

(2008) 02 P&H CK 0211
In the Punjab And Haryana At Chandigarh

Shri Bhupinder Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2008) 02 P&H CK 0211

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehtab S. Gill, J.—This is a writ petition filed by Bhupinder Singh, Assistant Director Industries, Punjab (Retired) for the release of his arrears along with interest @ 18% per annum.

2. Learned Counsel for the petitioner has stated that a number of representations were made to the State to fix pay of the petitioner and release the arrears as per the orders passed by the Hon''ble High Court in C.W.P. No. 562 of 1979, but no action was taken.

3. Finally, C.W.P. No. 5285 of 1992 was filed in which the Hon''ble High Court on 7.5.1992 passed the following order:

The respondents are directed to decide the representation of the petitioner keeping in view the decision of the Civil Writ Petition No. 562 of 1979 decided on 1st September, 1988, expeditiously and if the petitioner is found entitled to any relief the same may be granted to him with interest at the rate of 12% per annum from the date the amount is found due till the date of payment.

4. With these observations the writ petition is disposed of accordingly. No action was taken by the respondents. C.O.C.P. No. 852 of 1992 was filed by the petitioner and the Hon''ble Bench passed the order dated 7.12.1992 which is as under:

Non-implementation of the order which was complained in the present contempt petition has since been fully complied with. In so far as the fixation of pay is concerned, the Court wishes and hopes that the same would be done as soon as possible. The order having been complied with, I do not wish to proceed any further in this case. The contempt petition is disposed of and the rule against the respondents is discharged.

5. The petitioner was entitled to adopt the new scale or to continue with the old scale as on 22.10.1992. Petitioner opted for the new scale on 18.11.1992. Respondents should have fixed the pay of the petitioner with effect from 1.12.1979 at Rs. 940/- in the scale of Rs. 600-1120, but the respondents erroneously computed the pay of the petitioner at Rs. 880/-. This anomaly crept in because of the laxity on the part of the respondent-State in implementing the order passed in C.W.P. No. 562 of 1979.

6. Learned Counsel for the State has argued that it is admitted that C.W.P. No. 562 of 1979 (Mohinder Partap Bahl and Ors. v. State of Punjab and Ors.) was decided on 1.9.1988. C.O.C.P. No. 862 of 1992 was disposed of on 7.12.1992. The pay-scale of the petitioner was correctly fixed. I have heard the learned Counsel for the parties and perused the record with their assistance.

7. Petitioner retired from the Post of Assistant Director on 30.4.1993.

8. C.W.P. No. 562 of 1979 titled as Mohinder Partap Bahl and Ors. v. State of Punjab and Ors. was decided by this High Court on 1.9.1988 and petitioner was one of the petitioners in the said writ petition. After the decision of C.W.P. No. 562 of 1979 on 1.9.1988, petitioner gave numerous representations to the respondents to fix his pay and release the arrears of pay in accordance with the orders passed by the Hon'ble High Court, but no action was taken which compelled the petitioner to file C.W.P. No. 5285 of 1992. The following order was passed by the Division Bench of this Court on 7.5.1992 : The respondents are directed to decide the representation of the petitioner keeping in view the decision of Civil Writ Petition No. 562 of 1979 decided on 1st September, 1988, expeditiously and if the petitioner is found entitled to any relief, the same may be granted to him with interest at the rate of 12 per cent per annum from the date the amount is found due till the date of payment.

9. With these observations, the writ petition is disposed of accordingly.

10. Still no action was taken and hence the petitioner had to file C.O.C.P. No. 852 of 1992 and the following order was passed on 7.12.1992:

Non-implementation of the order which was complained in the present contempt petition has since been fully complied with. In so far as the fixation of pay is concerned, the Court wishes and hopes that the same would be done as soon as possible. The order having been complied with, I do not wish to proceed any further in this case. The contempt petition is disposed of and the rule against the respondents is discharged.

11. For the first time during this intervening period i.e. from the date of filing of the contempt petition to 7.12.1992, some financial benefits were released to the petitioner, but they were not in accordance with the judgment rendered in C.W.P. No. 562 of 1979, as they were not properly computed.

12. For the purpose of the present case, petitioner became entitled for the first time to give his option on 22.10.1992 and petitioner opted for the new scales on 18.11.1992 i.e. well within the period of one month from the date when he became eligible to give his option. After receiving this option the respondent ought to have fixed the pay of the petitioner with effect from 1.12.1979 at Rs. 940/- in the pay-scale of Rs. 600-1120, but it was erroneously computed by treating the petitioner at Rs. 880/-. Similarly, on 11.2.1986, the pay of the petitioner ought to have been fixed at Rs. 2640/- in the pay-scale of Rs. 2000-3500, whereas the Department fixed the same as on 1.1.1986 at Rs. 2350/-. This mistake had crept in because long time was taken by the respondents to implement the judgment rendered in C.W.P. No. 562 of 1979. Had the judgment dated 1.9.1988 been implemented forthwith, petitioner would have been given the option of new pay-scales at that time, but the opportunity to opt for the first time arose when he became entitled i.e. on 22.10.1992.

13. The petitioner was not having another occasion earlier than 22.10.1992 for giving option as his pay in the new scales i.e. on 1.12.1979 and on 1.12.1986 was fixed for the first time and the Government decided to release the benefits on 20.10.1992 in compliance of the judgment rendered in C.W.P. No. 562 of 1979. Annexure P-2 written by the petitioner as back as on 18.11.1992 is very clear and specific. The seniority list of the petitioner is at Page-13 as Annexure P3-A and the name of the petitioner is figuring at Serial No. 18. Notice u/s 80 C.P.C. was also served. The then Assistant Director of Industries had filed the reply which is distorted. Petitioner filed the rejoinder and again clarified every aspect. He became entitled to opt for the scales on 20.10.1992. There is another case of Avtar Singh of the Industries Department. He was allowed to change the date of option as is evident from Annexure P-7. Besides this, pay of the petitioner was fixed lower than his immediate junior i.e. Shri S.R. Bansal. Pay of the petitioner as on 1.1.1992 was fixed at Rs. 2775/- whereas of the official who was junior i.e. S.R. Bansal was fixed at Rs. 3200/- on 1.12.1991.

14. That the case of the petitioner is covered even as per the judgment of Division Bench of the Hon'ble High Court in C.W.P. No. 7049 of 2000, decided on 8.10.2002. Photo copy of the said judgment has been annexed with the petition. Now, it is the question of only fixing of the pay of the petitioner and thereafter releasing the benefits in terms of the option exercised by him on 18.11.1992.

15. Writ petition is allowed and the respondents are directed to fix pay of the petitioner and release the arrears along with interest within two months.