
(2014) 12 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 20145 of 2013

Shamsher Singh	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2015) 1 SCT 56

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : S.B. Nagpal, Advocates for the Appellant; Rupam Aggarwal, D.A.G, Advocates for the Respondent

Judgement

Rajiv Narain Raina, J.—In the case of two direct recruit clerks belonging to the same batch, both would have to successfully clear the period of probation of two years within which period the rules of service require them to pass a prescribed departmental examination for them to be considered for confirmation in service. It is informed that the departmental examination is conducted every six months. When a junior clerk passes the departmental examination earlier then the senior but within the period of probation the senior passing in subsequent test would take his seniority from his batch and merit determined in the select list. It is not the case that the petitioner did not pass the departmental examination, which he did in his second chance but within the period of probation. Having cleared the departmental examination, it is not an argument for the State to contend that the person junior who passes the examination earlier would become senior unless the rule speaks otherwise which is not the case in defence of the writ petition. In defence, it has been explained in paragraph 3 of the written statement as follows:

"That the petitioner & Sham Lal Garg both were appointed in May 1978 in the pay scale of Rs. 750-25-1300, both official's annual increment was due on 1-5-1979 but the petitioner not passed Departmental Examination within prescribed period and his next increment was allowed on 14.10.1979,

consequently his annual increment became due on 1st October."

Grant of annual grade increment to the person junior who passed the departmental examination earlier on completion of one year service would not affect the original inter se seniority position so long as both passed the test before the period of probation expired. It may have been a different matter if the petitioner had not cleared the test within time. If the rule is structured in such a way that non-passing of the test within the probationary period would result in withholding of the annual increment to await the passing of the departmental examination then loss of seniority may entail. Where non-passing of the prescribed test does not result in automatic termination or discharge from public service by operation of rule then it would be hard to contend that person junior would become senior only for the reason that he received financial benefit of increment earlier. I fail to see the connection between award of annual grade increment and the rule of seniority in the cadre. The prescription of the departmental examination is only a qualifier for purposes of confirmation in service. It only offers periodic chances to be availed to qualify for confirmation just as was the position in cases of promotion in the repealed Punjab State Assistant Grade Examination, Rules, 1984 where five chances were offered to clerks for promotion to the post of Assistant but within the duration allowed otherwise they would be passed over. The question with respect to preference being given to such Clerks who had passed the Assistant Grade Examination in the first five chances for promotion to the higher post came up for consideration before a Full Bench of this Court in the case of Baldev Raj and others v. State of Punjab and others, decided on 17.09.1996. The Full Bench held that persons who passed the test within the first five chances would not be given any preference over such Clerks who had passed the Assistant Grade Examination in more than five chances. The matter, thereafter, was carried to the Supreme Court in the case of Saroj Rani and Another Vs. State of Punjab and Others, . The Court while adjudicating upon the issue had framed the issue whether the person who has passed the test in the first five chances has preference over the persons passing the test in more than five chances? The Supreme Court endorsed the view of the Full Bench in Baldev Raj's case and held that all such candidates as had qualified the Assistant Grade Examination irrespective of the number of chances constituted a single homogenous group and as such no preference could be given to such employees who had qualified in the first five chances over and above those who had qualified in more than five chances. The ratio of the ruling can be applied in principle to the present case. In the same line of reasoning this Court has delivered judgment in Sant Parkash Gill v. State of Punjab, 2000 (2) SCT 28 (P-7) wherein it is held that passing of departmental examination would relate back to the date of first chance of appearing in the examination. This ruling is pat on the point.

2. It was not disputed that the petitioner cleared the departmental examination but in the test held next after his junior Sham Lal Garg got higher salary by virtue of annual increment in the prescribed pay scale. The annual increments of

both the petitioner and Sham Lal Garg were due on 1st May 1979 since they joined as clerks in 1978. However, the petitioner was able to earn his annual increment subsequently on passing the departmental examination on 14th October 1979 w.e.f. 1st October 1979.

3. Apart from the legal position as explained, the learned counsel for the petitioner pleads discrimination by citing a precedent in the respondent department involving the same issue arising in some other person's case at the stage when the anomaly was discovered which was resolved in favour of the senior by allowing the first annual increment on completion of one year from the date of joining by direct recruitment as clerk and not from the date of passing the departmental examination. Such an administrative decision is contained in document Annexure P-2 which has not been successfully explained or distinguished by the respondent-State vis-a-vis the petitioner in the written statement or in the oral arguments addressed by the learned Law Officer.

4. Even otherwise, it is a well settled principle that a junior ought not take home higher salary and emoluments than his senior in service, unless there are cogent reasons necessitating departure entailing loss of seniority position such as by infliction of punishment etc. This right flows from rule 4.4(a)(1) and rule 4.14 of the Punjab Civil Services Rules Vol I Part 1 which deals with stepping up the pay of the senior to the level of the junior. The petitioner and Sham Lal Garg held the substantive posts of District Treasury Officer. The petitioner was promoted on 4th February 1991 earlier on reserve roster point earmarked for SC and Sham Lal Garg five years thereafter on 27th May 1996 on his own turn. Since 27th May 1996 the petitioner's pay was reduced to Rs. 8925/- while Sham Lal Garg enjoyed the pay of Rs. 9200/-.

5. In *Er. Gurcharan Singh Grewal and Another Vs. Punjab State Electricity Board and Others*, the Supreme Court has held that a senior officer in the same cadre cannot be paid less than his junior even if an anomaly in the pay of the senior is due to difference of incremental benefits. The Court ordered the stepping up the pay to remove disparity and awarded 18% interest per annum.

6. The petitioner quite apparently appears to have been wronged by misinterpretation of the rule interlinking probation and the departmental examination conducted half yearly.

7. I would, therefore, allow this petition by setting aside the impugned order dated 12th August 2013 (Annexure P-19) by a writ of certiorari issued to the official respondents forbearing them to act upon it.

8. In making the monetary amends, the State is consequently directed by a writ of mandamus to bring the pay of the petitioner at par with the junior by stepping up his pay to that of the admitted junior w.e.f. 27th May 1996, in the revised pay scale of Rs. 800-1400-+50 Special Pay i.e. with retrospective effect from the aforesaid due date with all consequential benefits flowing therefrom by refixing the last pay drawn by amending the last pay certificate and to sequentially revise

the petitioner's pension and pensionary benefits with cascading effect. The arrears of pay and pension be calculated and paid to the petitioner with 10% interest per annum since money was legally due and illegally withheld. Besides, the State has reaped the usufruct of the money. The entire exercise be undertaken within 2 months from the date of receipt of a certified copy of this order and amount be disbursed within the one month thereafter as ordered.