

(2013) 02 P&H CK 0220
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. 163 of 2013

Krishan Kumar Sharma and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) LabIC 1819

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : S.S. Chauhan, for the Appellant;

Judgement

Rakesh Kumar Jain, J.—The appellants had joined the Department of Education, Punjab, before 16.7.1975 and have retired after attaining the age of superannuation. In the year 1966, the Government of India, with a view to revise the pay scales of teaching personnel in Government Schools, constituted a commission known as "Kothari Commission", which recommended for revision of the pay scales of the teachers after a period of 5 years. On the basis of said recommendations, the pay scales of Classical and Vernacular Teachers were revised after five years w.e.f. 1.11.1971 but no revision was effected insofar as the Masters/Teachers are concerned. The pay scales of the appellants i.e. Masters/Mistress were, however, revised w.e.f. 16-7-1975. The grievance of the appellants was that they have been deprived of the pay revision as recommended by the Kothari Commission w.e.f. 1.11.1971 and in the matter of fixation of pay in the revised scale of pay in the case of Classical and Vernacular teachers, the pay of a teacher, whose salary or pay was intermediate between two stages in the new time scale, his initial pay was fixed in the next stage in the new time scale, whereas in the case of the appellants, who were Masters/Teachers, it was fixed at the lower stage in the new time scale.

2. The appellants preferred CWP No. 20703 of 2012 in which direction was issued to the respondents to decide the representation dated 5.7.2009 in terms of the orders passed by this Court in the case of Lakh Raj Khara & others v. State of

Punjab & others, CWP No. 2208 of 1989, decided on 24.3.2009. The relevant paragraph of that order reads thus:--

It is further clarified that in the eventuality of the petitioners being found entitled to the benefits at par with the petitioners in Lekh Raj Khera's case (supra), it shall be open for the respondent-authorities to deny to the petitioners the actual arrears. However, the pay of the petitioners would be open to be fixed on a notional basis and thereafter, they shall be granted the revised pensionary benefits on such fixation of pay on a notional basis.

3. As the appellants were not satisfied with the aforesaid order, they filed CM. No. 17559 of 2012 in which it was alleged that in the order passed in Lekh Raj Khera's case (supra), no restriction is envisaged on the payment of arrears accruing after fixation of pay as per directions contained in the said judgment. It was also alleged that similar writ petitions on the same cause of action have been disposed of in terms of the judgment passed by this Court in Lekh Raj Khera's case (supra) and the arrears have been allowed ranging from 36 to 38 months preceding from the date of filing of the writ petitions. In this regard, reliance was placed on the case of Manjit Singh and others v. State of Punjab and another, CWP No. 13310 of 2011 decided on 27.7.2011 in which arrears for three years preceding the date of filing of writ petition were allowed, and on the case of Raj Kumar and others v. State of Punjab and another, CWP No. 17928 of 2012 decided on 17.9.2012 in which the arrears of 38 months preceding the date of filing of the writ petition were allowed. It was, thus, prayed that the order passed in CWP No. 20703 of 2012 be modified and the appellants be allowed arrears ranging from 36 to 38 months preceding the date of filing of the writ petition.

4. This application has been dismissed by the learned single Judge vide the impugned order dated 14.12.2012 observing that there is no ground for modification.

5. We have heard learned counsel for the appellants and have perused the record from which we have found that in Lekh Raj Khera's case (supra), following order was passed by this Court:--

In view of the above legal and factual position, this petition succeeds partially. Respondents are directed to extend the benefit of the Pay revision in case of petitioners w.e.f. 1.11.1971 instead of 16.7.1975. They are further directed to fix the pay scale of the such of the petitioners whose unrevised pay falls between two stages in the new time scale in the revised scale in the next stage. The process of fixation of pay be completed within a period of four months from the date certified copy of this order is served upon the competent authority. The consequential benefit be released in favour of the petitioners within a period of two months thereafter.

6. But in Manjit Singh and others" case (supra), the following order was passed:--

This petition has been filed seeking the benefit of pay revision w.e.f. 1.11.1971

when they completed five years of service. It is not in dispute that the controversy has been settled by this Court in CWP No. 2208 of 1989 titled as Lekh Raj Khera and others v. State of Punjab passed by this Court on 24.3.2009 wherein this Court has allowed the pay revision with effect from 1.11.1971.

The writ petition is allowed in view of the orders passed in Lekh Raj Khera's case (supra). However, the claim for arrears is restricted to three years preceding the filing of the writ petition.

7. In Raj Kumar and others" case (supra), the following orders were passed by this Court:-- The petitioners have preferred the present writ petition seeking benefit of fixation of pay revision w.e.f. 1.11.1971 instead of 16.7.1975. Admittedly, all the petitioners stand retired.

Learned counsel appearing for the petitioners contends that the claim as raised in the present petition is covered in terms of the judgment dated 24.3.2009 passed by this Court in CWP No. 2208 of 1989 titled as Lekh Raj Khera & others v. State of Punjab & others (Annexure-P-5). Counsel further submits that even a representation dated 5.7.2009 (Annexure-P-6) stands submitted to the respondent/authorities and is pending consideration.

Without making any observation as regards the merit of the claim raised in the present petition, I deem it appropriate to dispose of the present petition with directions to the respondent/authorities to decide the representation dated 5.7.2009 (Annexure-P-6) strictly in accordance with law in terms of passing a speaking order within a period of four months from the date of receipt of certified copy of this order. It is clarified that in the eventuality of the petitioners being found entitled as regards the benefit of pay revision w.e.f. 1.11.1979, it shall be open for the respondent/authorities to consider the feasibility of notional pay fixation and restrictions of actual arrears to a period of 38 months from the date of filing of the present writ petition.

Petition disposed of accordingly.

In view of the aforesaid facts and circumstances, the prayer made by the appellants in their application, which has been declined by the learned single Judge, appears to be justified and as such, the present appeal is accordingly allowed and the appellants are held entitled to the actual arrears for a period of 38 months preceding the date of filing of the writ petition.