
(2014) 10 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 17828 of 2012 (O&M)

Hardyal Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Citation : (2015) 2 SCT 152

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Nonish Kumar, Advocates for the Appellant; Harish Rathee, Senior Deputy Advocate General, Advocates for the Respondent

Judgement

Rajesh Bindal, J.—This order will dispose of C.W.P. Nos. 17828, 18904, 23741 and 25647 of 2012, as common questions of law and facts are involved. The facts have been extracted from C.W.P. No. 17828 of 2012. Challenge in the present petition has been made to the orders dated 8.12.2011 (Annexure P-3), 14.12.2011 (Annexures P-4 and P-5) and 27.6.2012 (Annexure P-7), vide which pay of petitioner No. 1 and late husband of petitioner No. 2 was re-fixed and pension has been revised accordingly.

Petitioner No. 1 and late husband of petitioner No. 2 were appointed as Clerks in Public Health Department on 8.7.1969 and 20.5.1970, respectively. They were promoted to the post of Sub Divisional Clerk on 5.5.1973 and 5.5.1978, respectively. When promotion was made from the post of Clerk to Sub Divisional Clerk, there was no stepping up of pay scale except that Rs. 25/- extra were given. They were further promoted as Assistant (Account Clerk) on 28.6.1979 and 18.7.1981, respectively. On the aforesaid post, they were granted pay scale of Rs. 1400-2600 w.e.f. 1.1.1986. Vide letter dated 8.2.1994, they were granted higher standard pay scale of Rs. 1600-2660 w.e.f. 1.1.1994, which was later on modified to Rs. 1640-2900. Petitioner No. 1 and late husband of petitioner No. 2 retired from service on 31.3.2003 after attaining the age of superannuation and thereafter were getting pension. More than eight years after their retirement,

vide order dated 8.12.2001 (Annexure P-3), pay of petitioner No. 1 and late husband of petitioner No. 2 was reduced and accordingly the pension. The aforesaid order was challenged in this court by filing CWP No. 2999 of 2012, which was disposed of on 17.2.2012 with a direction to the Engineer-in-Chief to consider the legal notice got issued by the petitioners. The order passed consequent thereupon on 27.6.2012 (Annexure P-7) has also been impugned.

2. In the aforesaid factual matrix, learned counsel for the petitioners submitted that the policy issued by the Government of Haryana on 8.2.1994 for grant of higher standard pay scales to Group "C and "D" employees on completion of 10 years or more and 20 years or more of regular satisfactory service provided that every employee in Group "C and "D" category, who had completed 20 years or more of regular satisfactory service before 1.1.1994 and had got only one promotion or promotional scale or higher time scale or selection grade in his service career, will be allowed first higher standard pay scale in place of his present pay scale w.e.f. 1.1.1994, as specified in the policy. It is further provided in the aforesaid policy that the employees, who got promotion but pay scale of the promotional post was either equal to or lower than the pay scale of the feeder post, the benefit of higher standard pay scale will be admissible. Some issues were raised regarding implementation of the policy. The same were clarified vide letter dated 29.12.1995, which provided that in case an employee is promoted to a post carrying same pay scale with special pay attached to it, he shall be entitled to the benefit under the policy. Referring to the aforesaid provisions in the policy circulated on 8.2.1994, as clarified on 29.12.1995, the submission is that petitioner No. 1 and late husband of petitioner No. 2 having got promotion as Sub Divisional Clerk in the same pay scale but only with Rs. 25/- extra, were entitled to get the next higher standard pay scale in terms of the policy issued on 8.2.1994 and had been rightly granted that benefit. He further submitted that the reason assigned for denying the same to petitioner No. 1 and late husband of petitioner No. 2 and revising the pay much after their retirement is totally erroneous. The post of Sub Divisional Clerk was carrying higher pay scale than the post of Clerk w.e.f. 1.1.1986. In fact, petitioner No. 1 and late husband of petitioner No. 2 had already been promoted to that post way back on 5.5.1973 and 5.5.1978, respectively. They never got the benefit of higher standard pay scale on the post of Sub Divisional Clerk.

