

(2014) 10 P&H CK 0147

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 1450 of 2013

Karamjit Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Oct. 6, 2014**Citation:** (2014) 4 SCT 723**Hon'ble Judges:** Rajiv Narain Raina, J**Bench:** Single Bench**Advocate:** D.R. Sharma, Advocate for the Appellant; Monica Chhibber Sharma, D.A.G,
Advocate for the Respondent

Judgement

Rajiv Narain Raina, J.

The petitioner seeks protection of pay last drawn by him on being relieved by the U.T., Chandigarh Administration to join service by way of direct recruitment to the post of Manual Assistant in Legal Metrology in the Department of Food, Civil Supplies and Consumer Affairs, Punjab. The petitioner was posted as a Manual Assistant in the Legal Metrology, Mohali, Punjab vide appointment letter dated 6th December, 2011. The Chief Engineer, U.T., Chandigarh relieved the petitioner on 23rd December, 2011. However, his lien was kept in the electricity wing of the Engineering Department for a period of two years. While serving the UT Administration, Chandigarh, the petitioner was drawing salary amounting to Rs. 28298/- per month in the pay scale of Rs. 10900-34800 with grade pay of Rs. 4500/-. In the new post, he was placed in the same scale but in the basic pay of Rs. 16,600/- with grade pay of Rs. 4500/-. He started earning less and made a grievance before the Controller, Legal Metrology, Mohali for an order protecting his pay which he was drawing while serving in the Electricity Department, Chandigarh. The request was refused vide order dated 11th June, 2012 (P-4) informing the petitioner that Government of Punjab in the Finance Personnel, Branch-II had not agreed to the request for pay protection. Since the order was non-speaking, he invoked the provisions of Right to Information Act, 2005 and asked for supply of noting portions

of the file where his request for pay protection was dealt with. The file noting were supplied in February, 2012. It is the say of the petitioner that a perusal of the file noting portion reveals that in March, 2012, the office had recommended to the Finance Department for protecting the pay of the petitioner but which request was rejected on 11th May, 2012 on file. The petitioner made a fresh application for supply of information and on receipt of fresh material from the Finance Department, he found that protection of pay of the petitioner could not be accorded since services rendered in Government of Haryana and U.T., Chandigarh is not considered for pay protection on appointment in service of the Government of Punjab. The Administrator relied on the instructions dated 15th November, 2000 which make no mention that pay received for services rendered in U.T., Chandigarh could not be taken into account in fixing pay of employees like the petitioner. Mr. D.R. Sharma argues that when the Department recommended the case of the petitioner, it did not deserve to be rejected by the State Government. The instructions dated 15th November, 2000 governing pay protection and fixation of pay of government employees appointed by transfer or by open selection etc. and from one service to another, on direct appointment to a post in the services of the State of Punjab, pay cannot be reduced and deserves to be protected as a measure personal to the petitioner in the initial scale of the new post on which he was directly recruited. The purpose of the instructions is to protect an employee from his pay being reduced on transfer from one Department to the other or by open selection for inter or intra department candidates.

2. Mr. Sharma contends that the instructions clearly provide that person concerned may already be drawing pay in the higher pay scale then it is not appropriate to ignore previous service for fixation of pay in the new post or counting the same for time bound promotions. This argument, however, does not satisfy the primary test of pay protection of a foreigner appointed to Punjab Government service should carry pay of past service which can be rendered only in a Department of the Government of Punjab.

3. Punjab Government has contested the claim of the petitioner by filing a written statement. The decision of the Finance Department is defended as being a proper one and consistent with the principles of pay protection issued by way of clarification by the Department of Finance in its executive instructions dated 15th November, 2000. These instructions are to be read harmoniously with rule 4.4(b) of the Punjab Civil Services Rules, Volume-I as being confined to service under or in the affairs of the State of Punjab. The clarification issued on the existing provisions of rule 4.4(b) were necessitated in a changed scenario where multi-stage pay scales are in operation and where appointment to premier or other services through selection including transfer by selection is made and is permitted inspite of the fact that the person concerned may already be drawing pay in the higher pay scale, only then is it not appropriate to ignore previous service for fixation of pay in the new post by counting the same for a time bound promotion. It was clarified that counting of

service for purposes of fixation of pay for a time bound promotion, in such cases will not create any right on the employees already senior, to claim equality in the pay with the junior who received higher pay by counting previous service.

4. Ms. Monica Chhibber Sharma learned DAG, Punjab refers to para 5(3) of the instructions where it has been decided by the Government that the aforesaid instructions shall not apply in case of employees of various Public Sector Undertakings who are offered employment in the Government on compassionate grounds on being declared surplus or otherwise. They should be deemed to be joining service under the Government for the first time, as at present. It was also decided in the Department of Finance that these instructions would come into effect immediately. However, cases decided on or after 15th December, 1998 may be reviewed in consultation with the Finance Department in order to ensure uniformity.

5. When Government speaks formally and in writing, it speaks for its own territories and for its employees but not employees of other States and Union Territories unless it is expressly stated so. The doctrine of necessary implication or what might appear to fall on first principles or on the common law are inappropriate legal principles to apply to the instructions dated 15th November, 2000 issued by way of clarification to remove doubts. There can be no doubt that when the instructions speak of "employees", it means only "employees" who are in Government service of the State of Punjab. The decision of the Finance Department in the case of the petitioner is therefore unexceptionable and is in accordance with rule 4.4(b) read with the clarificatory instructions dated 15th November, 2000. The past service rendered in the State of Haryana, or any other State for that matter or in the U.T., Administration, will not count for protection of pay of an employee entering service through open competition by direct recruitment. The past service stands surrendered for all intents and purposes. However, the only demonstrable right the petitioner has is of retention of lien in the Electricity Department of the U.T., Administration for a period of 2 years so that his doors are not shut in case he does not satisfactorily complete the period of probation and is discharged from service of the Punjab Government. Though the specific rules of service applicable to the department of Legal Metrology, Punjab are not shown but usually the period of probation in direct recruitment is of 2 years which matches the period of retention of lien. Protection by lien afforded by the U.T. Administration, Chandigarh is addressed to itself and not to the State of Punjab and is not binding on it. It would be of no consequence to the new employer if it were to discharge the petitioner during the probationary period or what events may follow adverse to the petitioner as a consequence.

6. Faced with this situation, Mr. D.R. Sharma submits that the pay scales admissible to UT employees are on Punjab pattern and many of the instructions issued by the Punjab Government are followed by U.T. Administration, Chandigarh by adoption or otherwise and even the Punjab Civil Services Rules apply to UT employees governing

their rights and obligations and therefore the petitioner's pay should be protected. He cites [Union Territory of Chandigarh and Others Vs. Rajesh Kumar Basandhi and Another](#), to buttress the proposition. This argument is fallacious. The judgment of the Supreme Court has not decided the issue of pay protection raised in this petition and is wide off the mark and of no help to the petitioner. Consequently, the view of the Finance Department is found justified and is endorsed and the petition is dismissed. No costs.