
Prem Chand Manchanda and Others Vs State of Haryana and Another

CWP No. 4563 of 2007

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 9, 2009

Acts Referred:

Constitution of India, 1950 – Article 39

Citation: (2009) 1 ILR (P&H) 767

Hon'ble Judges: Mehtab S. Gill, J; K. Kannan, J

Bench: Division Bench

Advocate: Raghuwinder Singh and Ravi Sharma, for the Appellant; Harish Rathee, D.A.G., Ravi Sharma and Sunil Bhardwaj, in C.W.P. Nos. 9780 and 12144 of 2008, for the Respondent

Judgement

K. Kannan, J.

I. Nature of lis:

1. The benefit of retaining the stepped-up pay by giving effect to Assured Career Progression Scales in the department of PWD and its subsequent

withdrawal by the department gives rise to these bunch of writ petitions that effect fairly a large number of persons who have figured as Petitioners

in the respective writ petitions.

2. C.W.P. No. 4563 of 2007 seeks for quashing of the proceedings of Respondent No. 2 dated 15th January, 2007 (Annexure P-6) under which

the increased pay scales granted to the Petitioners earlier on 8th March, 1996 had been withdrawn. The impugned order, however, clarified that

no recoveries would be effected with retrospective effect but that recovery would be effected from 23rd July, 2003 i.e. from the date of issue of

instructions by the Finance Department. The impugned order further stated that the pension of the retirees would be compounded/refixed notionally

for the period prior to the date of issue of instructions dated 27th March, 2003 and actually from the date of issuance of directions i.e. 23rd July,

2003. C.W.P. Nos. 9780 and 12144 of 2008 impugned the order of Respondent No. 2 issued on 17th April, 2008, similarly, withdrawing the

benefits of stepping up of pay granted to the Petitioners and for recovery in the manner stated in the earlier order.

II. Facts giving rise to the dispute:

3. All the Petitioners had initially joined services of the Respondent-department as Draftsmen. The promotional post for them was Head

Draftsmen. During their employment with the Respondent-department, pay scales of all categories had been revised with effect from 1st January,

1986 and consequent upon some anomalies pointed out by the employees association in some departments, pay scales were modified with effect

from 1st May, 1990 instead of 1st January, 1986. The modification of the pay scales meant better emoluments but they had the benefit only from

31st April, 1990 through modified instructions issued on 23rd August, 1990. The department came to issue another set of instructions on 8th

February, 1994 providing for Assured Career Progression Scales to prevent stagnation in service. The issue of how these instructions operated in

the manner of their application together with the subsequent modifications that were effected gives rise to the core controversy between the parties.

ID. Details instructions for claiming ACP Scales:

4. The instructions which were applicable to all the Government employees of Group "C and Group "D" provided, inter alia, that persons who had

completed 20 years of regular service or more of satisfactory service before 1st January, 1994 but who had got only one promotion or

promotional scales/higher time scale/selection grade/, could be allowed in the place of present pay scale, the first higher standard scale with respect

to the pay scale of the post applicable from 1st January, 1986. Any employee who completed such regular satisfactory service of 20 years after

1st January, 1994 but had got only one promotion or the higher pay scale could be allowed the first higher standard scale with effect from the first

day of the month following the month in which he completed such service. In case of an employee who had got promotion already but the pay

scale of the promotional post was only equal to or lower than the pay scale of the feeder post, the benefits of higher standard scale was also to be

given.

IV. The Petitioner"s grievance:

5. The Petitioner"s complaint was that in spite of the applicability of the instructions for the higher scales, they had not been awarded the same and

certain representations yielded to fresh instructions dated 29th December, 1995 granting the benefits of stepping up of their pay with effect from

