(1975) 10 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1235 of 1972

Satpal Singh and others APPELLANT

Vs

The Union of India and others RESPONDENT

Date of Decision : 15-10-1975

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1977) 1 ILR (P&H) 19 : (1975) 77 PLR 781

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Advocate : J.L. Gupta, for the Appellant; I.S. Tiwana, Deputy Advocate-General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

S.P. Goyal, J.—The facts in this petition filed under Article 226 of the Constitution of India are not in dispute. The petitioners are in employment of this High Court as Readers/ Private Secretaries Prior to February 1, 1963, their pay scale was Rs. 250 2-450 and on January 31,1968, they were getting Rs. 380/- per month as ray (basic pay Rs. 310/- and dearness pay Rs. 70/) whereas Shri Gurbachan Singh. Reader, and. Shrj, Naresh Chander, Private Secretary, who were also in the same time-scale were getting Rs. 350/- as pay (basic pay Rs. 290/- and dearness pay Rs. 60/- on the said date. The pay-scale of the Readers and the Private Secretaries was revised with effect from February 1, 1968 from, Rs. 250-25-450 to Rs. 450-25-500/30 650/to-800 vide Government of India, Ministry of Home Affairs letter No. 25 54-69-DH S), dated April 23, 1970. The pay of the petitioners and Sarvshri Gurbachan Singh and Naresh Cnander in the revised scale was fixed at the minimum of the side, that is Rs. 450/-, under proviso (d) to sub-rule (2) of rule 6 of the Punjab Civil Services (Revised Scale of pay) Rules, 1969 (hereinafter called the Rules). The petitioners, however, claimed that they were entitled to an increment with effect from February 2, 1968, under proviso (ii) to rule 7 of the said Rules. The claim of the petitioners was rejected by the respondents on the ground that where proviso () to rule 7 of the Rules was applicable, the benefit of proviso (ii) to rule 7 of the Rules was not admissible. Feeling aggrieved against the said decision of the Government, they have filed this petition claiming a direction to the respondents to grant the benefit of the next increment in accordance with proviso (ii) to rule 7 of the Rules with effect from February 2, 1968 to pay the arrears accruing therefrom. Written statement has been filed by Shri G.S. Sodhi, Accounts Officer, Accountant General''s Office, Chandigarh, (respondent 3), controverting the claim of the petitioners.

2. The sole dispute between the petitioners and the Government is as to whether the petitioners are entitled to the next increment with effect from February 2, 1968, under proviso (ii) to rule 7 of the Rules or from the date it was due in the revised scale under proviso (it to rule 7 of the Rules. Rule 7 and its two provisos, on the interpretation of which the decision of this petition depends, reads as under :--

7. Date of increment in the revised scale :

The next increment of a Government servant whose pay has been fixed in accordance with rule 6 above shall be granted on the date he would have drawn his increment, had he continued in the existing scale :--

PROVIDED THAT

(i) where the revised pay is fixed at the minimum of the time-scale and on such fixation, the revised pay exceeds the present emoluments by more than the appropriate ceiling limit in terms of rule 6(2) above, the next increment shall be granted on the date it falls due in the revised scale :

(ii) the next increment shall be granted on February 2, 1968, to a Government servant, whose pay fixed on the appointed day in the revised scale is at the same stage as the one fixed for another Government servant drawing pay at a lower stage than him in the same existing scale.

3. Mr. J.L. Gupta, the Learned Counsel for the petitioners, contends that the operation of proviso (ii) to rule 7 of the Rules is not subject to proviso (i) to rule 7 of the Rules and the second proviso is in the nature of a further proviso meant for dealing (sic) a situation wholly different and independent of the one envisaged in the first proviso. According to the Learned Counsel, if the interpretation put by the Finance Department on the said two provisos is accepted it would necessarily lead to violation of the provisions of Article 16 of the Constitution of India, inasmuch as Sarvshri Gurbachan Singh and Naresh Chander, who were in the same time-scale as the petitioners and were getting lesser pay than the petitioners, would be put at par with them and draw the same salary in the revised scale as that of the petitioners. Mr. I. S. Tiwana, the learned Deputy Advocate General representing the respondents, has, on the other hand, contended that under rule 1.8 of the Punjab Civil Services, Volume I,

