
(2013) 12 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16167 of 1997

I.C. Aggarwal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2014) 2 PLR 386

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Fateh Deep Singh, J.—The petitioner claims a writ of mandamus for directing the respondents to re-fix his pay under Rule 4.14(2) read with Rule 4.4(a)(i) of the Punjab Civil Services Rules, Volume I, Part I (for short "the Rules"). The petitioner joined as Member of Punjab Civil Service (Judicial Branch) on 12.11.1965. The petitioner was in pay scale of Rs. 2000-2400, when he was promoted on officiating basis as Additional District Judge on 13.8.1984. At that time, the pay scale of the said post was Rs. 1775-2400. The petitioner opted for the revised scales with effect from 01.01.1986. On the said date, the basic pay in the time scale of his officiating post was Rs. 2600/- so was his pay in the selection grade of his substantive post. The revised pay in the revised pay scale on the existing emoluments was Rs. 5750/- on 01.01.1986. The petitioner asserts that by virtue of instructions dated 01.12.1988, he became entitled to two additional increments by way of proficiency set up with effect from 1.1.1986, which were granted to him vide letter dated 22.11.1996 (Annexure P-1) raising the pay to Rs. 6100/-.

2. The petitioner on promotion on officiating basis as Additional District & Sessions Judge in the Superior Judicial Services on 13.08.1984 did not get any increase in pay. The petitioner claims that in terms of Rules 4.14(2) and 4.4(a)(i) of the Rules, he is entitled to additional increments on promotion. The petitioner claims that the pay of Shri S.S. Arora on promotion was fixed at Rs. 5450/-

under Rule 4.14(2) of the Rules consequent to his promotion on 05.08.1992. The petitioner also makes reference to the grant of additional increment to Shri O.P. Goel promoted on 19.11.1986 in the rejoinder, who is stated to be nineteen places junior to him.

3. In the written statement filed on behalf of respondent No. 2, it is pleaded that Rules 4.14(2) and 4.4(a)(i) of the Rules are not applicable in view of Rule 11 of the Punjab Civil Services (Revised Pay) Rules, 1988 (for short "the Revised Rules"). After the commencement of the Revised Rules, the Rules contained in the Punjab Civil Services Rules, Volume I & II and Punjab Civil Services (Revised Scales of Pay) Rules, 1979 are not applicable. It is pleaded that since the petitioner was promoted as Additional District & Sessions Judge on 13.08.1984, he does not qualify for grant of proficiency increment as on 01.01.1986 in accordance with the Punjab Government instructions dated 01.12.1988. It is also pointed out that the petitioner was getting his basic pay at Rs. 2500/- in the selection grade of Punjab Civil Services (Judicial Branch) of Rs. 2000-2400/- and Rs. 100/- 1st Biennial increment and that on promotion he remained at the same stage of pay in the time scale of Rs. 1580-2400/- admissible to the Members of the Punjab Superior Judicial Service. It is pointed out that the instructions dated 18.07.1991 apply to the employees, who are promoted after 01.01.1986.

4. The petitioner was promoted as a Member of the Punjab Superior Judicial Service in the year 1984 i.e. much prior to the commencement of Revised Rules, with effect from 1.1.1986. This Court has struck down the discriminatory applicability of such Rules to the Officers promoted before the publication of such Rules and the officers after the publication of the Rules in *G.S. Grewal v. State of Punjab*, 1993(2) S.C.T. 54 and followed in *CWP No. 9836 of 1996 titled A.C. Aggarwal v. The State of Punjab and another*", *CWP No. 9836 of 1996* decided on 04.12.2013.

5. But in the present case, the petitioner was promoted prior to the promulgation of the Revised Rules i.e. on 13.08.1984. His pay in the feeder cadre and in the promoted cadre remained same. The petitioner claims additional increment in terms of Rules 4.14(2) and 4.4(a)(i) of the Rules. However, the right to claim additional increment arose, when he was promoted as Additional District & Sessions Judge, but was not granted any additional increment. The petitioner did not raise any claim till the time he submitted the representation to this effect on 13.03.1997 (Annexure P-5). Therefore, we find that the petitioner has acquiesced in his pay fixation from the year 1984 till 1997. Thus, he is estopped to claim increment at this stage. The claim is grossly delayed.

6. The argument of learned counsel for the petitioner is that nonpayment of additional increment is a recurring cause of action, therefore, the delay cannot be made basis to non-suit the petitioner. We do not find any merit in the argument raised. The recurring effect of non-payment is consequent to the reason of not granting benefit of additional increment in the year 1984. The petitioner had to claim additional increments in the year 1984 or soon thereafter.

The petitioner has not raised any claim for almost thirteen years after the cause to dispute proper fixation of pay arose. Therefore, under the guise of recurring cause of action, the petitioner cannot be permitted to claim additional increments after 13 years of pay fixation. In view of the above, we do not find that the petitioner can be permitted to dispute the settled position of fixation of pay after long lapse of time.

Consequently, the present petition is dismissed.