
(2016) 11 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10216 of 1999

K.C. Chhabra

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 14, Article 16, Article 226

Citation : (2017) 2 SCT 521

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Sandeep Jasuja, Advocate, for the Petitioner; Ms. Shruti Jain Goyal, AAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—The State Government introduced an incentive for stagnating employees by granting them the Higher Standard Scale (for short 'HSS') vide notification dated 08.02.1994. This scheme would be later replaced by the better designed Assured Career Progression Rules, 1998 (for short 'ACP Rules'). The HSS scheme was restricted to employees in Group-C & Group-D, who had regular satisfactory service to their credit as per eligibility if the employee does not get at least one financial up-gradation within a period of 10 years and two financial up-gradations within a period of 20 years of regular satisfactory service. However, Para.4 of the notification barred HSS to an employee who forgoes promotion or seeks reversion to the lower post at his own request, then he will render himself ineligible for the benefit of HSS under the instructions.

2. At the relevant juncture of his career, the petitioner's turn for promotion matured, but he declined the offer by foregoing his rights to promotion as Senior Accounts Clerk from the feeding post of Sub Divisional Clerk. His reason for not accepting promotion was on account of prolonged illness of his son. He made a request in writing on 02.11.1993 that he was not in a position to accept the offer

as his circumstances did not allow him to do so. As time went by, his juniors inevitably came to receive more pay than the petitioner in the higher pay scale of Rs. 1400-2600/-. One such instance was Ganga Ram Gupta. Para.12 of the notification dated 08.02.1994 provided as follows:

"Since the grant of higher standard pay scale under these instructions is compensation for stagnation and is therefore based on length of service without involving higher responsibilities, this will be treated as a fortuitous circumstances and thus no benefit of step up of pay to a senior just on the basis of seniority in the hierarchy will be admissible."

3. The petitioner made a representation to the Department that his juniors at Level-I, example Ganga Ram Gupta was drawing more pay than him and, therefore, his salary should be stepped up to the level of the junior. This request was rejected vide letter dated 03.02.1995 citing Para.12 of the notification, which barred relief on account of surrender of promotional rights.

4. In the meanwhile, the Finance Department reconsidered its earlier decision and issued a clarification dated 29.12.1995, whereby Government decided to delete Para.12 of the Finance Department's letter dated 08.02.1994. It was further clarified that if pay scale of promotional post is lower than the higher standard pay scale actually given to a Government employee on his lower post, he on promotion to higher post shall be given the pay scale equal to the higher standard pay scale in which he was placed in the lower post and in such cases the pay in the promotional post shall be fixed assuming higher responsibilities attached to such post. These clarificatory instructions are the mainstay of the petitioner's claim for stepping up of his pay on par with Ganga Ram Gupta.

5. Aggrieved by the denial of stepping up of pay, the petitioner approached the Civil Court in Civil Suit No.435 of 13.06.1995 filed before the learned Additional Senior Sub Judge, Palwal. It was during the pendency of these proceedings that the clarification letter dated 29.12.1995 came to be issued deleting Para.12 of the notification dated 08.02.1994. The case of the petitioner rested on Explanations 10 and 23 of the letter, when Government decided to step up the pay scale of the senior on a par with the junior employee, who started drawing salary in the higher scale by virtue of grant of higher standard pay scale. The relevant Explanations 10 & 23 of FD read as follows:

"10. The pay/pay scale of the senior Govt. employee shall be stepped up to the level of his junior provided this benefit shall not be admissible to a senior Govt. employee vis-a-vis a junior Govt. employee who has been appointed on transfer basis. In case a senior Govt. employee has got two promotions within his line of promotion and so he becomes ineligible to Higher Standard Pay Scale but his junior who has completed 20 years of service and has got no promotion becomes eligible for 2nd High Standard Pay Scale. In case the Higher Standard Pay Scale of the lower post happens to be higher than the pay scale of the promotional post, the pay scale of the senior shall be stepped up to the level of pay scale of

his junior and his pay will be fixed assuming higher responsibilities for the pay scale so granted.

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23. There is clear provision under para 4 of the instructions dated 8.2.94 that an employee who foregoes promotion or seeks reversion to a lower post at his own request will render himself ineligible for the benefit of Higher Standard Pay Scale, but in the instant case employee on completion of 20 years of service would be eligible for the 1st Higher Standard Pay Scale."