1st April, 1995 instead of 1st January, 1994 as has been previously said in the earlier instructions. The instructions had also specifically given the

scales of pay at the various levels, namely, at Rs. 1400--2300 as was applicable with effect from 1st January, 1986. The corresponding higher pay

scale was given as Rs. 1600-- 2660. This scale of Rs. 1600--2660 was higher than the revised pay scale of Rs. 1400--2600 and as such benefit

of first higher pay scale was admissible. However, in the case of Head Draftsmen, the modified pay scale with effect from 1st May, 1990 remained

at par with the higher standard pay scale admissible on the basis of pay scale of Rs. 1600-2660. In such an event, the instructions stated that the

benefit of higher standard pay scale could not be availed but they would be entitled for stepping up their pay in the manner specifically set forth in

the notification. It could be noticed that the Assured Career Progression Scheme itself was only to act as an incentive in the nature of employment

with assured promotions. If any employee had already received two promotions or more, by implication, the benefit of Assured Career

Progression, Scales was not applicable at all. According to the Petitioners, it was this aspect which was lost sight of Assured Career Progression

Scales had been given across the board to all persons holding the posts of Draftsmen and who, in some cases, had been promoted as Head

Draftsmen. The instance of a mistake, as pointed out by the Petitioner, was the case of Abhnashi Lal Chugh who was originally a Tracer, later

promoted as Draftsman and still later promoted as Head Draftsman, had also been given the Assured Career Progression Scales but during the

relevant period, the said person had received two promotions and that his initial appointment was on a lower post as Tracer and the benefit

granted under the Assured Career Progression Scale for him who had obtained two promotions was clearly wrong. When they found out the

mistake and sought the recovery against Abhnashi Lal Chugh, they applied the same yardstick to all the persons such as Petitioners who had

obtained promotion in some cases as Draftsmen. The order of withdrawal of the stepped up pay scales was given effect by the proceedings

impugned in the writ petition on 15th January, 2007. The Petitioners treated all the Draftsmen at par and visited to some persons with similar

orders of withdrawal of ACP Scales and for recoveries subsequently by its proceedings dated 17th April, 2008 which came to be challenged in

the other two writ petitions referred to above.

V. The State's defence:

6. The justification preferred by the Respondents was that the claim for grant of ACP was originally applied as Rs. 10,000 and Rs. 20,000 in the

time scale but to Group "C and Group "D" employee,-- vide letter of the Government dated 14th May, 1991 to take effect from 1st January,

1991 itself and was implemented on 7th August, 1992. The subsequent claim for ACP referred to its application that refers to the completion of

years of service, namely, 8/18 years. This period of 8/18 years had been subsequently changed as 10/20 years by Government letter dated 8th

February, 1994 which was to take effect from 1st April, 1994. This claim was again modified on 1st January, 1996 by the introduction of Haryana

Civil Services Assured Career Progression (Rules 1998).

7. When this scheme through its notification and later through the rules came into effect, it gave rise to some anomalous situation requiring several

clarifications to be issued over a period of time. In a writ petition filed by Surinder Singh and other in C.W.P. No. 7255 of 1997, this Court dealt

with the issue of counting of ad hoc service for computing "regular satisfactory service" for entitlement to ACP Scheme. In the factual position that

the case grappled with, the Court observed that the benefit of higher standard pay scale to a senior on the ground that the pay of his junior had

been fixed higher to his pay in terms of the scheme contained in circular shall not be admissible to such a senior. This observation was purported to

be in consideration of the instructions dated 8th February, 1994. The rationale of such a statement was that the ACP Scales were intended to

provide for higher scales based on length of service without involving higher responsibilities and hence in cases where a junior earned higher pay

under fortuitous circumstances, no benefit of step up of pay would be admissible only on the basis of seniority. The judgment sent the department

scurrying to issue the notification dated 23rd July, 2003 that withdrew the clarification that it had given on 29th December, 1995 (Annexure P-3) in

C.W.P. No. 4563 of 2007 in answer to a query that the scale of senior employee would be stepped up to the level of his junior provided this

benefit shall not be admissible to a senior government employee besides junior government employee who had been appointed on temporary basis.

It only confirmed the earlier instructions made on 8th February, 1994 (Annexure P-2) that the higher standard pay scale being in the nature of

compensation for stagnation and as an incentive based on length of service without involving their responsibilities, there would be no benefit of

stepping up of pay to a senior just under the head of seniority. The Government felt that it had stepped up the scales of pay to the seniors only on

the basis of the seniority over the scales of some of the juniors and sought to withdraw the benefit and also obtained recoveries in the manner

referred to in the impugned notice. Preparatory to the action, the Government had issued a show cause notice and a final order had been made.

