
(2013) 04 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4578 of 1994

O.P. Garg

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) LabIC 3607 : (2013) 2 PLR 825 : (2013) 4 SCT 569

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

Bench : Division Bench

Advocate : Parveen Kumar, for the Appellant; H.S. Sidhu, Addl. A.G. Punjab and Rajesh Garg, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The petitioner has prayed for a writ in the nature of mandamus for issuance of direction to the respondents to bring necessary amendment in Rule 9 of Part D of the Punjab Civil Service (Judicial Branch) Rules, 1951 (for short "1951 Rules") and to grant first annual increment to him w.e.f. 2.6.1973, refix his pay and pay arrears after re-fixation of his pay w.e.f. 2.6.1973 by quashing the order dated 21.12.1993. This writ petition was filed by Judicial Officer while in service. He joined the Civil Service (Judicial Branch) as Sub Judge-cum-Judicial Magistrate w.e.f. 2.6.1972. He passed his departmental examination on 1.2.1975 and was granted his first annual increment w.e.f. 1.2.1975. The agitation was that from the very inception, the Punjab Civil Service (Judicial Branch) (for short "PCS (JB)") has been treated at par with Punjab Civil Service (Executive Branch) (for short "PCS (EB)") as admitted by the State Government in reply filed in CWP No. 1047 of 1975 decided on 5-11-1975. The pay-scales applicable to both PCS (JB) & PCS (EB) were stated to be para material but there was a difference in the matter of grant of first annual increment because the officers of PCS (EB) are governed by Rule 24 (as amended in 1979) of the PCS (EB) Class-I Rules, 1976 (for short "1976 Rules") whereas the officers of PCS (JB) are governed by Rule 9 of Part D of the 1951

Rules. Rule 24(1)(a) of the 1976 Rules and Rule 9 of the 1951 Rules are hereby extracted for ready reference:--

24(1)(a): Members of the service shall be entitled to the pay-scale of Rs. 2200-50-2,400-60-2700-75-3, 000-100-4,000.

Provided that no member of the Service shall be entitled to draw his second and the subsequent annual increments unless he passes the departmental examinations by the higher standard, whereafter he shall be entitled to the grant of the withheld increments with effect from the due dates but the increments so granted shall be released to him from the date following the last date of the departmental examinations in which he completes the qualification, and no arrears for the period preceding the aforesaid date shall be paid to him.

Rule 9: On appointment every subordinate Judge shall get the minimum pay of the time-scale of the Punjab Civil Service (Judicial Branch), viz. 300-30-510-30-600/40-720/40-800-50-850 and be allowed to draw the first increment on the completion of the Departmental Examination prescribed in Part E of these Rules or after one year's service, whichever is later. The future increment will normally be admissible on the anniversary of the date on which the first increment is drawn.

2. The petitioner had also represented the High Court in this regard and the High Court had recommended to the Government to amend Rule 9 of Part D of the 1951 Rules on the lines of amendment made in Rule 24 of the 1976 Rules. Since no decision was taken by the Government in this regard, the petitioner filed CWP No. 4301 of 1993 which was disposed of on 29.7.1993 with a direction to the respondents to decide the representation made by petitioner by passing a speaking order. It was then vide order dated 21.12.1993, the representation was rejected which is challenged by way of the present writ petition.

3. In reply filed by the High Court, it has been admitted that recommendation has been made by the High Court to the State vide its letter dated 21.1.1981 to carry out necessary amendment in the 1951 Rules so as to conform to the parameters of the 1976 Rules.

4. In reply filed by the State Government, the equality of pay-scale of both the services was admitted but it was submitted that grant of increment is different aspect and is governed by separate Rules for both the Branches. It was also alleged that the departmental examination under the 1951 Rules and 1976 Rules are with different syllabus, therefore, provisions of the 1976 Rules cannot be made applicable to the members of service of PCS (JB). It was also alleged that Rule 9 of the 1951 Rules cannot be amended with retrospective effect i.e. 2.6.1973.

5. During the pendency of the writ petition, an additional affidavit was filed by the State Government in which it was alleged that matter regarding amendment of Rule 9 part D of the 1951 Rules was reconsidered but the State is unable to

amend it for the following reasons:

(1) That upto some years back there used to be parity between the two Branches of PCS in the matters of scales and service conditions. Upto 1965 there was only one Branch known as Punjab Civil Service when it was split into two branches - Executive Branch and Judicial Branch.

(2) That in 1993 there was a judgment of Supreme Court in Review Petition No. 249 of 1992 -All India Judges" Association and others v. Union of India and others in which it was stated that there is no comparison between judicial and Executive wings of the State. The relevant paragraph of the judgment is mentioned below

The parity is between the political executive, the legislatures and the judges and not between the judges and the administrative executive.

(3) That some time back the scales of the judicial officers were revised on the intervention of the Hon"ble Supreme Court. The revised scales of PCS (Judicial Branch) are higher not only than the PCS (Executive Branch), but also than those of the IAS officers. Thus, the principle of parity between PCS (Judicial Branch) and PCS (Executive Branch) is no more available.

(4) That the recommendations dated 21.1.1981 of the Full Court of the Hon"ble High Court regarding amendment have been considered by the Government from all aspects.

(5) That the quality of work which is required from a judicial officer is higher than that required from an executive officer. A judicial officer must pass the departmental examination and is entitled to the increment from the date when the examination has been passed and not from the back date.

6. We have heard, learned counsel for the parties and have perused the record.

7. The short question involved in this petition is that whether the petitioner is entitled to first annual increment from the due date after passing the departmental examination or from the date the departmental examination is cleared.

8. Undisputedly, the pay-scales of PCS (JB) and PCS (EB) are similar but there is a difference in Rules with regard to the grant of annual increment as the officers of PCS (EB) are governed by Rule 24 of the 1976 Rules whereas PCS(JB) are governed by Rule 9 of the 1951 Rules. Rule 24(1)(a) of the 1976 Rules pertaining to PCS (EB) provides for grant of annual increment from the due date after passing of departmental examination but Rule 9 of the 1951 Rules pertaining to PCS (JB) stipulates that the first increment shall be drawn on completion of the departmental examination and not from the due date.

9. Apparently, Rule 9 of the 1951 Rules is discriminatory in nature as counter parts of the petitioner working in the Executive Branch would get increment from due date after passing the examination whereas the petitioner serving in the

Judicial Branch would not get the same treatment and would get the increment from the date of passing the departmental examination. The reason assigned by the respondent-State to deny similar treatment is hardly of any consequence.

10. In the present case, the petitioner passed the departmental examination on 1.2.1975 but he was held entitled to increment from 2.6.1973. In view of the aforesaid reasons, we are of the considered opinion that this writ petition deserves success and is thus, hereby allowed. The petitioner is held entitled to grant of first annual increment w.e.f. 2.6.1973 and it is directed that his pay be re-fixed and he be paid arrears on account of revision of pay w.e.f. the said date.