

(2015) 10 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 18514, 19064, 22577 of 2012, 10661, 10749, 619, 678 of 2013, COCP No. 1926 of 2012, CWP Nos. 21461 of 2014 and 997 of 2015

Anil Kumar and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 10 P&H CK 0205

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Puneet Gupta and Anil Rana, Advocates, for the Appellant; H.S. Sethi, Addl. AG, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—This order will dispose of CWP No. 18514 of 2012 titled Dr. Anil Kumar and others v. State of Punjab and others, CWP No. 19064 of 2012 titled Dr. Neena Singla v. State of Punjab and another, CWP No. 22577 of 2012 titled Dr. Parshottam Dass and others v. State of Punjab and another, CWP No. 10661 of 2013 titled Dr. Gagandeep Singh and others v. State of Punjab and another, CWP No. 10749 of 2013 titled Dr. Devinder Pal Bansal v. State of Punjab and others, CWP No. 619 of 2013 titled Dr. Jagjiwan Kumar Bansal v. State of Punjab and others, CWP No. 678 of 2013 titled Dr. Rajendra Bhooshan v. State of Punjab and another, COCP No. 1926 of 2012 titled Dr. Rajesh Kumar Dhir and others v. Smt. Vinni Mahajan and another, CWP No. 21461 of 2014 titled Dr. Suresh Kumar v. State of Punjab and others & CWP No. 997 of 2015 titled Dr. Tirath Ram Goyal and another v. State of Punjab and another. The facts are taken from CWP No. 18514 of 2012.

2. There is an interesting point to be decided in this case. The three petitioners are medical Doctors serving in the Punjab Civil Medical Services. While in service,

they acquired the Post Graduate qualification all prior to May 21, 2001. In order to encourage doctors to earn higher medical qualifications the State Government made a scheme to benefit Post Graduate Doctors and to encourage them to acquire higher qualifications while in service to improve the quality of medical care in government hospitals and dispensaries. Those who partook of the scheme and earned PG degrees were offered six additional increments over and above the annual increments. This bore them to higher salary than their counter-part PCMS Doctors who were non-PG Doctors by dint of achieving higher qualifications. This was State policy till it lasted. These additional increments were granted in terms of the Government letter dated October 27, 1993 (P-1) which concession was ultimately withdrawn on May 23, 2001 (P-2). The decision to withdraw the PG increments was litigated before this Court in CWP No. 17156 of 2008 in case titled Dr. Jagmohan Singh and others v. State of Punjab and others. LPA No. 1818 of 2011 was withdrawn by the State on January 11, 2012 and the following order was passed:-

"9. Mr. SS Gill, learned Deputy Advocate General, Punjab, appearing for the respondents has attempted to justify the impugned action of the respondents on the grounds that the circular dated 23.05.2001 has superseded earlier instructions. It is further argued that since the petitioners opted for revised pay scale, they were not entitled to the benefit of additional increment as envisaged under the circular dated 27.10.1993 (Annexure P-I).

10. It appears that the revised pay scale has nothing to do with the grant of benefit of additional increment under the aforesaid circular. It has only relation with the acquiring of the Higher Qualification specified therein."

3. The issue presently is whether the six annual increments granted to the petitioners on account of acquiring higher qualification while in service are to be treated as additional increments without disturbing the annual increments granted on the basis of length of service of one year.

4. This issue arose directly in CWP No. 6954 of 2009 decided on January 24, 2011 in Priya Sood v. State of Punjab and others. The petitioner therein was a member of the Punjab Civil Services (Judicial Branch) and was serving as Chief Judicial Magistrate in the State of Punjab. The Judicial Officer approached this Court against the action of the State Government in restricting the grant of three increments to mean "not additional or special but only as advance" increments. The learned Single Judge of this Court relied on the Shetty Commission report where both the phrases "additional" and "advance" were used in para. 8.46 of the recommendations as inter-changeable and since the solitary object of these recommendations was to grant extra benefits to those officers who joined Judicial services with higher qualification the word advance shall connote the same meaning as the word additional is understood in general parlance. The learned Single Judge observed that the Commission, under no circumstance, can be said to have recommended a short term gain only by construing the word "advance" as premature for such a restrictive meaning which would lead to discriminatory

results and would unwittingly bring equality amongst unequals. This would violate the equality clause in Article 14 of the Constitution.

5. The Court allowed the writ petition and set aside the impugned communication/order dated November 13, 2007 to the extent it refused to grant three annual increments as additional increments to the petitioner therein and it was directed that State will grant three annual increments in lieu of the higher qualification to the petitioner and to the other similarly placed persons over and above the annual increments admissible to them as have become a part of the conditions of their service under the Punjab Civil Services (Revised Pay) Rules, 2009 ("2009 Rules").