VI. Relevant considerations:

(a) Basis of Surinder Singh's Case (8) The impugned order is on a perception that while applying the ACP Scale, instead of taking the relevant

number of years qualifying for entitlement, there had been wrong application of the normal principle applied in service jurisprudence that the scales

of pay of the seniors should be stepped up to match with the scale of a junior. It has been found that such a stepping up of scales were made for

certain seniors when the juniors had been given a higher pay and purporting to apply the principle of law laid down by this Court in Surinder Singh

and Ors. v. State of Haryana in C.W.P. No. 7255 of 1997, dated 10th September, 1997 that the benefit of higher standard pay scale to a senior

on the ground that pay of his junior had been fixed higher to his pay in terms of the scheme contained in the circular ought not to be admissible to

such senior. This decision had been rendered particularly in reference to a point raised before the Bench whether period of ad hoc service should

be counted for reckoning the qualifying number of years of service for extending the benefit of the ACP Scheme. The Bench was merely

reaffirming a clarification that had already been given by the Department that such a benefit could not be extended only on the ground of seniority,

without reference to the number of years of regular satisfactory service within the cadre.

(b) Parity of scales for senior and junior admit of exceptions:

9. The application of ACP Scales have always to be done with reference to the terms of the Scheme itself. It would be wrong to apply the

principle that a senior would always be entitled to a higher pay merely because a junior had obtained to such a higher scale. There could be several

instances when such a situation may not happen. Stepping up of pay on the only ground that a junior is drawing more pay will be untenable where a

junior is enjoying special pay for some arduous work and earn a higher pay, as pointed out by the Hon^{ble} Supreme Court in Surendra Kumar Vs.

Union of India (UOI) and Others, . The parity of pay shall be only in the context of the constitutional principle of "Equal Pay for Equal Work

enacted through Article 39(d) of the Constitution of India. A similar situation may also result when an ad hoc promotee draws a higher pay on

earlier officiation on a higher post, when he may have earned increments. When the previous pay is taken on account of fixing his pay on

promotion, his senior cannot expect stepping up of pay. This situation was considered in the case of Union of India and another Vs. R.

Swaminathan, . Another situation that Courts have dealt with is that when a direct recruit was offered scale attached to the post, when the same

post had been earlier meant for ad hoc appointees of lower scales on contract, such an ad hoc appointee cannot ask for stepping up of his pay if

under a Scheme his services are sought to be regularised and his pay is fixed at the scale which he would have earned if his services have been

regularised on that day. This situation was noted in State of Karnataka and Others Vs. G. Halappa and Others, . There may be another instance,

when there are two streams of promotional avenues and when the promotional post is occupied from two different feeder cadres, the issue of

stepping may not arise. This situation was dealt with in a decision of the Hon^{ble} Supreme Court in the case of Union of India and others Vs. O.P.

Saxena and Others, .

10. The impugned order dated 15th January, 2007 in C.W.P. No. 4763 of 2007 cites of the office order No. 197/E-II dated 8th March, 1996

that 81 Head Draftsmen (HDM) were stepped up to the scale of Rs. 2000-3200 with effect from 1st April, 1995 to the level of their juniors and

consequently the benefit of stepping up of pay allowance to the senior officers was sought to be withdrawn. The situation under which the juniors

earned higher pay is not discernible from the order. The Petitioners have responded to this act by stating that the Petitioners were holding the posts

whose pay scales were modified with effect from 1st May, 1990 against the pay scales of 1st January, 1986. According to them, the Petitioners

were not given the benefit of higher standard pay scales but were merely placed at par with similarly situated juniors. They cited the instance of a

Head Draftsman who got one promotion and completed 20 years or more of regular satisfactory service in the pay scale of Rs. 1600-2660 as on

1st January, 1986, the first higher standard pay scale was Rs. 1640-2900 as per column III of the Annexure of letter dated 8th February, 1994. It

was at par with the promotional scales of Circle Head Draftsman as on 1st January, 1986 and hence the benefit of higher standard pay scale of Rs.