Part 1, the power of interpreting, changing and relaxing the rules vests in the Finance Department. The Commissioner for Finance and Secretary to Government, Punjab, Finance Department, in his letter No. 730-FR/ PRC-69/4214, dated February 21, 1969, clarified that proviso (ii) to rule 7 of the Rules does not apply where proviso (i) to rule 7 of the Rules was applicable. It is further argued that the pay fixed of the petitioners and others in the revised scale exceeded the present emoluments by more than the ceiling limit laid down in sub-rule (2) of rule 6 of the Rules. The Learned Counsel, therefore, contends that proviso (i) to rule 7 of the Rules is fully applicable to the case of the petitioners and the next increment to them will be admissible only in accordance with proviso (i) to rule 7 of the Rules, that is on the date it falls due in the revised scale.

4. I have given my thoughtful consideration to the respective contentions of the Learned Counsel and am of the view that the purpose and field of operation of proviso (ii) to rule 7 of the Rules is wholly independent and distinct from that of proviso (i) to rule 7 of the Rules. The second proviso, as argued by the Learned Counsel for the petitioners, is in the nature of a further proviso and appears to have been made to met the anomaly and the discrimination which was likely to occur by the operation of rule 6 (2) and proviso (i) to rule 7 of the Rules in certain cases like that of the petitioners and Sarvshri Gurbachan Singh and Naresh Chander. If the interpretation put by the respondents on the said provisions of rule 7 is accepted, it would certainly result in the negation of the right of equal opportunity in matters relating to employment enshrined in Article 16 of the Constitution of India, inasmuch as Sarvsari Gurbachan Singh and Naresh Chander, who were in the same time scale with the petitioners and were getting lesser pay, would be put at par and draw the same salary as drawn by the petitioners. It is difficult to accept that the framers of the Rules ever intended to create such a situation. 1 am rather of the view that it was to avoid this anomaly that a provision was made to grant the next increment from February 2, 1968, to such employees whose pay fixed on the appointed date in the revised scale was at the same stage as fixed for another employee drawing pay at a lower stage than the former in the existing scale In case, the position taken by the respondents is to be accepted, then the provisions of rule 6(2) of the Rules have to be struck down being violative of the right guaranteed under Article 16 of the Constitution of India. The primary rule of construction is that if the provisions of a statute or rule is reasonably capable of construction which does not involve the infringement of any fundamental rights, that construction must be preferred though it may reasonably be possible to adopt another construction which leads to the infringement of the said fundamental rights. Bearing this rule of construction in mind, I have no hesitation to bold that the contention raised by the Learned Counsel for the respondents has no substance and the provisions of rule 7 have to be interpreted as claimed by the petitioners.

5. As regards the other submission of Mr. Tiwana, the Learned Counsel for the respondents, that under rule 1.8 of the Punjab Civil Services Rules, Volume I,

Part I, the power of interpreting, changing and relaxing the rules Tests in Finance Department, it would suffice to say that any interpretation put on the Service Rules by the Commissioner for Finance and Secretary to Government Punjab, can under no circumstances be binding on this Court. Moreover, in view of Article 229 of the Constitution which sests complete control in the Chief Justice over the persons serving on the staff of the High Court, the power of interpreting, changing and relaxing the rules contained in rule 1.8 of the Punjab Civil Services Rules, Volume 1, Part I, vests in the Chief Justice and not in the Finance Department of the Punjab Government, as was held in Shri Kidar Nath v. Punjab Government AIR 1964 P&H. 265.

6. As a result of the above discussion, this petition is allowed and the respondents are directed to fix the pay of the petitioners by granting them the next increment with effect from February 2, 1968, in accordance with proviso (ii) to rule 7 of the Rules and to pay them the arrears accruing therefrom Keeping in view the circumstances of the case, I leave the parties to bear their own costs.