6. While the suit was pending, the petitioner had resorted to Explanations 10 & 23 of the instructions dated 29.12.1995 by making a fresh representation seeking Higher Standard of Pay to the scale of Rs. 1400-2600/- w.e.f. 01.01.1994, as provided to his juniors. This representation was answered by the department when the petitioner received a communication from the respondents dated 17.11.1997 informing him that his representation dated 27.06.1997 can only be considered by the authorities provided he withdrew the civil suit pending at Palwal. The petitioner did what he was guided and withdrew the civil suit on 06.12.1997 in the fond hope of relief. Accordingly, the suit for declaration was dismissed as withdrawn. Obviously on the strength of communication dated 17.11.1997 asking the petitioner to withdraw the suit before his representation could be decided.

7. The respondent Authorities honoured their commitment and granted the benefit of Higher Standard pay scale to the petitioner on 19.12.1997, but restricted the benefit w.e.f. 01.05.1997. The petitioner obtained the relief, but not from the date claimed i.e. 01.01.1994 when the juniors were given the Higher Pay Scale. Feeling aggrieved by the action restricting monetary relief to run from May 1997, the petitioner made yet another representation on 24.12.1997 to the authorities seeking the benefit w.r.e.f. 01.01.1994 allowed to Ganga Ram Gupta. However, the authorities went deep down to withdraw the order dated 19.12.1997 itself leaving the petitioner back to square one. It is against this order that the petitioner has approached this Court seeking directions not only to set aside the order passed without affording opportunity of hearing to him by issuance of a writ of certiorari, but also for mandamus declaring the petitioner's rights to Higher Standard Pay Scale w.e.f. 01.01.1994. By the time this writ petition was filed in the year 1999, the petitioner states that he had no knowledge as to what the reason was or what prevailed in the mind of the authorities for withdrawing the order dated 19.12.1997 unceremoniously.

8. On the other hand, the respondents have contested the case by filing a written statement. It is not disputed that the Department made an offer to the petitioner that if he withdrew suit, his representation would be decided giving an impression to him that it will be decided in his favour evidently to avoid a judicial verdict from the civil court. The rejection of the request is based on Paras.4 & 12 of the notification dated 08.02.1994 by reason of forgoing promotion since the

benefit of Higher Standard Scale was admissible in cases where Government employee could not be promoted due to lack of avenues or chances of promotion only to put the employee on a functional scale without according formal promotion. It is their say that the petitioner does not have a case for stepping up of pay as a matter of right and, therefore, the withdrawal of the pay scale is fully justified and the impugned action it is not arbitrary, unconstitutional or illegal and to withdraw the benefit wrongly granted no hearing was required in giving effect to the notification and rules of the Government. The State avers in its written statement that the decision as conveyed to the Executive Engineer, Electrical Division, PWD B&R Branch, Gurgaon under whose control the petitioner was working was sufficient knowledge and opportunity to the petitioner. The case of Ganga Ram Gupta is differentiated on facts since he had completed 20 years of service on 01.01.1994 and was not promoted as Sub Divisional Clerk or Senior Accounts Clerk, so he was entitled to Higher Standard Pay Scale of Rs. 1400-2600/- as compensation for stagnation and no benefit of stepping up of pay is admissible to the petitioner on the ground of seniority.

9. Ultimately, the petitioner was promoted to the higher post in the pay scale of Rs. 5000-7850/- vide order dated 14.01.1999 on his request dated 09.12.1998 praying that he should be promoted. Presently, the petitioner places reliance inter alia on the case of Vidya Devi of the same Department, who also give in writing forgoing her promotion despite the fact that at that point of time, the promotion order had been issued to her before she declined acceptance. Her case was also rejected for stepping up of pay equal to that of her junior against which impugned order she approached the civil court. Vidya Devi succeeded in her litigation before the trial Court, then in first Appeal by the department and then with the dismissal of RSA No.1768 of 2004 titled 'Haryana State Govt. through Collector, Karnal & another v. Vidya Devi" decided on 04.05.2004. It was affirmed in second appeal that the Government could not take away the benefit granted to the plaintiff prior to the issuance of the policy and recoveries could not be made from the pay of Vidya Devi though she had herself foregone her promotion of her free will without any condition. The Special Leave Petition filed by the State of Haryana against the decision of this Court was dismissed on 14.07.2005 setting the matter at rest.