2000-3200 was admissible as per para 5 of the letter dated 8th February, 1994. The said letter clarifies as follows:

In case an employee who has got promotion already but the pay scale of the promotion post is either equal to or lower than the pay scales of the

feeder post, the benefit of higher standard scale will be granted in such cases.

The pay scales of the Petitioners have been stepped up with effect from 1st April, 1995 along with Mr. Abnashi Lal Chug and others similarly

situated employees with reference to the pay scale of Draftsman namely Rs. 2000-3200. The applicants have also been given the highest pay

scales of Rs. 2000-3200 with effect from 1st April, 1995. This according to the Petitioners had been merely in satisfaction of their claims to ACP

Scales and they never knew that there was any stepping up of pay on account of the fact that Mr. Abnashi Lal Chug had been put on higher scale

of Rs. 2000-3200. The so called clarification which was effected on 29th December, 1995 had never been applied to them, being part of internal

departmental communication.

VII. Our dispensation:

11. The whole exercise of fixation of higher scale has to be reappraised in the light of the scheme by first computing the length of service "regular

satisfactory service of 10/20 years". This will be done by computing the period of ad hoc service also, in the manner set forth in Surinder Singh's

case (supra). While awarding the higher scales, if a junior draws a higher pay, stepping up of pay for the senior will not always result in the

circumstances outlined above. If higher scales have been fixed on completion of relevant number of years of satisfactory service of 10/20 years to

the seniors, without reference to the scales of juniors, who may have earned higher pay through increments by officiation in ad hoc promotion posts

and such like situations, there is no scope for withdrawal of the benefits of higher pay. However, if the scales of pay have been stepped up

wrongly, there is justification for the withdrawal of the benefit. Even in such a case, there shall be no recovery of higher pay already made.

12. Whatever the Petitioners had not been apprised of, would be really irrelevant so long as the mistake which the Department had committed,

was found later and all the Petitioners had been granted an opportunity to show cause against the withdrawal of the benefits. It had not sought for

return of the entire amount that had been wrongly paid by stepping up of the pay. On the other hand, it had specifically mentioned that no recovery

will be effected with retrospective effect but would be effected only with effect from 23rd July, 2003 from the date of issue of instructions by the

Finance Department. If there is a scope for intervention in this regard, it is this direction that would have to be modified. None of the Petitioners

could be imputed with any fraud or any voluntary act on their part that had resulted in payment of higher pay. While not finding fault with the

withdrawal of the benefit of higher scale by stepping up of their pay for what they were not entitled, we find interest of justice would be best

subservied if the recovery which had been ordered with effect from 23rd July, 2003 is modified to the effect that there shall be no recovery at all

for any excess amount paid. The Department would be entitled to recompute/refix the scale of pay notionally for the period from the day when

their Scales were stepped up and the retiral benefits would be paid on such notional refixation of pay. Here again, we direct that there shall be no

recoveries for any excess payment that have been made for the retired employees.

13. All the writ petitions, therefore, are disposed of with the direction that higher scale of pay, if they have been re fixed by stepping up their pay

only on the ground that some juniors have been granted higher pay, shall be withdrawn. No recoveries shall be made for excess payments made

already. The retiral benefits shall be refixed/recomputed on a notional refixation of the pay drawn on the last day of retirement of the respective

employees. If the higher pay to the Petitioners has resulted from the application of ACP Scales, then there is no question of withdrawal of benefits

and there will also be no question of recoveries to be made. The decision and reasoning in C.W.P. No. 45673 of 2007 will govern also the

findings of C.W.P. Nos. 9780 and 12144 of 2008. The Petitioners in the respective writ petitions will also be not entitled to the higher scale of pay

if they had been stepped up on a wrong basis,, apart from the fact that they not also be liable for any recovery. The retiral benefits whenever arise,

they shall be recomputed on notional re fixation of pay without stepping up their pay. The impugned orders are set aside for re-examination of the

issue in the light of the observations made above.

14. All the writ petitions are disposed of in terms of the above directions.