3. On the other hand, learned counsel for the State submitted that higher standard pay scale of Rs. 1600-2600 w.e.f. 1.1.1994 and Rs. 1640-2900 w.e.f. 1.4.1995 to petitioner No. 1 and late husband of petitioner No. 2 was given wrongly to them in contravention of the clarification vide para No. 17 of the letter dated 29.12.1995. Petitioner No. 1 and late husband of petitioner No. 2 were initially appointed as Clerks. Later on, they were promoted as Sub Divisional Clerks. In the pay revision effective from 1.1.1986, separate pay scale of Rs. 1200-2040 was provided for the post of Sub Divisional Clerk, which was first promotional post of Clerk. As petitioner No. 1 and late husband of petitioner No. 2 were promoted thereafter as Assistant in the higher pay scale, they were not

entitled to the benefit of the policy issued on 8.2.1994, as they had already got two promotions. The mistake having been committed was rightly corrected and the pension was revised. Petitioner No. 1 and late husband of petitioner No. 2 cannot raise any grievance if any error has been corrected.

4. Heard learned counsel for the parties and perused the paper book.

5. The undisputed facts are that petitioner No. 1 and late husband of petitioner No. 2 were appointed as Clerks in Public Health Department on 8.7.1969 and 20.5.1970, respectively. They were promoted to the post of Sub Divisional Clerks on 5.5.1973 and 5.5.1978, respectively. When promotion was made from the post of Clerk to Sub Divisional Clerk, there was no stepping up of pay scale except that Rs. 25/- extra were given. They were further promoted as Assistants (Accounts Clerk) on 28.6.1979 and 18.7.1981, respectively.

6. Relevant clauses of the policy issued on 8.2.1994 providing for higher standard pay scales to Group "C and "D" employees on completion of 10 years or more and 20 years or more of regular satisfactory service are extracted below:

"xx xx xx

2. With effect from 1st January, 1994 or thereafter, as the case may be the grant of higher standard scale will be regulated as under:

xx xx xx

(iii) every employee of group "C and "D" category who has completed twenty years or more of regular satisfactory service before 1.1.94 but has got only one promotion or promotional scale/higher time scale/selection grade in his service career will be allowed with effect from 1.1.94 in place of his present pay scale the first higher standard pay scale specified in column 3 of the enclosed Annexure with respect to the pay scale of the post applicable from First January, 1986. An employee who completes such regular satisfactory service of twenty years after 1.1.94 but has got only promotion or promotional scale/higher time scale/selection grade/higher standard scale in his service career will be allowed the afore-said first higher standard scale with effect from first day of the month following the month in which he completes such service.

xx xx xx

5. In case an employee who has got promotion already but the pay scale of the promotion post is either equal to or lower than the pay scale of the feeder post, the benefit of the higher standard scale will be granted in such cases.

xx xx xx"

Certain issues were raised regarding implementation of the aforesaid policy, which were clarified vide memo dated 29.12.1995. Relevant clauses thereof are also extracted below:

"xx xx xx

2. Some departments have sought clarification on some points in respect of the instructions referred to above. Necessary clarifications on issues raised by them are given as under:

7. The case set up by petitioners is that petitioner No. 1 and late husband of petitioner No. 2 were rightly granted higher standard pay scale in terms of the policy issued on 8.2.1994, as clarified vide memo dated 29.12.1995, whereas relying upon the clarification issued vide paragraph No. 17, as reproduced above, the case set up by the State is that there was an error in grant of higher standard scale to petitioner No. 1 and late husband of petitioner No. 2, hence, correction was rightly made.