10. It is in reply to C.M. No. 7787 of 2010 that the Department has explained that the Higher Standard Scale was granted to the petitioner due to inadvertence and later on when the mistake was discovered the same was withdrawn on 19.08.1998 after seeking clarification from the Engineer-in- Chief, Haryana, PWD B&R, Chandigarh issued vide letter dated 31.07.1998. The case of Vidya Devi has been explained. The Department admits that her suit was decreed on the ground that she was granted 2nd Higher Standard Pay Scale w.e.f. 01.01.1994 prior to the application of the petitioner dated 06.05.1994. Vidya Devi has foregone her promotion from a subsequent date, when she had already been granted the Higher Standard Scale, but in the present case, the petitioner had already foregone his promotion vide application dated 02.11.1993 before becoming

entitled for grant of 2nd Higher Standard Scale w.e.f. 01.01.1994. In these circumstances, the petitioner is not entitled to award of benefit of 2nd Higher Standard Scale.

11. It is apparent that the rights asserted by the petitioner and those accomplished by Vidya Devi hang on a fine and artificial distinction where one was granted Higher Standard Pay Scale and then it was withdrawn only to be set aside by the Court while the other, where the right to promotion had matured near about the completion of 20 years of regular satisfactory service, but was given up not to be conferred and the request declined. But all the same, the petitioner was granted Higher Standard Pay Scale when he was asked to withdraw his suit, but from an allegedly wrong date, with the petitioner claiming payments from 01.01.1994. A benefit which was granted by the authorities on their own without any deceit practiced by the petitioner was withdrawn without notice or hearing and, therefore, the action was in violation of the principles of natural justice. Therefore, there appears to me hardly any difference between the case of the petitioner and Vidya Devi in the matter of grant of benefits of Higher Standard Pay Scale, one protected by Court orders up to the Supreme Court, while the other remaining under litigation until the present. The impugned order passed without advance notice properly served by direct communication and offering a reasonable opportunity of hearing is normally open to be invalidated and case remanded to cure the lacuna. But after admission of the matter for regular hearing I do not think that course should reasonably be adopted after 15 years to keep rights postponed indefinitely for future settlement.

12. Therefore, the only question falling for opinion is; whether the benefit, if restored, should run from 01.01.1994 or from 01.05.1997. It has not been explained in the petition by the respondents as to why the date 01.05.1997 was chosen and what is the significance of an artificial date taken out of the hat and accordingly I see no cogent reason as to why the case of the petitioner and Vidya Devi should not be treated on a par to bring comity to Article 14 of our Constitution. Vidya Devi and the petitioner stand broadly on the same ground. If the petitioner could not accept promotion due to force of circumstances on account of illness of his son, which may have pre-occupied him and his family, then some allowance is not impossible to give to clip Paras.4 & 12 of the notification dated 08.02.1994. Moreover, the impact of the clarification issued by the Finance Department deleting Para.12 must enure to the benefit of the petitioner, paving his way to relief of Higher Standard Pay Scale not w.e.f. 01.05.1997, but from the date when junior was promoted on 01.01.1994 giving a right to him of stepping up of pay on par with Ganga Ram Gupta.

13. Ms. Shruti Jain Goyal in defence of the impugned order strongly places her reliance in favour of the State citing my decision rendered in CWP No.6594 of 2007 titled `Prem Lata v. The State of Haryana & others" on 26.09.2016 arising out of the Education Department where Prem Lata did not avail promotion when her turn came. Her prayer was accepted and she continued on lower post.

Thereafter, the Department mistakenly granted the ACP benefit on completion of 10 years. On discovery of mistake, the benefit was withdrawn which led to reduction in pay. The ACP Rules had similar provision in Rule 11 like in Paras.4 & 12 of the notification dated 08.02.1994 under consideration maintaining that in case government servant chooses to forego any functional promotion "on any ground whatsoever", while drawing his pay in any ACP scale with reference to him, he shall cease to be entitled to draw his pay in the ACP pay scales and shall draw his pay in the functional pay scale prescribed for the post on which he is substantially working from the date of such forgo of promotion. She relies on the following observations in Prem Lata's case:

"Mr. Sharma argues that words `ceasing' of entitlement of ACP scales are significant and this does not mean that promotion will neither be offered nor accepted at a later point in time when the petitioner was willing. `Ceasing' means stopping i.e. for the time being, but it does not mean that right to promotion stands extinguished. That may be true, but the question is; by own act and conduct, the petitioner surrendered her right for promotion by seeking permission in 1999, which when granted entitled her to ACP scales. On promotion being granted in 2003, the right to ACP scales cannot be claimed as a matter of right and, therefore, there was nothing wrong in the action of the Department in withdrawing the ACP benefits, which are in lieu of promotion."

