules framed under Article 309 of the Constitution can be amended only by a Rule or Notification duly made under Article 309 and not otherwise. Whatever be the efficacy of the Executive Orders or circulars or instructions, statutory rules cannot be altered or amended by such executive orders or circulars or instructions nor can they replace the statutory rules.

But in the case in hand Para 7 of the Instructions dated



17.04.2000 (P-1) is running contrary to statutory provisions granting benefit of placement in higher pay scale under Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998 and is also whittling down its effect. The enforceable right of the concerned set of employees including the Veterinary Officers to be placed in higher pay scale on completion of 04, 09, 14 years of service under the Rules has been taken away by the Executive Instructions and such placement has been deferred by the Instructions to be granted on 1st January of the successive year thus cannot be sustained in the eyes of law and is hereby set aside.

18. The stand of the respondents-State justifying the circumstances under which Para -7 of the Executive Instructions dated 17.04.2000 (P-1) defers the placement in the higher pay scale based on fact that service record of employee is required to be overall 'Good' and last two ACRs to be "Good" are to be seen and since the last date for the recording of ACR by the Accepting Authority is 30th September and after last ACR to be considered for deciding benefit available, time is required for examining the eligibility angle, therefore, the benefits of ACP Scheme are given from 1st January of the ensuing year is totally irrational and arbitrary because in such a case even if such exercise is required to be conducted then the grant of the benefits can always flow back to the date of completion of 04, 09, 14 years of service. Furthermore, no such justification has been adopted in the case of other set of employees guided by other ACP Scheme under the State of Punjab itself where the benefits of placing in higher pay scales is given from the date the same is due upon completion of requisite service and there is no deferment.

19. Another relevant factor that merits consideration is the Department of Personnel, Government of Punjab has issued letter dated 20.12.2011 (P-10) wherein Para 7 of the instructions dated 17.04.2000 (P-1) has been deleted to the effect that the benefits of placement in higher pay scale are now ordered to be given on date of completion of 04, 09, 14 years of regular service without any deferment but the said remedy has been effectuated prospectively w.e.f. 01.12.2011 only. In the first instance, the respondent Authorities acted illegally to alter and modify the effect of the benefits provided under the Rules by way of Executive Instructions and in the second instance while removing the defect and anomaly (though by citing case of hardship) by not relating the rectification from the date same has erupted as is settled position on the issue. Once there is an anomaly in the pay scales and benefits thereon, then it requires to be removed from the date the anomaly has occurred and the consequential arrears of salary are also liable to be paid. In this regard reliance is placed on ratio of law laid down by the Hon'ble Apex Court in the case of **Purshottam Lal and others versus**



Union of India, AIR 1973 Supreme Court 1088; **Prem Parkash Nayar and others versus Punjab State Electricity Board**, 2003(2) SCT 550 and **State of Punjab and another versus Dr. Dharampaul and others**, (C.A. No. 10549 of 1996, decided on 25.8.1998).

Towards the grant of benefits in such a situation, reliance is placed on the judgment of the Hon'ble Supreme Court in **State of U.P. v. Arvind Kumar Srivastava**, (2015) 1 SCC 347, towards the legal principles as under :

22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see **K.C. Sharma versus Union of India** [K.C. Sharma versus Union of India,



(1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

20. Thus, in view of the observations made above and the settled proposition of law on the issue in hand, the present petition is “Allowed” and Para-7 of the Guidelines issued vide Executive Instructions dated 17.04.2000 (P-1) of the Department of Personnel, Government of Punjab to extent it deferred the financial upgradation in the ACP on completion of 04, 09 and 14 years of regular service to First (1st) January of the succeeding year for certain cadres of employees including the cadre of Veterinary Officers (that of the petitioner) from the date of its effectuation upto 30.11.2011 is set-aside being unreasonable, unjust, illegal and unlawful and is contrary and ultra vires to statutory provisions granting benefit of placement in higher pay scale under Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998.

The respondents are directed to grant and revise the benefits alongwith arrears to the petitioner and other effected employees towards placement in higher pay scale on completion of 04, 09, and 14 years of service based on the provisions of Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998 as applicable and read with Instructions dated 17.04.2000 (P-1) by deleting the offending clause of deferring the placement in higher pay scale in Para 7 of the Instructions dated 17.04.2000.

No costs.

The necessary relief shall be released to the petitioner within a period of four (04) months from the date of receipt of the certified copy of this order, failing which authorities concerned shall make themselves liable to be hauled up in contempt proceedings.”

4. The petition is disposed of in terms of **Dr. Rajesh Gupta** (supra).

(AMAN CHAUDHARY)
JUDGE

17.01.2025

M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No