IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 16975 of 2010 & connected petitions

Date of Decision: July 20, 2011

Ramesh Kumar and others

…Petitioners

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE GURDEV SINGH

Present: Mr. H.N Khanduja, Advocate,

Mr. Subhash Ahuja, Advocate,

Mr. Umesh Narang, Advocate,

Mr. Ravi Verma, Advocte,

Mr. Vivek Arora, Advocate,

for the petitioner(s).

Mr. Aman Chaudhary, Addl. AG, Haryana,

for the respondents.

1. To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

1. This order shall dispose of a group of petitions\* filed

under Article 226 of the Constitution because constitutional validity

of Rule 10 of the Haryana Civil Services (Revised Pay) Rules, 2008

(for brevity, ‘the 2008 Rules’), with regard to shifting the date of

increment has been challenged.

2. Facts are being stated from CWP No. 16975 of 2010.

The petitioners have been working in the Education Department on

regular basis with the respondent State. Some of them have retired

having attained the age of superannuation. Their dates of

increments fall between 1st of January to 30th of June. In the

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recommendations of the 6th Central Pay Commission it was

suggested that in the revised scheme the date of annual grade

increment should be 1st of July every year. In other words, those

employees who have completed six months and above in the scale

on 1st of July were to be eligible to earn increments. The

respondent State accordingly revised the pay scales of its

employees w.e.f. 1.2.2006 by promulgating the 2008 Rules.

Accordingly, the pay of all the petitioners was revised in accordance

with the 2008 Rules w.e.f. 1.1.2006.

2. In order to achieve uniformity in the date of granting

annual grade increment, Rule 10 in the 2008 Rules has been

formulated. The necessary consequences of framing Rule 10 was

that employees like the petitioners have been getting their annual

grade increments after serving for 13-14 months whereas some

others who have fortuitous circumstance of their date of increment

between 1st of July to 1st of December became entitled to the grant

of increment after completing 7-11 months. The grievance of the

petitioners is that the action of the respondent State by delaying

the annual grade increment in their cases, has resulted into a loss

of service to the extent of over five months to one month whereas

it has resulted into gain for the similar period for those employees

who have fortuitously their date of next increment between

1.7.2006 to 1.7.2007.

3. The petitioners are those persons whose date of

increment was due in the span of 1.1.2006 to 30.6.2006 as the

period of completion of 12 months fall between the aforesaid dates

from the date of last increment. They have been granted next

increment only on 1.7.2006 despite the fact that they have

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completed 12 months between the span of 1.1.2006 to 30.6.2006.

The necessary result which flows from the operation of Rule 10 of

the 2008 Rules is that the span of increment instead of 12 months,

have expanded to 13-17 months. The petitioners have illustrated

the operation of Rule 10 of the 2008 Rules with the help of a table,

which is as under:-

“PARTICULARS OF INCREMENTS AND PAY FIXED IN NEW

PAY SCALES AS ON 16.9.2010

Sr.

No.