14. Ms. Goyal while arguing Prem Lata's case had placed reliance on the following observations made in Rakesh Kumar v. State of Haryana & others, 2010 (1) SCT 443:

"13. xx xx xx

A plain and bare reading of Rule 11 of ACP Rules, 1998 reveals that a Government servant who has been placed in the ACP scale, if chooses to forego his promotion on any ground whatsoever while drawing the ACP scale shall cease to be entitled to draw his pay in the ACP pay scale from the date of his refusal of promotion. It is thus clear that continuance of the grant of pay in the ACP scale is based on the condition that the Government employee shall not forego his promotion for whatever reason. The rationale is based on logic besides being just and fair as placing in the ACP scale is itself made on account of stagnation/non-availability of promotional avenues and in the event, though subsequently, the Government servant willingly refuses to accept the offer of promotion for whatever reason then it can safely be presumed that the Govt. Servant considers there is no stagnation in his Government service, which needs/deserves to be compensated by ACP/promotional scale. Therefore, in our opinion, the State Government would be well within its right to withdraw placement of such an employee in ACP scale as the same was subject to certain condition which is germane to the grant of the same. Consequently, the provision of Rule 11 cannot be by any stretch of reasoning be held to be arbitrary. A reading of the clarification Annexure P/2 further reveals that for implementing the provision of Rule 11 of the ACP Rules, the method and manner of refixing the pay scale of the

Government servant covered under Rule 11 has been provided. No serious challenge has been laid to the clarification Annexure P/2. Therefore, no infirmity can also be found with Annexure P/2. We further find that the refixation of the pay of the petitioner vide Annexure P/6 in terms of Rule 11 cannot also be faulted. Therefore, challenge to Annexure P/6 also fails."

On this conspectus of case law, reliance on Single Bench decision in CWP No.8143 of 2009 titled `Kamlesh Kumari v. State of Haryana & others" had to be brought in tune with the judgment of the Division Bench in Rakesh Kumar"s case. The learned Single Judge in Kamlesh Kumari had relied upon an earlier decision of Coordinate Bench in CWP No.5283 of 2005 decided on 16.12.2005 while setting aside the order re-fixing and reducing pay of Kamlesh Kumari in similar circumstances as happened in Vidya Devi case and that of the present petitioner. I do not find the words "on any ground whatsoever" employed in Rule 11 of the ACP Rules in the notification relating to Higher Standard Pay Scale dated 08.02.1994. Therefore, to my mind grounds of forgoing promotions can be considered relevant, if not irrelevant, in a case of Higher Standard Pay Scale. This would be a more humanistic view of the beneficial molar of Higher Standard Pay Scales in a case of government employee faced with a predicament he is unable to overcome which his family circumstances may foreclose [including say, transfer and posting far away which a promotion may entail etc.] and some allowance can always be read in, to do substantial justice where indisputably a junior come to receive higher pay than a senior. This will remove heart burn and maintain a collegial atmosphere in office. Exceptional circumstances are always open to be consulted by the writ court exercising equity power without seriously damaging the face of the rule. And if equity has to be placed in the scales of Article 14, then parity of treatment is the better course to adopt. I would, therefore, find my order in Prem Lata"s case distinguishable on facts and would not apply it to this case as Ms. Goyal strongly suggests to the contrary. However, while dismissing Prem Lata"s petition, the mistaken overpayments were held irrecoverable.

15. As a result of the above discussion and having regard to the tacit assurance given by the respondent department to the petitioner vide letter dated 17.11.1997 that his case would be considered provided he withdrew the civil suit coupled with the fact that the petitioner did what he was bid and withdrew his suit on 06.12.1997 and this fact when juxtaposed with the fact that relief was in fact granted vide office order dated 19.12.1997, albeit w.e.f. 01.05.1997, the petition must succeed and the benefit of Higher Standard Pay Scale drawn from 01.01.1994 and not from the artificial and arbitrary date i.e. 01.05.1997, which date has no rational connection with the object sought to be achieved. Accordingly, the impugned order dated 19.08.1998 (Annex P-13) is held illegal and arbitrary and is, therefore, set aside with all consequential benefits.

16. The petition is accepted.