

(2011) 03 P&H CK 0429

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15667 of 1991

Kartar Singh Aulakh and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 03 P&H CK 0429

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The crux of the facts, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that Petitioner No. 1 Kartar Singh Aulakh was appointed on 30.1.1959, while Petitioner No. 2 Mangat Ram was appointed in the year 1963 as Tubewell Operators by the Superintending Engineer and Managing Director of Punjab State Tubewell Corporation (Respondent Nos. 3 and 4) respectively (for brevity "Respondent-Corporation"). The Petitioners claimed that as there was no promotional avenue, therefore, they were not promoted to any higher posts for the last about 30 years. The Punjab Government in order to deal with the problem of stagnation was stated to have issued instructions dated 3.3.1980 (Annexure P1) and has introduced the provisions of selection grade, which was higher than the time scale, by means of which, such benefit was available to 20% of the posts in the selection grade in the cadre, by virtue of instructions dated 29.10.1984 (Annexure P2). Although they moved representation (Annexure P3) in this regard, but no action was stated to have been taken by the Respondents on it.

2. Levelling a variety of allegations and narrating the sequence of events, in all, according to the Petitioners that although they were entitled to selection grade in pursuance of the government instructions (Annexures P1 and P2) and the

judgments dated 26.11.1987 and 21.3.1991 of this Court (Annexurs P4 and P5), but the same benefit was illegally denied to them despite the fact that they have completed 30 years of continuous service. On the basis of aforesaid allegations, the Petitioners claimed that the Respondents be directed to grant the selection grade to them with effect from 1.1.1978 and to fix their salaries accordingly in the manner indicated hereinabove.

3. The Respondents contested the claim of the Petitioners. The Respondent Nos. 1 and 2 filed their joint written statement, while Respondent Nos. 3 and 4 filed their separate written statement, inter-alia pleading certain preliminary objections of, maintainability of the writ petition, cause of action and locus standi of the Petitioners and objection of delay and laches of more than 12 years in this regard.

4. The contesting Respondents claimed that the Petitioners have already been granted the benefits emanating from the recommendations of 3rd Punjab Pay Commission, which has repealed the report of 2nd Pay Commission. In all, the Respondents claimed that since the 3rd Punjab Pay Commission has repealed the report of 2nd Pay Commission and as per the recommendations of 3rd Pay Commission, special increment of proficiency step-up in place of selection grade, after the completion of 8 and 18 years of service was already granted, so, the Petitioners were not entitled to any benefit in view of the instructions (Annexures P1 and P2) in this behalf at this belated stage. It will not be out of place to mention here that the Respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

5. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant writ petition in this context.

6. Ex-facie, the celebrated argument of learned Counsel for the Petitioners that the 3rd Punjab Pay Commission has wrongly repealed the beneficial clause of 2nd Pay Commission in regard to grant of selection grade, is not only devoid of merit but misplaced as well. It is now well settled principles of law that creation of posts, appointment to posts, regularization and fixation of pay scale etc. are the functions of executive or the legislative and the authorities are competent to take such decision. The Courts should not interfere in such executive methods of calculations in this regard. Reliance in this respect can be placed on the judgment of Hon''ble Apex Court in case *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.*, .

7. What is not disputed here is, not only that Petitioners have already retired from service since long, after attaining the age of superannuation, but the Respondent-Corporation has merged into the Punjab Water Resources Management & Development Corporation Limited, by means of notification dated 12.2.2008.

8. As is evident from the record that Petitioners have claimed the fixation of their

salaries after release of the selection grade w.e.f.1.1.1978 in view of the instructions (Annexures P1 and P2) pertaining to the 2nd Punjab Pay Commission. On the contrary, the contention of learned Counsel and the specific stand reiterated by the contesting Respondents, that since the Petitioners have already been granted the benefit of increment of proficiency step up in the same scale in pursuance of recommendations of 3rd Pay Commission, so, they were not entitled to any relief arising from the instructions (Annexures P1 and P2) pertaining to the 2nd Pay Commission at this belated stage of their retirement, has considerable force. Moreover, the learned State counsel has stated that similar writ petitions bearing Nos. 18523, 19132 of 1991 and 1596 of 1992 have already been dismissed by this Court, by way of orders dated 11.5.1992.

9. In this manner, it is held that once the Petitioners have already availed the benefit of increments of proficiency step-up, after the commencement of the recommendation of 3rd Punjab Pay Commission, repealing the 2nd Pay Commission, in that eventuality, they are not entitled to any benefit in the wake of instructions (Annexures P1 and P2) relatable to 2nd Pay Commission in the obtaining circumstances of the case.

10. No other point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

11. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petition is dismissed as such.