
(2016) 09 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4386 of 2014 (O/M)

Byasa Devi

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Citation : (2017) 2 SCT 503

Hon'ble Judges : Kuldeep Singh, J.

Bench : Single Bench

Advocate : Vivek Khatri, Advocate, for the Petitioner; Roopam Aggarwal, Deputy A.G. Punjab, for the Respondents

Final Decision : Allowed

Judgement

Kuldeep Singh, J. (Oral) - Sansar Chand (deceased husband of the petitioner) was working as a driver with the Deputy Commissioner, Bathinda. On 23.4.1993, while Sansar Singh (ex-driver) alongwith Inderjit Singh (gunman) accompanying the Deputy Commissioner, Bathinda, who was on official tour, were going to village Kotha Guru, District Bathinda, was got injured in a bomb blast, which occurred near village Puhla. On account of exceptional bravery shown by Sansar Singh (ex-driver) and Inderjit Singh (gunman) of the Deputy Commissioner, Bathinda, the Commissioner, Ferozepur Division, Ferozepur, announced to grant five additional increments to Sansar Singh (driver) and Inderjit Singh (gunman) was promoted to the post of Junior Sub Inspector. Accordingly, vide order dated 26.4.1993 (Annexure-P-1), such five advance increments were given to Sansar Singh (ex-driver). The said order was passed under Rule 4.10 of the Punjab Civil Services Rules, Volume-1, Part-1, by the Deputy Commissioner, Bathinda, in compliance of the order of the Commissioner, Ferozepur Division, Ferozepur. It comes out that later on, the audit party of the office of Auditor General, Punjab, raised some objections in the audit report for the year 2007, saying that the Deputy Commissioner, Bathinda, has no power to grant five advance increments. Accordingly, vide order dated 26.11.2007 (Annexure-P-2), passed after 14 years

of the said order of grant of five advance increments, the Financial Commissioner Revenue-cum-Principal Secretary, Punjab Government, Revenue Department, withdrew the said five advance increments granted to Sansar Singh (exdriver) and recovery was ordered from him. The salary of Sansar Singh was accordingly re-fixed on 17.12.2007, vide order Annexure-P-3. It also comes out that Sansar Singh immediately made representation (Annexure-P-4) to the Deputy Commissioner, Bathinda, against the said order of re-fixation of his pay. The Deputy Commissioner, Bathinda, also wrote a letter dated 27.12.2007 (Annexure-P-5) to the Financial Commissioner Revenue-cum- Principal Secretary, Punjab, Revenue Department, Chandigarh. It appears that the matter was decided, vide letter Annexure-P-6, vide which the Finance Department, taking into consideration the death of Sansar Singh, ordered that no recovery of additional payment be made from the family of the deceased employee. It was also observed that since the order of grant of five advance increments was passed by the Deputy Commissioner, Bathinda, without sanction of the competent authority and the recovery was not effected in time, the action be taken against those officials/officers, who are responsible for making additional payments and not effecting the recovery. Vide order dated 29.6.2009 (Annexure-P-7), the provisional pension was sanctioned to the petitioner. The Deputy Commissioner, Bathinda, again wrote a letter dated 31.3.2011 (Annexure-P-8) for regularization of five advance increments granted to Sansar Singh (exdriver). Similar letter dated 5.7.2011 (Annexure-P-9) was also written by the Deputy Commissioner, Bathinda. Vide letter dated 8.9.2011 (Annexure- P-10), the petitioner was informed by the Deputy Secretary, Punjab Government, Revenue Department, that the question regarding recovery of Rs. 2,10,638/- given to the deceased employee in the form of five advance annual increments is under consideration separately and the Deputy Commissioner, Bathinda, was asked to take necessary action for releasing the family pension and other benefits to the widow of the deceased after taking the matter with Accountant General because five advance increments have already been withdrawn. It is stated that thereafter the petitioner had been making representations (Annexures-P-11 to P-13), but no action was taken on the same.