Name of

Petitioner

Increment

Due date

Increment

Given on

Increment

granted

after

Pay fixed in

the scale of

`9300-34800

1. Ramesh

Kumar

01.01.2006 01.07.2006 18

months

10200+4200

2. Aneet

Kumar

01.02.2006 01.07.2006 17

months

15070+4800

3. Bal

Kishan

Sharma

01.03.2006 01.07.2006 16

months

15810+4800

4. Krishna

Barkodai

01.03.2006 01.07.2006 16

months

14700+4800

5. Gurvinder

Kaur

01.04.2006 01.07.2006 15

months

12510+4600

6. Manjeet

Kaur

01.05.2006 01.07.2006 14

months

14330+4800

7. Anita

Kamboj

01.06.2006 01.07.2006 13

months

14910+4800

8. Satish

Kumar

01.03.2006 01.07.2006 16

months

15440+4400

9. Kulwant

kaur

01.03.2006 01.07.2006 16

months

15810+4800

10. Jagtar

Singh

01.03.2006 01.07.2006 16

months

14200+4800

11. Ishwar

Singh

01.04.2006 01.07.2006 15

months

6510+1800

12. Jai Kishan 01.03.2006 01.07.2006 16

months

6650+1800

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13. Jasbir

Kaur

01.05.2006 01.07.2006 14

months

12510+4600

14. Sangeeta

Rani

01.04.2006 01.07.2006 15

months

11540+4600

15. Mohan

Lal

01.02.2006 01.07.2006 17

months

15810+4200

16. Sunil

Mann

01.02.2006 01.07.2006 17

months

15800+4200”

4. A perusal of the aforesaid table would show that

increment of petitioner No. 1-Ramesh Kumar has been released

after 18 months and to petitioner No. 2 after 17 months. The total

span on period is more than 12 months in each case. According to

the petitioners it has caused them permanent recurring loss of

delayed increment. According to the averments made in paras 10

and 11 of the petition, it has been asserted that Rule 10 would

result into violation of Rule 4.7 of the Punjab Civil Services Rules

(applicable to the State of Haryana) [for brevity, ‘CSR Rules’] which

provides that an increment shall ordinarily be drawn as a matter of

course annually. The rule further contemplate that increment of a

government employee can be withheld by a competent authority on

the ground that his conduct has not been good. Therefore, the

assertion is that deferring the increment beyond the period of one

year would be stigmatic and since it could be down only after

recording of finding that a government employee has misconducted

himself in accordance with the provisions of the Haryana

Civil Service (Punishment and Appeal) Rules, 1987 (for brevity, ‘the

1987 Rules’). The further grievance of the petitioners is that while

framing Rule 10 of the 2008 Rules, interests of the employees

belonging to this particular segment have been ignored. The

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petitioners have also averred that if the aforesaid course is

permitted then junior would start getting more pay than their senior

counterparts in the same cadre, which is impermissible and it

violate Articles 14 and 16(1) of the Constitution. The petitioners

have also asserted that classification of employees by fixing the

date of increment as 1st of July would result into hostile

discrimination as it bifurcate a uniform class of employees working

in one service and in one cadre.

5. The respondent State of Haryana and its officers have

filed their common written statement and taken the stand that on

the basis of recommendations made by the 6th Central Pay

Commission they have adopted the recommendation on the same

pattern. Accordingly, the pay scale of employees working in the

respondent State were revised by framing the 2008 Rules under

proviso to Article 309 of the Constitution with some modifications.

The general recommendation concerning the date of increment has

been adopted in toto and 1st of July of every year is the date fixed

for grant of annual grade increment. According to the respondents

a non-obstente provision has been framed in Rule 15 of the 2008

Rules, which specifically provide that the provisions of the CSR or

the Punjab Fundamental Rules or any other rules made in this

regard was not to apply where pay is regulated under the 2008

Rules except as otherwise provided and to the extent they are

inconsistent with the 2008 Rules. Therefore, it has been asserted

that Rule 10 cannot be challenged on the ground that it violates the

provisions of Rule 4.7 of the CSR.

6. In para 4 of the preliminary submissions it has been

pointed out that the petitioners could have opted out of the 2008

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Rules as per the provisions of Rule 6. It has been maintained that

the basic object of introducing 1st of July every year as the date of

annual grade increment is to bring uniformity and there is no

question of any discrimination or arbitrariness. Another submission

made by the respondent State is that by the enactment of the 2008

Rules no anomaly in the pay scales would emerge because in the

revised pay structure there is no loss to any employee nor there is

any case where the junior employee might be getting more salary

than his senior.

