
(2015) 04 P&H CK 0234
In the Punjab And Haryana At Chandigarh
Case No : CWP-16188 of 2012

Mohinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 LLN 527 : (2015) 3 SCT 208

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Saurabh Mohunta, Amicus Curiae, for the Appellant; Mehardeep Singh, DAG, Advocates for the Respondent

Judgement

Jitendra Chauhan, J.

1. Petitioner Mohinder Singh has filed the present writ petition under Articles 226 of the Constitution of India praying for benefit of revision of pay scale as Rs.1120/- Plus Rs.50/- as Special pay per month from 1.1.1978 to 15.7.1981. Further, he prays for onward annual increments upto 15.7.1981 i.e. the day the petitioner remained and served as ATO and also re-fixation of his pay by the Punjab Hospitality Department from where the petitioner superannuated. Interest on delayed payment as well as cost of litigation is also prayed for.

2. The facts leading to the present case are that the petitioner joined as Clerk in the Irrigation Department, Punjab on 28.5.1957. He became Assistant in the Irrigation Department, Punjab on 18.9.1961. After coming in the merit list in the open competition of the Punjab Public Service Commission (in short the PPSC) examination the petitioner joined as Assistant Treasury Officer on 24.11.1972 in the pay scale of 750/-, 1300/- and worked uptill 15.7.1981. Petitioner retired on 30.6.1983 from the Hospitality Department, Punjab as Joint Director.

3. The Punjab Government had appointed an Anomaly Committee which was to submit a report to the Government with regard to pay scale pertaining to Senior

Auditors. On 1.8.1983 the Government of Punjab, on the report of Anomaly Committee revised the pay scale of Senior Auditors by re-designating them as Section Officer and placed them in the pay scale of Rs.800-1400/- w.e.f. 1.1.1978. This benefit which was granted by the Government of Punjab to the Senior Auditors was of serious concern for the Assistant Treasury Officers who moved the High Court in CWP No. 4818 of 1987 titled as S.P. Mehta and others V/s State of Punjab and others. These were 23 Assistant Treasury Officers who had challenged the pay scale of Rs.800-1400 granted to the Senior Auditors on the ground that they are at par with them according to the similar nature of duties and that the audit report submitted by the Senior Auditors were examined by them and that the Senior Auditors were working under the Assistant Treasury Officers. Thus, according to Assistant Treasury Officers there was no justification in granting higher pay scale to the Senior Auditors.

4. This writ petition was allowed vide order dated 23.9.2008 with the direction that the petitioners shall be entitled to be placed in the same pay scale of Rs.800-1400/- with Special Pay of Rs.50/- per month w.e.f. 1.1.1978 till the revision of the pay scale by the Third Pay Commission.

5. The benefit which was allowed to 23 Assistant Treasury Officers vide decision rendered in CWP No. 4818 of 1987 was not extended to the present petitioner Mohinder Singh. Accordingly, the petitioners represented to the Principal Secretary, Finance to Government of Punjab on 28.5.2012 for grant of the same benefit him being similarly placed person, but there was no response from the Government. The petitioner again sent a reminder dated 3.7.2012 to which there was also no response. Finally, the petitioner served a legal notice dated 18.7.2012 to the same authority which again was of no consequence.

6. The petitioner finally moved this High Court for redressal of his grievance that since the writ filed by the 23 Assistant Treasury Officers was allowed, therefore, the same benefit should also be granted to him as he served the Assistant Treasury Officer from 24.11.1972 till 15.7.1981. He also placed reliance on instructions dated 7.7.2002 of the Government of Punjab, Government of Personnel (Personnel Policies Branch-II) which were based upon the directions made in CWP No. 4382 of 2002 titled as Satbir Singh V/s State of Haryana, wherein it was held that whenever, the rights of the parties are settled in a case and the same attains finality then the State should follow the same in the true spirit and command.

7. After the present writ was set in motion, an affidavit dated 7.12.2012, was filed by Sh. R.K. Behal, Additional Director (T&A) wherein as per Annexure R/1 the petitioner Mohinder Singh, was also extended the same benefit which was extended to the petitioners in writ petition No. 4818 of 1987. The petitioner was allowed the pay scale of Rs.800-1400/- with Special Pay of Rs.50/- per month w.e.f. 1.1.1978 to 15.7.1981 as his case is squarely covered as per record of the judgment rendered in CWP No. 4818 of 1987. The petitioner has taken a serious objection to this grant of pay scale there is an extra insertion of the word "initial

scale" which was never there in the decision rendered in CWP No. 4818 of 1987.

8. This is the moot point involved in the present case. According to the Amicus Curiae the petitioner at that point of time was already drawing basic pay of Rs.1080/- per month which is reflected in this service book and is also admitted in another affidavit dated 25.11.2014 filed by Sh. Jaspal Singh, IAS, Secretary, Expenditure, Government of Punjab, under the Head of Unrevised Scale in the Pay Chart/Table. As per the submissions of the learned Amicus Curiae the import of the word "initial scale" is that the petitioner who was already drawing basic pay of Rs.1080/- would jump down to Rs.800/-1400 Plus Rs.50/- Special Pay, per month. This is more of a punishment than increment as it denies the petitioner is more of a punishment than increment as it denies the petitioner the benefit of one stage above increment in view of rule 4.6 of the Punjab Civil Services Rules, Vol.1 Part-1 appended as Annexure R/1 with the affidavit dated 23.12.2014 relevant extract of which is reproduced are as under:-

"2. With a view to avoiding such financial loss to the employee the Government has, in modification of the rules, now decided that in all cases of revision of pay-scales and the grant of Selection Grades, whether or not the pay in the old scale corresponds to a stage in the revised grade, pay should be fixed at the appropriate stage in the revised grade which is next above the stage which the employee was drawing pay in the old grade and that the next increment shall be allowed after putting in one year's service at the particular stage in the revised pay scale or the selection grade."

9. He finally conclude the arguments by submitting that the petitioner who was already drawing basic pay of Rs.1080/- should be placed in the next above stage of pay i.e. Rs.1120/- as per rule 4.6 of the Punjab Civil Services Rules Vol.1 Part-1. He, thus, prays that the petitioner's pay scale be revised accordingly and he may be appropriately compensated with 12% interest/litigation expenses, since he is pursuing re-fixation of pay over since he retired.

10. On the other hand the Ld. State counsel points out that at the relevant time i.e. 9.2.1978 the petitioner was drawing basic pay of Rs.1008/- and not Rs.1080/- and in view of Rule 4.6 of the Punjab Civil Service Rules Vol.1 Part-1 the next higher grade would be of Rs.1080/- and not Rs.1120+50/- Special Pay.

11. During the course of argument the Service Book of the petitioner was perused. At page No. 10 of the same, it is noticed that on 9.2.1978, the petitioner had been placed in the pay scale of Rs.1080/-. Keeping in view the position clarified in Annexure R-1 dated 30.6.1977, the petitioner deserved to be placed in the pay scale of Rs.1120/- being the next scale.

12. Accordingly respondents are directed to treat the petitioner in the pay scale of Rs.1120+ Rs.50 as special pay as on 9.2.1978 instead of Rs.1080. Further his pay would also be appropriately re-fixed by the Punjab Hospitality Department from where the petitioner retired. He would also be entitled to payment of interest@8% per annum from 9.2.1978 on account of delayed

payment. Respondents are directed to pay the difference of pay and other consequential monetary benefits within a period of 4 months from the receipt of certified copy of this judgment.