

LPA-1423-2018 with
CM-3855-LPA-2018

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IN THE HIGH COURT OF PUNJAB & HARYANAAT
CHANDIGARH

LPA-1423-2018 with
CM-3855-LPA-2018
Reserved On:14.02.2023
Pronounced on :15.03.2023

State of Punjab and others

... Appellants

Versus

Dr.Ranjit Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO,
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr.Aman Dhir, DAG, Punjab, for the applicants/appellants.

Mr.Gurminder Singh, Sr. Advocate, assisted by
Mr.Jatinder Singh Gill, Advocate, for the respondents.

M.S. RAMACHANDRA RAO, J.

This Letters Patent Appeal is preferred by the State of Punjab and others challenging the judgment dt.06.10.2017 in CWP-25517-2012 of the learned Single Judge.

The said Writ Petition had been filed by the respondents challenging a notification dt.21.12.2011 (P10), orders dt.02.07.2012 (P11) and dt.18.07.2012 (P12).

The respondents had been working as Agriculture Officers, PAS-II, in the Administrative Wing of the Department of Agriculture, Punjab. Their services are governed under the Punjab Agricultural Service (Class-II) Rules, 1974.

In the said notification dt.21.12.2011 and the subsequent orders passed, Agriculture Officers such as the respondents were given different pay scales in a pay revision with effect from 01.12.2011 in the entry scale, and on completion of 4/9/14 years of service in the entry scale.

They contend that the pay scales cannot be fixed differently in the same post on the basis of length of service.

Background Facts

Prior to 1986, there were three classes of various officers belonging to the Punjab Agricultural Service i.e. Class I, II and III carrying pay scales of Rs.940-1850, Rs.825-1580 and Rs.700-1200. A senior thus was paid a higher pay scale than his junior. The pay scales of Class II and III were revised w.e.f. 01.01.1986 and thereafter the pay scales were again revised in 1991 vide notification dt.22.01.1991.

By notification dt.18.09.1992 all the three classes were merged into one cadre and officers were granted pay scales of Rs.2200-4000 at the time of entry into service, pay scale of Rs.3000-4500 after 8 years of service and pay scale of Rs.3700-5300 after 18 years of service, respectively.

Earlier to the notification dt.18.09.1992, Class II officers in service were getting higher pay scale than their juniors or officers belonging to Class III. This continued till the notification dt.18.09.1992 came into force.

By the said notification, an anomaly was created in the service and a junior started getting higher pay scale on the basis of his longer length of service although they were promoted after the seniors were recruited directly in service.

This notification was challenged in *Sarjit Singh and others Vs. State of Punjab*¹ (CWP-11697-1995) and a Division Bench of this Court on 06.05.1996 held that there is no rationale as to why a Junior Agriculture Officer should get a higher pay than a senior; and the said notification insofar as it provided for grant of higher pay scale only on the

¹CWP-11697-1995 decided on 06.05.1996

basis of completion of 8/18 years of service and not seniority was held to be violative of Article 14 & 16 of the Constitution of India; and the State of Punjab was directed to grant same pay scale to the petitioners as was being paid to their juniors, who had completed 8/18 years of service period.

The said decision was also confirmed in **SLP-2372-1997 dt.14.02.1997**.

Subsequent thereto, on 21.04.1997 an order was issued by the Government of Punjab implementing the said judgment and directing that all Class I and II officers belonging to the Administrative Wing of the Department of Agriculture, Punjab irrespective of their length of service would be granted the placement scales admissible to their juniors w.e.f. 18.09.1992.

On 20.03.1998, the date of giving effect was changed from 18.09.1992 to 01.01.1991.

Thereafter, an order dt.12.05.1998 was issued by the Director, Agriculture fixing the pay of persons like the respondents in the revised pay scales of Rs.3700-5300 from 01.01.1991 or from the date of their joining whichever is later.

There was a pay revision on the basis of recommendation of the 4th Pay Commission in 1998 vide notification dt.16.11.1998 re-fixing revised pay scales from 01.01.1996.

In 2001, a notification dt.13.09.2001 was issued notifying the Punjab Civil Services (Revised Pay) (4th Amendment) Rules, 2001 which came into effect from 01.01.1996. In this notification, the pay scale of Rs.7220-11660 was fixed at the time of entry into service, Rs.10025-15100 after 6 years of service and Rs.12000-16350 after 16 years of service.

**The CWP-23138-2010**

This was challenged in *CWP-23138-2010* titled as *Dr.Naresh Kumar Kataria and others Vs. State of Punjab and others*² in this Court and on 05.01.2012, it was disposed of taking into consideration an order passed on 21.12.2011 whereby the claim of pay parity raised by the petitioners therein with their counterparts in the Animal Husbandry Department was accepted. But the Court held that they are not entitled to any arrears or of fixation of pay on notional basis from the due dates.

