(2006) 09 P&H CK 0207

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 17399 of 2005

Karamjit Singh Bajwa APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Citation : (2006) 09 P&H CK 0207

Hon'ble Judges : S.D. Anand, J;J.S. Khehar, J

Bench : Division Bench

Advocate : P.S. Thiara, for the Appellant; Ashok Aggarwal, Addl. A.G., for the Respondent

Judgement

J.S. Khehar, J.—The petitioner was inducted into the service of the Excise & Taxation Department, Punjab in 1974. The issue raised in the present writ petition pertains to the fixation of the pay of the petitioner by raising it to the level of his junior one Smt. Swadesh Gupta. The petitioner''s junior Smt. Swadesh Gupta was promoted as Assistant Excise & Taxation Commissioner on 2.8.1996 after she had completed 18 years of service as Excise & Taxation Officer. On the completion of 18 years of service, she was granted one proficiency step up. At the time of promotion of the petitioner as Assistant Excise & Taxation Commissioner, he had not completed 18 years of service, and was therefore, not entitled to the said proficiency step up (which was granted to Smt. Swadesh Gupta). When Smt. Swadesh was promoted as Assistant Excise & Taxation Commissioner, she was obviously entitled to pay at a stage higher than the petitioner as she had availed of the benefit of proficiency step up with effect from 8.5.1995 i.e. with effect from a date proceeding the date of her promotion as an Assistant Excise & Taxation Commissioner. It is, therefore, that the pay scale of the petitioner was sought to be raised to the level of his junior Smt. Swadesh Gupta by an order dated 2.12.1998.

2. A perusal of the pleadings of the instant case reveals, that the Excise & Taxation Commissioner, Punjab, was not competent to pass the order by which

the pay scale of the petitioner was raised to the level of his junior. The pleadings reveal that the competent authority to pass the aforesaid order was the administrative department of the petitioner. It is, therefore, that on the retirement of the petitioner, his retiral benefits were calculated as if he had not been granted pay fixation in terms of the order dated 2.12.1998. It is, this action of the respondents coupled with the withdrawal of the benefit of the order dated 2.12.1998, which is a subject matter of the controversy raised by the petitioner in this case.

3. In sum and substance, as is apparent from the assertions recorded in paragraph 4 of the written statement filed jointly by respondent Nos. 1, 2 and 4, the final determination on the issue in hand was left to the wisdom of the Administrative Department coupled with the Finance Department of the State Government. On the last date of hearing, i.e. on 29.8.2006, proceedings in this matter were adjourned so as to enable the learned Counsel for the respondents to ascertain the determination of the Administrative Department, as well as, that of the Finance Department, on the issue of pay fixation of the petitioner. Learned Counsel for the respondents, during the course of todays proceedings,` has handed over to us a photo copy of an order dated 28.8.2006 addressed by the Under Secretary, Department of Excise & Taxation, Punjab to the Excise & Taxation Commissioner, Punjab, disclosing, that the State Government has found the determination at the hands of the Excise & Taxation Commissioner, Punjab, taken in his order dated 2.12.1998 as correct, and that, appropriate sanction and approval has been granted for release of payments calculated in terms of the said order dated 2.12.1998 to the petitioner. A copy of the order dated 28.8.2006 handed over to us in Court today, is taken on record and marked as Annexure `A''. Learned Counsel for the respondents states that in terms of Annexure `A'', the benefits flowing to the petitioner shall include arrears of salary, as well as, arrears of retiral benefits. He further states that all the payments due, shall be released to the petitioner within a period of three weeks from today.

4. In view of the factual position noticed herein above, it is apparent that the delay in releasing the payments to the petitioner was based on the non-determination of the issue in hand by the Administrative Department, as also, by the Finance Department of the State Government, which had to collectively dispose of the claim of the petitioner for pay fixation (at the same level, as was being drawn by Mrs. Swadesh Gupta, a person admittedly junior to the petitioner), with effect from the date of her promotion to the post of Assistant Excise & Taxation Commissioner i.e. 2.8.1996.

5. We are of the view that the Excise & Taxation Commissioner, had rightly adjudicated on the issue in hand as far back as on 2.12.1998. The determination at the hands of the Excise & Taxation Commissioner by his order dated 2.12.1998 was in consonance with the statutory rules and instructions prevalent on the issue. There was no justification with the Administrative Department and

or the Finance Department in not concurring with the same and/or not granting administrative approval to the determination at the hands of the Excise & Taxation Commissioner, Punjab. It is only after the petitioner approaching this Court by filing the instant Civil Writ petition in 2005 that the Administrative Department wake up to the situation. This waking up was also half hearted, in the sense, that in paragraph No. 4 of the written statement filed jointly by respondent Nos. 1,2 and 4, it was averred that the matter in issue was under the active consideration at the level of the Administrative Department and the Finance Department. Shockingly in the written statement, it is alleged, that the petitioner being well aware of the fact that the matter was under active consideration, had unnecessarily approached this Court for the redressal of his present grievance. It is surprisingly, that the respondents should record such an assertion in the written statement, when the respondents were themselves blameworthy of delaying the issue from 1998 to the year 2005, when the present writ petition came to be filed. Rather than adjudicating on the issue on the administrative side and making the required payment to the petitioner, an innocuous written statement with the stance noticed above was filed, probably to prolong the matter further. It was on the insistence and persuasion by this Court which compelled the authorities to take a final decision in the matter.

6. In the peculiar facts and circumstances of this case, we consider it just and appropriate to direct the respondents to pay interest to the petitioner quantified at 9% on the arrears of pension payable to the petitioner, from the date when the same became due to the petitioner, till the release of the same to him.

7. Disposed of in the aforesaid terms.

