
(2012) 12 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2136 of 2010 (O and M)

State of Haryana

APPELLANT

Vs

Vijayveer Singh

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Punjab Jails Department State Service (Class III-Executive) Rules, 1963 — Rule 9(2) (d)

Citation : (2013) 3 SCT 468

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : Ashish Kapoor, A.A.G. Haryana, for the Appellant; Rajbir Sehrawat, for the Respondent

Judgement

A.N. Jindal, J.—The plaintiff-respondent (herein referred as, "the plaintiff), could not succeed in his suit whereby he had challenged the order withholding annual increments w.e.f. 1.1.2002 to 1.1.2006 and also for mandatory injunction seeking a direction to the defendants that they should release all the increments due in his favour. However, the first appellate court, vide judgment dated 11.1.2010 allowed the appeal and the plaintiff was awarded following relief:-- 1. The order for withholding the increments w.e.f. 1.1.2002 to 1.1.2006 was invalid and not binding upon the plaintiff.

2. The defendants were directed to release the increments to the plaintiff w.e.f. 1.1.2002 and also pay him the arrears within a period of four months from the date of passing of the judgment, failing which the appellant-plaintiff would be entitled to get interest @ 9% per annum.

3. The arrears for the period preceding the date of institution of the suit i.e. 24.1.2007 shall be restricted to 38 months only.

The plaintiff submitted that he joined the Jail Department, Haryana as Warder on 15.1.1968 and retired at the age of superannuation on 31.8.2006. He was earlier

promoted as Head Warder and thereafter as Sub Assistant Superintendent on 17.11.1999, but he wrongly reverted to the post of Head Warder. However, he was again promoted to the post of Sub Assistant Superintendent by giving him seniority w.e.f. 31.12.1998 and thereafter promoted as Assistant Superintendent vide order dated 31.3.2003, from where he retired on 31.8.2006. It has been further submitted that after his promotion as Sub Assistant Superintendent, he was not granted annual increments for the period 1.1.2002 to 1.1.2006. The written representation made by him were paid no heed by the department. Though, he was informed that his case was under consideration, yet, later on, Superintendent District Jail, Rewari orally informed him that his request was declined on the ground that he had not passed the departmental examination. It was contended that he was not given opportunity of being heard and that he has been discriminated against by the defendants inasmuch as Virender Pal Singh, who was promoted as Assistant Superintendent after him, who has now been retired from service, had also not cleared the departmental test but was given the benefit of all the due annual increments. Thus, the order stopping the increments was challenged.

2. The defendant while contesting the suit admitted in their written statement about his appointment and promotions from time to time. However, it was pleaded that the plaintiff has been misleading the court while making false averments that he had made request for granting annual increments w.e.f. 1.1.2002 to 1.1.2006. However, the annual increments for the said period were stopped under Rule 9(2)(d) of the Punjab Jails Department State Service (Class III-Executive) Rules, 1963 (herein referred as, "Service Rules, 1963"). On merits, it was submitted that the plaintiff never raised any such request regarding claim of annual increments at the time of seeking retirement and receiving the pensionary benefits. It was further stated that the Superintendent, District Jail, Bhiwani, vide order dated 2.8.2006 had intimated the plaintiff about the reasons for withholding the increments.

3. From the pleadings of the parties, the following issues were framed:--

1. Whether the plaintiff is entitled to the declaration with consequential relief as prayed for? OPP

2. Relief.

4. Both the parties led evidence. The trial court dismissed the suit. However, the appellate court reversed the judgment and decreed his suit.

5. Undisputedly, the plaintiff was promoted to the rank of Sub Assistant Superintendent, vide order dated 18.11.1999 (Ex. PW1/E) and was reverted back to the original post of Head Warder vide order dated 16.8.2002 (Ex. PW1/F). The plaintiff also does not dispute that on representation for claiming seniority amongst the Sub Assistant Superintendent from 31.12.1998 instead of 18.11.1999, he was ordered to be promoted as Sub Assistant Superintendent w.e.f. 31.12.1998, vide order dated 1.10.2002 (Ex. PW1/G). The plaintiff also

does not dispute that he was awarded increments w.e.f. 1.1.2000 and 1.1.2001. Later on, he was further promoted to the post of Assistant Superintendent vide order dated 25.3.2003 (Ex. PW1/H). The main dispute is with regard to stopping of annual increments w.e.f. 1.1.2002 to 1.1.2006 and further grievance of the petitioner is that the said annual increments were stopped without giving any notice to him, nor providing him opportunity of being heard. Mainly the dispute in this case is with regard to interpretation of Rule 9 of the Service Rules, 1963. Rule 9 of Service Rules, 1963 reads as under:--

9. Departmental Examination--Every Assistant Superintendent or Welfare Officer or Probation Officer appointed under the Probation of Offenders Act, 1958 and Sub- Assistant Superintendent shall be required to pass a departmental test within a period of two years from the date of his promotion or appointment to the Service in accordance with the provisions of the Punjab Departmental Examination (Jail Department) Rules.

(2) In the case of an Assistant Superintendent/Welfare Officer who does not pass the test within the prescribed period of two years, the Inspector General may:--

- a) supersede him in the matter of confirmation and promotion by his juniors who have passed the test or have been exempted taking the test; or
- b) revert him to the parent department if appointed by transfer from another department.
- c) discharge him from service if recruited by direct appointment;
- d) postpone his grade increment till he passes the test and in that case he shall not be entitled to any arrears of increment.

(3) No officer will be qualified for confirmation till he passes the test:

Provided further that the Sub Assistant Superintendents who were allotted to the Haryana State at the time of reorganization on 1st November, 1966, or may be allotted hereinafter shall be given additional time for passing the Departmental Examination which shall be double that of the ordinary permissible time and their promotion will not be withheld on account of their not having passed the Departmental Examination till the expiry of the time so allowed.

Provided further that the Sub Assistant Superintendents who shall be of 45 years or more on the date of publication of this notification shall be exempted from passing the Departmental Examination and they shall be eligible for promotion without passing the Departmental Examination.

6. Now the question arises, whether the defendants were justified in stopping the increments for the period from 1.1.2002 to 1.1.2006, i.e. even after his promotion a Sub Assistant Superintendent. Admittedly, the plaintiff was promoted to the next higher post of Assistant Superintendent on 25.3.2003, when he joined his duties on 12.4.2003 at Central Jail, Ambala. Thus, after he was promoted at the higher grade, then there was no significance for stopping

the increments.

7. Further more, apparently, the petitioner was not given any notice before withholding the increment and he was not provided any opportunity of being heard. Thus, the order passed, which may be detrimental to the rights of the employee, cannot be passed without giving him opportunity of being heard. The order which informs the plaintiff the reasons for stopping his increments came to be known only after his retirement. Moreover, I was apprised by the learned counsel for the respondent that Virender Pal Singh, who has already retired from service as Assistant Superintendent, had also not passed the departmental examination after his promotion as Sub Assistant Superintendent and Assistant Superintendent and he was awarded the annual increments till his retirement. There is nothing to suggest that he cannot be treated at par with him. The Apex Court while discouraging the discrimination made by the Government with other similarly situated employees, in case Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, observed that the similarly situated employees cannot be discriminated. Thus, it appears that there is no justification to deny the benefit of annual increments as claimed by the plaintiff on his promotion to the post of Sub Assistant Superintendent while delivering him discriminatory attitude. The judgment passed by the Appellate Court appears to be well founded and well reasoned.

8. No substantial question of law arises for determination. Dismissed.