

“5. It Is Apparent from a Conjunctive Vs. Bakhtaur Singh and Another

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Court : Punjab and Haryana

Decided On : Feb-08-2013

Appellant : “5. It Is Apparent from a Conjunctive

Respondent : Bakhtaur Singh and Another

Judgement :

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Civil Writ
Petition No.14174-CAT of 2012 Date of Decision:

8. h February, 2013. Union of India and others ..Petitioners Versus Bakhtaur Singh
and another ..Respondents. CORAM: HON'BLE MR. JUSTICE A.K.SIKRI, CHIEF
JUSTICE. HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

1. Whether Reporters of local papers may be allowed to see the judgment ?.

2. Whether to be referred to the Reporters or No.?.

3. Whether the judgment should be reported in the Digest?. Present : Mr. Sanjay
Joshi, Advocate, for the petitioners. Mr. Jagdeep Joshi, Advocate, for the
respondents ***** A.K.SIKRI CHIEF JUSTICE The respondent herein initially joined
Indian Army as Naik and was transferred to the pension establishment w.e.f.
30.06.1985. At the time of release from Army, the respondent herein was drawing
basic pay at the stage of ` 288/-. Being an Ex-Serviceman the respondent herein
got re-employed as vehicle mechanic in the respondent department w.e.f.
1.7.1985. There was no break in the re-employment of the respondent and he was

granted the pay scale of ` 260-6-290-EB-6326-8- 390-10-400. However, his pay was fixed at the minimum of the pay scale i.e. ` 260/- instead of protecting his pay at the stage of ` 288/-, which he was drawing while in Army service. CWP No.14174-CAT of 2012 -2- 2. The respondent herein submitted that his pay should have been fixed at ` 288/- thereby protecting the pay he was drawing while he was in army service and that could not have been fixed at a lower level at ` 260/- which is minimum of the pay scale. His case was recommended by the office of I.O.C. EME Records vide letter dated 17.10.1997. It was also recommended by the Major, OIC, Adm. GP for 316, Station Workshop, vide his letter dated 06.11.1997. Still the petitioners did not accede to his request. He thereafter even served legal notice dated 26.09.2006 which also went unheeded. Thereafter the respondent filed O.A. before the Tribunal which was disposed of on 11.08.2008 with a direction to the petitioner to consider the claim of the respondent herein as per Rules. The matter was considered but the petitioners rejected the claim of the respondent vide orders dated 01.04.2009 on the ground that in a similar case DOP&T had clarified that when a re-employed pensioner asks for re-fixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale and the question of granting advance increment would arise only if there is any hardship. It was also mentioned that the question of hardship is to be seen from the point of view of whether minimum pay of re-employed post plus full pension plus pension equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no such hardship, no advance increment can be granted. The order further spelt out that as in the case of the respondents there was no hardship, inasmuch as the minimum pay of the re-employed post plus full pension plus pension equivalent to gratuity (whether ignorable or not) was not less than the last pay drawn at the time of retirement. The petitioner thus maintained that CWP No.14174-CAT of 2012 -3- the respondents pay had rightly been fixed at the minimum of the pay scale in absence of any hardship.

3. This order of the petitioners was challenged by the respondent herein by filing Original Application (O.A.) which has been allowed by the learned Tribunal vide orders dated 11.07.2011. In coming to this conclusion that the respondents pay needs to be protected, the Tribunal has referred to orders passed in O.A. No.1322-PB of 1996 titled as Ex-Havaldar D.P.S.Kang Vs. Union of India. The

Tribunal has noted that similar prayer made by Shri D.P.S.Kang was allowed and the benefit was extended to him. Therefore, there was no reason to meet out a different treatment to the respondent herein. Precise reasons given in this behalf are contained in para No.5 of the orders of the Tribunal which are as follows:-

5. It is apparent, from a conjunctive perusal of the pleadings raised by the parties, that the respondents did not dispute the applicability of the judgment in Ex-Havaldar D.P.S. Kangs case to the case of the applicant, but have raised a plea that they cannot grant similar relief to the applicant in view of the instructions of the Ministry of Finance and the clarification issued by the DOP&T. It is not a plea raised by the respondents that the judgment rendered in the case of Ex-Havaldar D.P.S. Kang had been challenged in judicial review. It, thus, follows that the judgment rendered by the Tribunal in the case of D.P.S.Kang was allowed to attain finality. In the light of that judgment, the respondents cannot resist the grant of relief to the applicant by relying upon the administrative instructions issued by the Ministry of Finance and CWP No.14174-CAT of 2012 -4- the clarification issued by the DOP&T. It is to state the obvious that the administrative instructions cannot outweigh the judicial view.

. Union of India has filed this writ petition under Article 226 of the Constitution of India challenging the veracity of the orders passed by the Tribunal. The reason contained in the rejection order dated 01.04.2009 is emphasized submitting that it was not a case of hardship and the pay was rightly fixed. Learned counsel for the petitioners at the time of arguments referred to the judgment of Apex Court in the case of Director General, Esi Corporation, New Delhi Versus M.P.John AIR 199.SC 448.

4. We do not find any merit in the aforesaid contention of learned counsel for the petitioners. It is sought to be projected that the case of the respondent is not that of hardship and therefore his claim is not maintainable. The reason given in the order dated 01.04.2009 is as under:- AND WHEREAS, in a similar case DOP&T has clarified that when a re-employed pensioner asks for re-fixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale. The question of granting him advance increments will arise only if there is any hardship.

Hardship is seen from the point of view of whether minimum pay of re-employed post plus full pension plus pension equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no such hardship no advance increment can be granted.

. CWP No.14174-CAT of 2012 -5- 5. What is overlooked in passing the aforesaid order is that the instant case is not that of grant of advance increments. The respondent herein never claimed that while fixing his pay in the pay scale of ` 260-6-290-EB-6326-8-390-10-400 he should be granted any advance increment. It is only if he had asked for advance increment, the aforesaid rational would have been relevant. The judgment of the Supreme Court in the case of M.P.John (supra) also deals with that aspect; instead the claim of the respondent was for pay protection. At the time of leaving the Army Service, he was drawing pay of ` 288/- and not he wanted protection of this pay and did not want any advance increment.

6. As far as the protection of his pay is concerned, the case is squarely covered by the orders passed in the case of Ex-Havaldar D.P.S.Kang Vs. Union of India which order was implemented by the petitioners themselves in that case. The case of the respondent is exactly the same as that of Mr. D.P.S.Kangs case and therefore, the Tribunal rightly allowed the O.A. of the respondent herein. We find no merit in the present petition as the order of the Tribunal is without blemish. Accordingly, this writ petition is dismissed. (A.K.SIKRI) CHIEF JUSTICE 8 h February, 2013 (RAKESH KUMAR JAIN) 'ravinder' JUDGE

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