Thereafter on 18.07.2012, the Punjab Government granted to Agriculture Development Officers and also those working as Agriculture Officers in the Administrative Wing of the Agricultural Department revised pay scales w.e.f. 01.01.1996 as under: -

- a. From 01.01.1996
 - (i) Rs.7800-13500 (with start of Rs.8000/-) entry pay scale
 - (ii) Rs.10025-15100 other 4 years of service
 - (iii) Rs.12000-15500 other 9 years of service
 - (iv) Rs.14300-18600 after 14 years of service.
- b. From 01.01.2006
 - (i) Pay Band Rs.15600-39100 plus grade pay Rs.5400 initial pay 21000 (entry scale).
 - (ii) Rs.15600-39100 plus grade pay 6600=Rs.25250 other 4 years of service
 - (iii) Rs.15600-39100 plus grade Pay 7600=Rs.31320 other 9 years of service and
 - (iv) Rs.37000-67000 plus grade pay 8600=Rs.46000 after 14 years of service.

The CWP-25517-2012

The respondents approached this Court and filed CWP-25517-2012.

² CWP-23138-2010 dt.5.1.2012

According to the respondents/Writ Petitioners, this refixation of their pay again created an anomaly whereby they are drawing less pay than their juniors.

According to them though respondent No.1's pay has been fixed in the pay scale of Rs.12000-15500 on the ground that he had completed only 9 years of service as on 01.01.1996, he has not been given admissible pay scale of Rs.14300-18150 from 01.01.1996 irrespective of length of service; and the same was given only on 01.01.2003 i.e. after the completion of 14 years of service.

Thus, the rightful benefit following from the order in *Sarvjit Singh and others* from 01.01.1996 as was given earlier vide order dt.16.11.1998 was not granted by reintroducing the condition of completion of 14 years of service for the grant of the said pay scale. They contend that the appellants have not granted to them the same pay scale which is admissible to the Agriculture Development Officers, who have completed 14 years of service.

They contend that the imposition of the condition of the completion of 4/9/14 years of service on the respondents (who are rank senior to Agriculture Development Officers) is an arbitrary action of the appellants. As a result the junior officers with longer length of service have been given higher pay scales Rs.14300-18150 from 01.01.1996 than their seniors with lesser length of service.

For example vide Director Agriculture Orders No.2.2556/12/EI(2)5596.99 dated 06.09.2012 a Junior Agriculture Officer Dr.Dogar Singh with longer length of service but was promoted at a date

later than Dr.Ranjit Singh (respondent No.1) has been given the pay scales 14300-18150 from 01.01.1996 whereas this has not been given to a senior officer Dr. Ranjit Singh with lesser length of service who has been given a lower pay scale of Rs.10025-15100 as on 01.01.1996. This situation has to be declared anomalous, void and violative of Articles 14 and 16 of the Constitution of India since it grants pay scale on the basis of the length of service and not seniority.

The stand of the State

The State refuted the said contentions in its written response filed in the Writ Petition.

The State contended that the benefit of the Assured Career Progression Scheme is applicable to officers upto the cadre of Agriculture Development Officers/Agriculture Officers/Chief Agriculture Officers/Deputy Director of Agriculture Cadre counting their regular service of 4, 9 and 14 years from the date they joined the appellant-department.

They relied on instructions dt.21.06.2000.

Though they admitted that the judgment in *Sarvjit Singh and others* was implemented by issuing office orders on 22.04.1997 and 26.03.1998, they contended that it would not apply to the Writ Petitioners.

They also contended that the judgment in *Sarvjit Singh and others* is not applicable to the respondents because 4/9/14 scheme pay scales were granted according to Annexure P10 dt.21.12.2011 as modified by the judgment in *Dr.Naresh Kumar Kataria and others* read with a letter dt.17.04.2000.

They also admitted that the judgment in *Dr.Naresh Kumar Kataria and others (2 supra)* was implemented on 02.07.2012 and all Chief Agriculture Officers/Deputy Director Agriculture/Agriculture Officers/Agriculture Development Officers have been sanctioned the pay scales after completion of 4, 9 and 14 years of regular service w.e.f. 01.01.1996 on notional basis vide letter dt.18.07.2012 (P12).

According to the State, service rendered in the same post before 01.01.1996, or the date opted for by an officer, shall count for the purpose of grant of revision of pay scales; same post shall mean a post which is in the same cadre with same designation and same pay scale; where the post is one for which different pay scales without involving promotion to a higher cadre was prescribed under the Rules applicable immediately before 01.01.1996, the entire service of officers adjudged as satisfactory from entry scale onwards shall be taken into consideration. For reckoning the period of service only the service rendered from the date of assignment of seniority in the cadre and which counts for increment shall only be taken into consideration.

It is stated that 4-9-14 scheme pay scale could not be granted to those employees who did not fulfil all conditions mentioned in the instructions issued by the personnel department and the question of rank junior or rank senior does not arise for the purpose of these higher scales.

The decision of the learned Single Judge in CWP-25517-2012

The learned Single Judge allowed the Writ Petition on 06.10.2017.

The learned Single Judge held that the notification dt.21.12.2011 and the subsequent orders passed allowing revised pay scale on the basis of the condition of completion of 4/9/14 years of service and

not on the basis of seniority, violates the law laid down in *Sarvjit Singh's* case (1 Supra).

