

2025:PHHC:078881



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

1433

CWP-24464-2012 (O&M)
Date of decision: 03.07.2025

Gurvinder Singh

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. PL Verma, Advocate for the petitioner.

Ms. Shruti, AAG, Punjab.

AMAN CHAUDHARY, J. (Oral)

1. Prayer made in the present petition for quashing the impugned order dated 26.07.2012 (Annexure P5) whereby claim of the petitioner for annual increment from the date of promotion as Draftsman, was rejected in view of Notification dated 19.02.1990.

2. The petitioner, who was appointed as a Tracer on 05.08.1986, was promoted to the post of Draftsman on 11.12.1987 (Annexure P1) and was accordingly rightly granted the annual increment vide order dated 28.12.1989 (Annexure P2), however, the same was withdrawn vide order dated 20.04.1990 (Annexure P4) in view of Notification dated 19.02.1990 on account of fact that as per the same, it was admissible only on completion of 12 years of service on the promoted post. This very issue came up in CWP-18115-1991 which was allowed on 10.01.1995 titled as **Balwinder Singh and others vs. State of Punjab and others**, who was also promoted as a Draftsman but similarly denied the increment based on the same Notification, to which no challenge was made, relevant para whereof reads thus:-

“6. Though Shri Khehar, learned counsel for the petitioners, advanced many fold contentions in support of the writ petition, I do not consider it necessary to deal with all of them because in my opinion the petition deserves to be allowed on the short ground that the notification issued on 19.2.1990 (Annexure P.3) cannot be applied to the persons who have already been promoted as Draftsmen before the coming into force of the revised pay-scales. The respondents have not disputed that recruitment to the posts of Draftsmen is regulated by the provisions contained in the Rules of 1960. They have also not disputed the fact that under rule 10(1)(c) a person is eligible to be promoted as Draftsman on his having qualified the examination prescribed by the Chief Engineer for the purpose. There is also no controversy on the point that the petitioners have in fact been promoted as Draftsmen between the years 1980 to 1985 on their having passed the requisite examination prescribed by the Chief Engineer, Irrigation. Thus, all the petitioners were holding the posts of Draftsmen on the date of commencement of the revised pay-scale Rules. These petitioners and those who had been recruited as Draftsmen by direct recruitment constituted one class on the date of commencement of the revised pay-scale Rules. The promotion of the petitioners did not suffer from any legal infirmity. Neither it has been pleaded nor has the learned Assistant Advocate-General argued that any of the petitioners lacked the minimum qualifications prescribed under the recruitment rules for the purpose of promotion to the post of Draftsman. Once the petitioners are treated as existing Draftsmen duly promoted in accordance with the recruitment rules, it is not open to the respondents to impose any additional qualification in order to prevent them from earning their regular increments. Right to earn increments with the completion of each year of service accrues to the petitioners in terms of the Punjab Civil Services Rules. In terms of rule 4.7 an increment is earned by a public servant as a matter of course. Rule 4.7 uses the word "ordinarily" and expression unless it is withheld. A combined reading of the word 'ordinarily' and the expression 'unless it is withheld' shows that unless there is a specific order passed by a competent authority for withholding an increment payable to an employee, such an employee earns increment as a matter of right and as a matter of course. Note below rule 4.7 further clarifies that increment can be denied to an officer/official who does not fulfil the basic conditions as prescribed in the respective service rules regarding the minimum number of years in the lower rank who is promoted to the higher rank by invoking an alternative provision. The note in my opinion clinches the issue in so far as this case is concerned. It could have been legitimately argued by the respondents that the petitioners should not be given the benefit of annual increments in the revised pay scale because at the time of promotion they did not fulfil the requirement of the minimum number of years of service. However, as has already been mentioned above, it is not the case of the respondents that any of the petitioners lacked the minimum number of years of service prescribed under the rules under which they were promoted as Draftsmen. Therefore, the petitioners could not have been denied

increments to which they became entitled in the cadre of Draftsmen. If at all the respondents could legitimately incorporate a condition requiring 12 years service for the purpose of promotion to the post of Draftsmen, such condition was required to be incorporated in rule 10(1)(c) of the 1960 Rules. If that had been done, such a condition would have operated prospectively and could not have affected the rights of the persons who have already been promoted as Draftsmen. The principle of law that the rights acquired in respect of promotion and even in respect of consideration for promotion at a particular point of time it cannot be taken away by amendment made in the statutory rules does not require a detailed discussion. If that be the position, in the event of an amendment in the rules of 1960, there is every justification in the argument of the learned counsel for the petitioners that the respondents have arbitrarily incorporated the condition of 12 years of service in Annexure P3 and have unjustly denied the benefit of annual increments due to the petitioners in the revised pay-scale with effect from the date of completion of each year's service. In fact, operation of the amendment made vide notification dated 19.2.1990 would result in depriving the petitioners of the annual increments which they have already earned. In my considered view the amendment brought about by notification dated 19.2.1990 could at the best operate prospectively and it was not open to the respondents to have invoked the note given in the said notification against the posts of Draftsmen held by the petitioners.

7. In view of the above, the writ petition is allowed. It is declared that the note incorporated in the notification dated 19.2.1990 cannot be applied qua the petitioners who have already been promoted as Draftsmen prior to 1.1.1986. The decision taken by respondent No.2 vide Annexure P.13 is hereby declared illegal and is hereby quashed. Respondents are directed to take action to grant annual grade increments to the petitioners in accordance with this order within a period of three months. The monetary benefit by way of granting annual grade increments shall be paid to them within the next two months. It is hoped that the respondents will apply the directions given by this Court in this case to the cases of all similarly situated persons so that they are not compelled to file separate petitions in this Court.”

3. The Division Bench also allowed the similar petition bearing CWP-3592-2004 titled as **Raghubir Singh and others vs. State of Punjab and another**, dated 30.08.2004, based on the decision in CWP-10457-2000 challenging the similar condition imposed with regard to the increments not to be granted in terms of the Notification, which reads thus:-

“The petitioners are claiming release of annual increments in the pay scale of Rs.1800-3200. In the notification Annexure P3 a condition has been imposed that a Junior Draftsman shall be entitled to increments only after a minimum period of 12 years

service has been rendered. This condition was earlier challenged by different employees of the State of Punjab in CWP No.10457 of 2000. The writ petition was allowed and the aforesaid condition was quashed.

In para 17 of the written statement, the respondents have stated as follows:-

That in reply to para No.17 of the Writ Petition. It is submitted that the office of respondent No.1 presented the case of the petitioners before the Finance Deptt. with the recommendations that the petitioners are similarly situated non petitioners. They may be granted the benefit of judgment rendered in CWP No.10457 of 2000. The Department Finance vide ID No.1/6/2004/FPI/102 dated 9.3.2004 advised the respondent No.1 to follow the instructions of the Personnel Department dated 17.7.2000 and 12.6.2003 but the petitioners choose to file the present Civil Writ Petition without awaiting the decision of the Committee constituted vide circular dated 17.7.2002.

In view of the aforesaid stand taken by the respondents the writ petition has to be allowed. The petitioners have to be given the benefit of the judgment in CWP No.10457 of 2000.

The writ petition is allowed. The increments be released to the petitioners on completion of one year service on the post of Draftsman.”

4. Learned State counsel being unable to controvert regards the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law, in view of which, the present petition is disposed of in terms thereof.

03.07.2025
ashok

(AMAN CHAUDHARY)
JUDGE

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