2. In the reply, the State has taken the stand that five advance increments were wrongly granted to Sansar Singh (ex-driver), which was objected to by the audit party of the Accountant General, Punjab, and the same was accordingly correctly withdrawn and the pay was re-fixed. The representation dated 17.12.2007 (Annexure-P-4) was declined by the Punjab Government, vide letter No. 14/3/04-RE-II (6)/814, dated 21.1.2008, The said order was not challenged by Sansar Singh during his life time. The orders dated 16.11.2007 and 17.12.2007 (Annexure-P-2 and P-3 respectively) were not challenged by Sansar Singh during his life time. The litigation was filed on 7.3.2014 and is barred by delay and latches.

3. I have heard the learned counsels for the parties and have also carefully gone through the file.

4. Admittedly, on account of exemplary bravery shown by Sansar Singh (ex-driver), the Deputy Commissioner, Bathinda, in compliance of the order of the Commissioner, Ferozpur Division, Ferozepur, is stated to have granted five advance annual increments to him on 26.4.1993 under Rule 4.10 of the Punjab Civil Services Rules, Volume-1, Part-1. The gunman was given promotion to the post of Junior Sub Inspector. It appears that later on, the audit party of the office of Auditor General, Punjab, while conducting the audit in the year 2007, i.e. after 14 years, raised objection with regard to the grant of five advance annual increments. Accordingly, the Financial Commissioner Revenue-cum-Principal Secretary, Punjab Government, Revenue Department, withdrew the amount of said five advance annual increments and other allowances, vide order dated 16.11.2007 (Annexure-P-2) and salary of Sansar Singh (driver) was accordingly re-fixed, vide order dated 17.12.2007 (Annexure-P-3). Thereafter, the matter was again referred to the Government by the Deputy Commissioner, Bathinda, for re-consideration. In the meanwhile, Sansar Singh died on 21.1.2009 and thereafter, his widow has been agitating the matter, as reproduced above. The withdrawal of five advance annual increments is effecting the family pension. Rule 4.10 of the Punjab Civil Services, Volume-1, Part-1 is reproduced as under :-

"Rule 4.10 Subject to any general or special orders that may be made by the competent authority in this behalf, an authority may grant a premature increment.

Note 1. A proposal to grant an increment in advance of the due date should always be scrutinized with special jealousy as it is contrary to the principle of a time-scale of pay to grant an increment before it is due. Such a grant should not be made or advised except in very rare circumstances which would justify a personal pay to a Government employee whose pay is fixed."

5. The language of the said rule itself shows that only one increment in advance could be given and not the five advance increments. The Deputy Commissioner is admittedly the appointing authority of the driver and, therefore, the Deputy Commissioner, Bathinda, was competent to grant one advance increment. This was admittedly the case of rare circumstances as a driver had shown exemplary bravery in saving the life of Deputy Commissioner, Bathinda, during the bomb blast when the State was under the spell of terrorism. May be due to zeal the Commissioner, Ferozpur Division, Ferozepur, without taking notice of the law and rules, announced five advance increments, which were granted by the Deputy Commissioner.

6. Now, the question would arise that whether the State could withdraw the same ?

7. I am of the view that the rule itself shows that at least one increment in advance could be given by the Deputy Commissioner, which he had given. Therefore, the impugned order dated 16.11.2007 (Annexure- P-2) so far as it withdraws all the five advance increments is set aside to the extent that only four

advance increments are to be withdrawn and not all the five. The net result will be that one additional increment given to Sansar Singh with effect from 26.4.1993 will continue to be given over and above the increments already due to him. His pay is to be accordingly re-fixed till his death and the family pension is also to be re-fixed accordingly. Needless to say that all retiral benefits shall also be released in accordance with the re-fixed pay. Since the employee has died and that he had shown the exemplary bravery during the spell of terrorism in the State, therefore, even though the order was wrongly passed to the extent of granting five advance annual increments in place of one advance annual increment, which could be granted by the Deputy Commissioner, the fact remains that the driver had saved the life of the Deputy Commissioner. The accompanying gunman was given a promotion and the said benefit has been apparently retained by the gunman. In these circumstances, the State shall not make any recovery of the payment already made to Sansar Singh (driver) or his family paid under the order dated 26.4.1993 (Annexure-P-1). The retiral benefits, which are wrongly withheld, shall be released with interest at the rate of 9% per annum within three months from the date of receipt of copy of this judgment.

8. The petition is accordingly allowed.