She noted that in the said case the Court had framed a question “whether a person who is senior in Punjab Agricultural Service can be denied the pay scale which had been granted to the junior on the ground that the said junior and had been in longer period of service?”, and had answered the question in the negative by holding *that the grant of higher pay scale merely on the basis of length of service without taking into consideration the seniority of the officers inter se had definitely created an anomalous situation whereby the seniors are getting lower pay than their juniors even though they are working as subordinates to them.*

She also referred to the decision in *Dr.Naresh Kumar Kataria and others (2 supra)* and noted that petitioners therein had sought parity in pay scales with those who are members of veterinary service; such relief was granted during the pendency of the Writ by the Government by issuing an order dt.21.12.2011, but in the revision of pay scale again the condition of being eligible to the next scale on completion of 4/9/14 years was maintained which was similar to the earlier notification dt.18.09.1992 which allowed for a higher pay scale after completion of 8/16 years of regular service; and that in *Dr.Naresh Kumar Kataria and others (2 supra)*, it was not argued before the learned Single Judge who decided it about the decision in *Sarvjit Singh's* case (1 Supra) [that the condition of completion of 8/16 years of regular service for grant of higher scale had been set aside].

She then referred to certain decisions cited, followed the decision in *Saravjit Singh's case* (1 supra) and allowed the Writ Petition

setting aside the order dt.21.12.2011 and the consequential orders dt.02.07.2012 and 18.07.2012. She directed the appellants to recalculate the pay and other allowances of the respondents and release the same within three months.

The Letters Patent Appeal

Challenging the same this Letters Patent Appeal is filed by the appellants/State.

Counsel for the appellants contended that the judgment of the learned Single Judge is unsustainable; that in *Dr.Naresh Kumar Kataria and others (2 supra)* which was disposed of on 05.01.2012, this Court had permitted grant of revised pay scales and notional pay fixation of pay in higher pay scales in 4/9/14 years of regular service; consequently vide order dt.16.09.2012, pay scale of the respondents was fixed w.e.f. 01.01.1996 after completing 9 years of regular service in pay scale of ₹12000-15500 and completion of 14 years on 23.07.1999 in the pay scale of ₹14300-18150. He therefore contended that the order of the learned Single Judge deserves to be set aside.

Counsel for the respondents supported the order of the learned Single Judge and contended that there was no adjudication on merits as to validate of fixation of pay scale on the basis of period of service rendered in the post in *Dr.Naresh Kumar Kataria and others (2 supra)*, and learned Judge was not informed of the decision in *Sarvjit Singh's* case (1 Supra) and so there is no necessity to interfere with the order of the learned Single Judge.

We agree with the submissions of the counsel for the respondents.

The question whether a person who is senior can be denied the pay scale which has been granted to the junior on the ground that the said junior had been in longer period of service had been answered in a negative in **Sarvjit Singh's** case (1 Supra) and the notification dt.18.09.1992 which allowed the junior to be given a higher pay scale on completion of 8 years and 18 years of service was set aside.

The said decision had also been held by the Supreme Court in **SLP-2372-1997** on **14.02.1997**.

As rightly contended by him the judgement in **Sarvjit Singh's** case (1 Supra) is not specifically considered in **Dr.Naresh Kumar Kataria and others (2 supra)**.

In **Dr.Naresh Kumar Kataria and others (2 supra)**, the issue was whether the petitioners therein were entitled to same refixed pay scales as were granted to other counter-parts in the Animal Husbandry Department. On 23.12.2010. This Court held that certain circulars are relied upon by the petitioners to contend that there is a conscious decision taken by the State Government to equate the petitioners with the members of veterinary service and therefore, equivalence of pay scale has to be maintained at the subsequent stage of revision of pay scales also. Thereafter the State issued an order dt.21.12.2011 accepting the claim of pay parity raised by the petitioners in the said Writ Petition, but with a rider that they shall not be entitled to any arrears or of fixation of pay on notional basis from the due dates. Taking note of this development, the court disposed off **Dr.Naresh Kumar Kataria and others (2 supra)** as infructuous, but directing that the petitioners therein be given notional fixation of pay from the due dates.

There was no consideration in *Dr.Naresh Kumar Kataria and others (2 supra)* of the issue raised in *Sarvjit Singh's* case (1 Supra) i.e. whether a person, who is senior, can be denied the pay scale which has been granted to the junior on the ground that the said junior has been in longer period of service.

Therefore, we are of the opinion that the learned Single Judge had rightly followed the decision in *Sarvjit Singh's* case (1 Supra) while distinguishing the decision in *Dr.Naresh Kumar Kataria and others (2 supra)* and had rightly granted relief to the respondents.

We agree with the view of the learned Single Judge that the impugned notification dt.21.12.2011 and the subsequent orders dt.02.07.2012 and 18.07.2012 cannot be sustained as they are contrary to the decision in *Sarvjit Singh's* case (1 Supra).

Accordingly, the appeal fails and is dismissed.

Pending application(s), if any, shall also stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

15.03.2023

Vivek

Whether speaking/reasoned : **Yes**
Whether reportable : **Yes/No**