8. As per the policy issued on 8.2.1994, every Group "C" and "D" employee on completion of 20 years or more of regular service before 1.1.1994, who got only one promotion or promotional scale/higher time scale/selection grade in his service career is to be granted next higher standard pay scale w.e.f. 1.1.1994. It is not in dispute that petitioner No. 1 and late husband of petitioner No. 2 joined service on 8.7.1969 and 20.5.1970, respectively and as on 1.1.1994 had completed more than 20 years of regular service. The only question is as to whether during this period, they were granted one promotion or two. Admittedly, petitioner No. 1 and late husband of petitioner No. 2 were promoted as Sub Divisional Clerks from Clerk on 5.5.1973 and 5.5.1978, respectively, but in the same pay scale. They were granted only Rs. 25/- extra as special pay. Clause 5 of the policy provided that in case the pay scale of a promotional post of an employee is either equal to or lower than the pay scale of the feeder post, he is to be granted benefit of higher standard pay scale. In the case in hand, it is not in dispute that pay scales of Clerk and Sub Divisional Clerk, i.e., promotional post, were same. The only extra benefit attached was Rs. 25/- as special pay. On account of some anomaly, the issue was raised with the Finance Department, which was clarified vide memo dated 29.12.1995, wherein vide paragraph No. 13, the issue was specifically cleared, where the question raised was whether an employee if promoted to a post carrying same pay scale but special pay attached to it is entitled to the next higher standard pay scale. The answer was in positive.

9. The aforesaid factors established that petitioner No. 1 and late husband of petitioner No. 2 were rightly granted next higher standard pay scale. However, the issue was sought to be re-opened after a long period referring to para 17 of the memo dated 29.12.1995, wherein reference was made to higher standard pay scale granted to Sub Divisional Clerk as compared to Clerk w.e.f. 1.1.1986. A perusal of the issue raised in the aforesaid communication clearly shows that before 1.1.1986, the posts of Clerk and Sub Divisional Clerk were in the same pay scale of Rs. 400-660 with only difference being that Sub Divisional Clerk was allowed special pay of Rs. 25/-. With effect from 1.1.1986, the Clerk was given replacement scale of Rs. 950-1500, whereas Sub Divisional Clerk was given pay scale of Rs. 1200-2040 and the special pay was abolished. Under these circumstances, the clarification was sought. The answer to that was that as

higher pay scale had been given to the post of Sub Divisional Clerk w.e.f. 1.1.1986 and the same being a promotional post from Clerk, the promotion to the post of Sub Divisional Clerk will be considered as promotion.

10. In my opinion, the aforesaid clarification has been totally misread and misinterpreted by the authorities for withdrawing the benefit already granted to petitioner No. 1 and late husband of petitioner No. 2. In the case in hand, petitioner No. 1 and late husband of petitioner No. 2 never got the benefit of higher standard pay scale on the promotional post of Sub Divisional Clerk, which was effective from 1.1.1986, as they had been promoted as Sub Divisional Clerks on 5.5.1973 and 5.5.1978, respectively. Not only this, they had been promoted as Assistant also much prior to the implementation of the new pay scales w.e.f. 1.1.1986, as the dates of their promotion as Assistant was 28.6.1979 and 18.7.1981. It clearly establishes that in the case of petitioner No. 1 and late husband of petitioner No. 2, they never got the benefit of higher standard pay scale on being promoted as Sub Divisional Clerk from Clerk. The aforesaid situation was only with reference to the employees, who got higher standard pay scale as Sub Divisional Clerk on 1.1.1986 or thereafter. The position with reference to the employees, who had already been promoted even on the next higher post prior to that and did not get the benefit of higher standard pay scale prescribed for the promotional post of Sub Divisional Clerk would fall in a separate category, to which the petitioners belong. In view of my aforesaid discussion, the impugned orders dated 8.12.2011 (Annexure P-3), 14.12.2011 (Annexures P-4 and P-5) and 27.6.2012 (Annexure P-7) are declared illegal. It is held that petitioner No. 1 and late husband of petitioner No. 2 had rightly been granted the benefit of next higher standard pay scale on their entitlement w.e.f. 1.1.1994.

The writ petitions stand disposed of.