7. We have heard learned counsel for the parties at a

considerable length. An employee who has entered into a

government service would be governed by the date of his entry into

service, which is not in his hands and it depends on the facts of

each recruitment and promotions. Therefore, if fortuitously an

employee has joined service on the recommendation of the Public

Service Commission or the Subordinate Services Selection Board

between the span of time 1.1.2006 to 30.6.2006 then all of them

would earn increment on 1.1.2007 by virtue of operation of Rule 10

of the 2008 Rules. It would, therefore, be necessary to read Rule

10 of the 2008 Rules, which reads as under:

“10. Date of next increment in the revised pay

structure:-

There will be a uniform date of annual increment

viz, 1st July of every year. Employees completing 6

months and above in the revised pay structure as on 1st

July will be eligible to be granted the increment. The

first increment after fixation of pay on 01.01.2006 in the

revised pay structure will be granted on 01.07.2006 for

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those employees for whom the date of next increment

was between 1st July 2006 to 1st January, 2007.

Provided that in case of persons who had been

drawing maximum of the existing scale for more than a

year as on the 1st day of January 2006, the next

increment in the revised pay structure shall be allowed

on the 1st day of January, 2006. Thereafter, the

provision of Rule 10 would apply.

Provided further that in cases where an employee

reaches the maximum of pay band, shall be placed in

the next higher pay band after one year of reaching such

a maximum. At the time of placement in the higher pay

band, benefit of one increment will be provided.

Thereafter, he will continue to move in the higher pay

band till his pay in the pay band reaches the maximum

of PB-4, after which no further increments will be

granted.”

8. A perusal of Rule 10 would show that a uniform date of

increment fixed by the respondent State is 1st of July every year and

an employee would be eligible for next increment after completing

6 months and above. It has a laudable object to bring uniformity in

the date of annual grade increment i.e. 1st of July every year.

However, we tend to accept the submission of the learned counsel

for the petitioners that those employees who have completed a day

less than six months would not ever e able to recover back that

period of service and it will go un-accounted. The table which has

been provided by the petitioners would make it clear that an

increment has been granted to petitioner No. 1-Ramesh after 18

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months and to petitioner No. 2-Aneet Kumar after 17 months.

Similar is the position with regard to other petitioners. As a

consequence, the additional period of service beyond the period of

one year has been washed away which is impermissible in law.

9. A public servant cannot be subjected to any punishment

without following the principles of natural justice as contemplated

by the 1987 Rules. Under Rule 4(v) of the 1987 Rules withholding

of increment without cumulative effect is a minor penalty and the

same cannot be inflicted on an employee unless the procedure

provided by Rule 8 has been followed. Likewise, stoppage of

increment with cumulative effect is a major penalty, as has been

provided by Rule 4(v)(a) of the 1987 Rules and the same cannot be

inflicted on an employee unless the procedure provided by Rule 7

for holding of a regular departmental inquiry has been followed and

complied with. There is, thus, apparent conflict between the

provisions of the 1987 Rules read with Article 311 of the

Constitution and Rule 10 of the 2008 Rules. Therefore, the

argument that Rule 15 of the 2008 Rules would have overriding

effect on the CSR or PFR or any other rules would not be available

to the respondents. It cannot be accepted by any stretch of

imagination that Rule 15 has excluded the application of the 1987

Rules read with Article 311 of the Constitution. When increment of

an employee is withheld with permanent effect by postponing the

date of its grant then it can be done only when a regular inquiry has

been held after following the principles of natural justice, as

contemplated by Rules 7 and 8 of the 1987 Rules.

10. The object of fixing 1st of July every year as a date of

grant of increment is wholly irrational. Annual grade increments

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are earned by an employee on completion of one year of service or

any other date which may be acceptable to the employee at his

option. The classification created by fixation of 1st of July as the

date of increment has divided one class of employees working in

the same cadre vertically. The benefit of Rule 10 has been granted

to one class which has completed six months or more than six

months but the segment belonging to the class of the petitioners

has been discriminated. They would get their increment after

rendering more than 16, 17 or 18 months of service. It is well

settled that classification under Article 14 would be accepted only if

it carves out a distinct class for the purposes of granting benefits

than those who are deprived of the same. The classification cannot

be made in such a fashion that some of the members of the same

class have been arbitrarily chosen for the grant of benefit whereas

the others have been kept out of it. The aforesaid principles have

been well routed in the constitutional scheme under the equality

clause of Article 14 of the Constitution and have been repeatedly

followed and applied by Hon’ble the Supreme Court. In that regard

reliance may be placed on the classical theory propounded on

Article 14 of the Constitution in the case of State of West Bengal v.

