
(2013) 08 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7408 of 1999

O.P. Garg

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2013) 4 SCT 837

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Baldev Raj Mahajan and Mr. Avinash Jain, for the Appellant; Pavit Mattewal, A.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The petitioner joined Punjab Civil Service (Judicial Branch) in the year 1972. The petitioner was promoted as Additional District & Sessions Judge w.e.f. 30.07.1993. The grievance of the petitioner is that the amendment vide notification dated 15.05.1990 in the Punjab Civil Service (Revised Pay) Rules, 1988 (for short "the Rules") was not notified to him and, thus, he could not exercise his option within a period of one month from the date of promotion. The petitioner submitted his option on 15.10.1993, as he was not aware that such an option is to be exercised within a period of one month from the date of promotion in terms of clause (b) of Rule 8, as inserted on 15.05.1990. The relevant extract from the notification dated 15.05.1990 reads as under: 2. They shall be deemed to have come into force in and with effect from the 14th day of September, 1988.

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(2) In the Punjab Civil Services (Revised Pay) Rules, 1988, in rule 8, after the existing proviso, the following shall be inserted namely:--

Provided further that a Govt. employee may give option for fixation of his pay on promotion to the effect that:

(a) His initial pay may be fixed by giving the benefit of the increments in the scale of pay of the higher post as provided under this rule and subject to the provisions contained in the first proviso without any further review on accrual of increment in the scale of pay of the lower post, or

(b) His pay may be fixed initially by giving him one increment in the scale of pay of the higher post, which may be refixed subsequently by giving the benefit of two increments in the scale of pay of the higher post as provided under these rules on the date of the accrual of next increment in the scale of pay of the lower post subject to the provisions contained in the first proviso.

In case, the pay is fixed under clause (b) above, the next increment to the Govt. employee shall be granted on the completion of twelve months, qualifying service from the date the pay is refixed on the second occasion. The option may be exercised by the Govt. employee to the head of the office within a period of one month from the date of his promotion.

In the case of Govt. employees, who stand promoted during the period commencing from the 14th day of September, 1988 to the date of publication of the Punjab Civil Services (Revised Pay) (Third Amendment) Rules, 1990 in the official Gazette the option may be exercised by them within a period of one month from the date of such publication. The option is aforesaid once exercised shall be final.

2. In the written statement, it is asserted that option for refixation of pay is required to be given within a period of one month from the date of promotion. Since the petitioner has exercised option much after the expiry of last date i.e. 29.08.1993, therefore, the claim of the petitioner for re-fixation of pay is not justified. It is also pointed out that amendment in Rule 8 was brought to the notice of all the District & Sessions Judge vide letter dated 15.05.1990, therefore, the assertion of the petitioner that amendment was not got noted from the petitioner is not sustainable.

3. Learned counsel for the petitioner relies upon an order passed by the Division Bench of this Court in Ram Dia & others Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & another 2005 (8) SLR 765, wherein in respect of option to avail pension scheme, it was observed that there is no material that the circular was actually got noted in writing from the petitioners. It was, thus, inferred that the petitioner had no knowledge about the option was called by the respondents vide the aforesaid circular. SLP (Civil) No. 2323 of 2006 titled "Uttar Haryana Bijli Vitran Nigam Ltd. & another Vs. Ram Dia & others" against the said order was dismissed in view of the judgment of the Supreme Court in Dakshin Haryana Bijli Vitran Nigam and Others Vs. Bachan Singh, wherein it was held to the following effect:

26. In view of the law as has been articulated in a large number of cases, where this Court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be

totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 06.08.1993 and 09.08.1994 were actually got noted in writing by the respondent. In the absence of any such material, it can well be inferred that the respondent had no knowledge about the options called by the appellants.

4. In the present case, the amendment in the Rules was carried out on 15.05.1990. It is the circular issued on the said date itself, which is said to have been sent to all the District & Sessions Judges. The petitioner was promoted three years later, on 30.07.1993. There was no occasion for him even to consider the exercise of option for refixation of salary in the year 1990, when the alleged circular was issued. There is no assertion that there was any communication to the petitioner to exercise option soon after his promotion on 30.07.1993. In view of the above, we find that in the absence of condition to opt not known to the petitioner, he cannot be denied the benefit of pay fixation in terms of the condition of the notification amending Rules. Thus, the present writ petition is allowed. The respondents are directed to fix pay in terms of the option submitted considering the same to be within time and pay the arrears of salary within three months. In the event of non-payment of arrears of salary within three months of the receipt of the certified copy of this order, the respondents shall pay interest @ 9% p.a. from the day the arrears are payable till the date of payment. The respondents shall also recalculate and pay arrears of pension within six months from the date of receipt of copy of the order.