6. The Punjab & Haryana High Court felt aggrieved by the order of the learned Single Judge and preferred an appeal through LPA No. 970 of 2011 which was dismissed in limine by a speaking order upholding the view of the learned Single Judge. The Division Bench noticed the law in *State of Mysore and Another Vs. P. Narasing Rao*, ; *V. Markendeya and Others Vs. State of Andhra Pradesh and Others*, ; *State of Rajasthan Vs. Gopi Kishan Sen*, ; *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, ; *Rajasthan State Electricity Board Accountants Association Vs. Rajasthan State Electricity Board and Another*, ; *Government of West Bengal Vs. Tarun K. Roy and Others*, ; *M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and Another*, ; and *U.P. State Sugar Corpn. Ltd. and Another Vs. Sant Raj Singh and Others*, to hold that educational qualification can always be the basis for grant of higher pay scales. When Judicial officers possess the degree of Masters of Law the higher qualification would certainly bring greater efficiency in discharge of duties in discharging judicial office in comparison to those who did not possess such a degree. The Division Bench observed that there would be no real benefit of granting advance increments if in the due course of time the petitioners and the respondents, the qualified and the higher qualified candidates are rendered equal. The SLP filed by the High Court was dismissed by the Supreme Court on October 11, 2011 in SLP (Civil) No. 26260 of 2011, a copy of which order is placed at Annexure P-11 at page 74 of the paper book.

7. The present dispute arises in the aftermath of 2009 Pay Rules which bring at par PG Doctors and non-PG Doctors and the benefit of six additional increments earned by the petitioners has not been taken away and by this process they have come to earn the same salary as is admissible to non-PG Doctors. Unequals have been made equal which is in violation of Article 14 of the Constitution of India. A benefit earned under State policy for acquiring higher qualifications while in service stands lost to the winds.

8. A look of the facts would be apt to understand the relief prayed for to keep the two set of employees by their earlier differential in pay scales and not to obliterate the hiatus. The anomaly in pay has been exacerbated with the upgradation of pay scales under the Assured Career Progression Scheme. To wit, the petitioner No. 1 completed 14 years of service under the 4/9/14 ACP Scheme

on December 17, 2007 and the benefit has been given to him w.e.f. January 01, 2008. Petitioner No. 3 had the same benefit w.e.f. January 01, 2008 while petitioner No. 2 is entitled to the ACP scale w.e.f. January 01, 2009 in terms of proviso to Rule 5 of the 2009 pay revision rules. The second proviso to Rule 5 permitted Government employee to exercise option from January 01, 2006 or from the date of upgradation of pay scales under the ACP scheme. In the process of implementing the revised pay scale w.e.f. January 01, 2006 and the 14 years ACP Scheme benefits following due thereafter, the State Government interpretation in fitment of the pay of the petitioners has wantonly taken away accrued, vested and crystallized rights to preservation of accelerated pay and allowances earned by grant of six advance increments over and above their annual increments earned in the post. The withdrawal of the policy of higher pay for higher qualifications may have been disbanded but the arbitrary action of the respondent-State has dissolved the recurring benefit of the six additional increments and the effect of this renders possession of the Post Graduate qualification as meaningless. If this was permitted it would amount to reverse discrimination.

9. The State in its reply admits that the petitioners have been granted additional increments from the date they had acquired Post Graduate qualification as per judgment in Dr. Jagmohan Singh's case. However, the stand in defence of the petition is that the petitioners cannot claim benefit of advance/additional increments as part of the pay in the revised pay scale. This interpretation is fallacious and runs counter to the decisions in Jagmohan Singh and Priya Sood cases. The revision of pay can by no means result in taking away acquired rights. The difference between Post Graduate Doctors and Graduate Doctors will have to be maintained in the aftermath of the pay revision rules which do not affect such accrued rights. If the policy has been withdrawn the benefit has not been retrospectively taken away and forms part of the conditions of service of PG doctors which are inviolable.

10. This Court finds merit in the submission of Mr. Puneet Gupta, learned counsel appearing for the Doctors that the impugned orders Annexures P-6 to P-8 dated August 29, 2012, April 26, 2012 and September 03, 2012 are erroneous inasmuch as they do not give weightage to the benefit of additional increments acquired by his clients in terms of the Punjab Government policy letter dated October 27, 1993. The right hand cannot be seen as giving and left taking away what was given. Therefore, the impugned orders suffer from misinterpretation and misapplication of the 2009 Rules and the ACP scheme and have caused grave prejudice to the petitioners. The classification of the two groups, that is, PG and non-PG degree holder PCMS doctors is reasonable.

11. Consequently, the writ petitions are allowed. A certiorari is issued quashing the impugned orders. The pay of the petitioners be re-fixed in terms of this judgment and the petitioners are directed to be granted the benefit of six additional increments in addition to their annual increments at both stages, that

is, on the coming into force of the 2009 Rules after refixation of their pay and allowances and on the event of completion of 14 year service qualifying for ACP pay scales under the scheme. The petitioners, in all the connected petitions would take costs of Rs. 10,000/- each personally towards expenses incurred in this litigation. The difference of arrears of pay and allowances be calculated and paid to the petitioners within 3 months from the date of availability of a certified copy of the order, failing which the outstanding dues will earn 9% simple interest on delayed payment till realization.

12. COCP No. 1926 of 2012

In view of the above order passed in the connected writ petitions, the rule stands discharged.