Anwar Ali Sarkar, AIR 1952 SC 75. It was in that case that Hon’ble

the Supreme Court laid down twin test to uphold a provision to be

reasonable. Firstly, the classification must be founded on an

intelligible differentia which distinguishes persons or things that are

grouped together than others left out of the group. Secondly, the

differentia must have a rational relation to the object sought to be

achieved by such a provision. The differentia which is the basis of

the classification and the object of the provision are two distinct

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things. In order to answer the first test it is necessary that there

must be nexus between the basis of the classification and the

object of the provision. It is only when there is no reasonable basis

for classification that the legislation making such classification

would be declared discriminatory. The aforesaid tests are followed

and applied in numerous judgments including Ram Krishna Dalmia

v. Justice S. R. Tendolkar, AIR 1958 SC 538. However, this theory

appears to have been further expanded in the cases of E.P.

Royappa v. State of T.N., AIR 1974 SC 555 and Maneka Gandhi v.

Union of India, AIR 1978 SC 597.

11. When the principles laid down in the classical theory are

applied to the facts of the present cases it emerges that at best the

intelligible differentia between two classes of employees is the date

of increment which is 1st of July every year. The next question for

determination is whether this intelligible differentia has a

reasonable nexus with the object sought to be achieved. The

object of framing Rule 10 of the 2008 Rules is stated to bring

uniformity in the date of annual grade increments. There can be no

reasonableness in fixing the date of increment because it would

result into treating the employees of the same class differently.

One class of employees whose date of increment would fall

between 1st of July to 1st of January next year, would get their

increments in a span of period ranging between 6 months to 12

months whereas the persons like the petitioners would earn their

increments after completion of more than 12 months and touching

18 months. The aforesaid situation would emerge from the perusal

of the table which highlights discrimination. Therefore, we are of

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the view that the provisions of Article 14 of the Constitution have

been flagrantly violated and the classification is not acceptable.

12. For the reasons aforementioned these petitions succeed.

The date of increment of 1st July is declared as ultra vires of Article

14 of the Constitution in respect of those employees who earn their

increment between 1st of January to 30th of June. It is directed that

the petitioners and all other such employees shall be given

increment on the date when they originally earn increment. The

respondents shall undertake the exercise of restoring these

increments to the petitioners from the date they originally earn

their increments. The needful shall be done within a period of two

months from the date of receipt of a copy of this order.

13. A photocopy of this order be placed on the files of

connected cases.

(M.M. KUMAR)

JUDGE

(GURDEV SINGH)

July 20, 2011 JUDGE

PKapoor

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Sr.

No.

CWP No. Title

1 16975 of 2010 Ramesh Kumar and others v. State of

Haryana and others

2 17524 of 2010 Anju and others v. State of Haryana and

others

3 20301 of 2010 Kashmir Chand and others v. State of

Haryana and others

4 23188 of 2010 Subhash Kumari v. v. State of Haryana and

others

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5 145 of 2011 Prahlad Singh and others v. State of

Haryana and others

6 149 of 2011 Ram Phal and others v. State of Haryana

and others

7 154 of 2011 Krishan Kumar and others v. State of

Haryana and others

8 8037 of 2011 Rajbir Singh and others v. State of Haryana

and others

(M.M. KUMAR)

JUDGE

(GURDEV SINGH)

July 20, 2011 JUDGE

PKapoor