
(2014) 02 P&H CK 0198

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 735 of 2000 (O&M)

Mohinder Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Citation : (2014) 3 SCT 326

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : S.K. Sharma, Advocate for the Appellant; Gurpreet Singh, Central Govt. Standing Counsel, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The limited grievance made by learned counsel for the petitioners before us is that prior to the appointment of the petitioners as Divisional Accountant in the Central Government service, on their having passed Indian Recruitment Examination (IRE) in the year 1973, they were working as Accounts Clerks in the State of Punjab and persons junior to them in the State of Punjab, who had also similarly passed the examination and had been appointed in the Central Government Service are getting higher pay than them. The petitioners, in fact, seek correction of their pay anomaly. Learned counsel for the respondents submits that the pay scales of the Divisional Accountants were revised under the Central Civil Services Revised Pay Rules, 1973, w.e.f. 01.01.1973 and the DA was merged with the basic pay. However, the benefit of pay revision was extended to employees who were in service on 01.01.1973, while the petitioners joined on 01.11.1973 and were not given the benefit. It is, however, contended that Mohan Lal and others came to the Central Government Service after 01.01.1978, by which time the State Government also had merged the DA with the basic pay at Consumer Price Index (CPI) 320 while in the Central Government CPI of 200 was given. It is submitted that this has given rise to the grievance of the petitioners and the pay anomaly.

2. In our view, learned counsel for the petitioners, rightly relies upon the judgment of Hon"ble the Supreme Court in the case of "Commissioner and Secretary to Govt. of Haryana and others v. Ram Sarup Ganda and others, 2007 (2) S.C.T. 476 : 2007 (1) Law Herald (P & H) 642 (SC) : 2006 (12) Scale 440, to advance the proposition that where higher pay scale to a junior than his senior in the cadre gives rise to an anomaly, in the absence of specific prohibition, such anomaly can be rectified by giving step up to the senior also to bring the senior at par with his junior.

3. In the facts of the present case, undisputedly, persons who were junior to the petitioners in the State of Punjab and continued to be junior to them in the Centre get a higher pay because of this anomaly and thus the principle of step up should be applied in the case of petitioners in view of the parity to the petitioners.

4. A perusal of the impugned order, however, shows that an earlier O.A. No. 5/PB/90 filed by the petitioners was dismissed on 29.11.1991 holding that their appointments as Divisional Accountants was strictly within the terms & conditions as mentioned in their appointment letters and so was the re-fixation of the pay. However, the petitioners pleaded fresh cause of action arising out of the rejection of their representation claiming fixation of pay made afresh. The Central Administrative Tribunal upheld the plea of limitation raised by the respondents and also found the claim barred under the principle of res judicata and declined the plea of a fresh cause of action arising from a fresh order of re-fixation of pay giving them some benefits.

5. We are in agreement with the submission of learned counsel for the petitioners that in matters of pay fixation there is a recurring cause of action arising every month and thus the writ petition claiming this relief cannot be dismissed on the ground of delay and laches. Such a case is distinct from a case of one time action of dismissal or termination as the pay fixation of an employee does not alter the settled things nor it affects the rights of any third party. The Court can in such a case restrict the arrears upto 38 months from the filing of objection petition and disallow the arrears for which a suit has become time barred. This principle is clearly enunciated in the Full Bench judgment of this Court in Saroj Kumari v. State of Punjab 1998 (3) P.L.R. 123. It is in view thereof we have examined the limited controversy on-merits which is really a case based upon on the principle of step up of pay.

6. We, thus, allow the present petition and set aside the impugned order of the Central Administrative Tribunal, but while granting the monetary relief as a consequence thereof, in view of the delay in filing the O.A. before the CAT, confine the arrears to a period of three years prior to the filing of the O.A. and thereafter.

7. The petition is accordingly allowed leaving the parties to bear their own costs. The arrears be paid within a period of two months from today.