

*IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH*

**Civil Writ Petition No.19799 of 2010**

*DATE OF DECISION: September 14, 2011*

Raj Singh Malik & others

.....Petitioners

VERSUS

State of Haryana & others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE RANJIT SINGH**

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present:** Dr. S.K. Redhu, Advocate,  
for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana  
for the State.

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*RANJIT SINGH, J.*

Number of petitioners working as JBT teachers and as on other posts have approached this Court through different writ petitions to challenge the order passed by the respondent-Government to withdraw the bunching increments earlier granted to them and thereafter, directing recovery of the paid excess amount from their pay and allowances. The petitioners have, thus, not only challenged the action of the respondent-Government in withdrawing bunching increments but have also made a grievance in regard to the recovery as ordered on the support of the ratio of law laid down in **Sahib Ram Versus State of Haryana, 1995(1) SCT, 668.** To challenge the action of the government in withdrawing the bunching increments after granting the same, reliance is placed upon a ratio of a law laid down in **Om Parkash Vs. State of Haryana, 2008(4) RSJ**

**35.** In some of the cases, reply has been filed, whereas pleadings are yet to be completed in number of writ petitions. In some of the petitions, even the service of notice is yet to be effected. Since the issue involved in all such cases is common, there would not be any need to wait for completion of service or pleadings. Accordingly all the petitions bearing Nos. 22041 (Ramdhari & others Vs. State of Haryana & others), 22048 (Anil Kumar & others Vs. State of Haryana & others), 22049 (Suresh Kumar & others Vs. State of Haryana & others), 22088 (Shiv Charan & others Vs. State of Haryana & others), 22122 (Badan & others Vs. State of Haryana & others), 22201 (Sunder Singh & others Vs. State of Haryana & others), 23364 (Ram Phal & others Vs. State of Haryana & others) of 2010, 537 (Umed Singh & others Vs. State of Haryana & others), 693 (Vinod Kumar & others Vs. State of Haryana & others), 1596 (Suresh Kumar & others Vs. State of Haryana & others), 2355 (Radha Krishan & others Vs. State of Haryana & others), 2383 (Satya Pal & others Vs. State of Haryana & others), 2585 (Davinder Singh & others Vs. State of Haryana & others), 2710(Saddiq Ahmed & others Vs. State of Haryana & others), 3027(Sanjay Kumar & others Vs. State of Haryana & others), 3420 (Raj Pal & others Vs. State of Haryana & others), 3442 (Raj Pal Singh & others Vs. State of Haryana & others), 4420 (Sh. Ashok Kumar & others Vs. State of Haryana & others), 4941(Sh. Baljeet Singh & others Vs. State of Haryana & others), 5120 (Ajay Singh & others Vs. State of Haryana & others), 5632 (Anil Kumar & others Vs. State of Haryana & others), 14304 (Ved Parkash & others Vs. State of Haryana & others) and 15628 (Harikesh Dalal & others Vs. State of Haryana & others) of 2011 are being disposed of

together through a common order. For the ease of discussion and order, the facts have been taken from Civil Writ Petition No.19799 of 2010, titled as "Raj Singh Malik & others Vs. State of Haryana & others".

As per the averments, on the recommendation of the 6<sup>th</sup> Pay Commission, the State had introduced revised pay scales w.e.f. 1.1.2006 through a notification dated 30.12.2008. The pay of the petitioners (in this writ petition) was, accordingly, fixed in the revised pay scale of ₹9300-34800+ pay band 4200 w.e.f. 1.1.2006. Petitioners No.1 to 5 were drawing their basic pay of ₹5250/- in the pre-revised pay scale of ₹4500-125-7000/-, dearness pay of ₹2625/- and dearness allowance of ₹1890/-. This worked out to ₹9765/- in the upgraded revised pay scale of ₹9300-34800+ pay band 4200. By adding increments of bunching, pay comes to ₹14340/- as on 1.1.2006. Granting one annual increment, thereafter, w.e.f. 1.7.2006, the pay was worked out to be ₹11020/- + 4200/-=15220/-. Similarly the pay has been calculated by adding the subsequent increments. Similar calculations are also given in respect of petitioners No.6 to 26.

It is stated that the respondents had earlier fixed the pay of the petitioners by granting the benefit of bunching as provided under proviso of Rule7(1)(A) in Haryana Civil Services (Revised Pay) Rules 2008 (for short '2008 Rules') issued vide notification dated 30.12.2008. Subsequently, however, Financial Department had issued a letter on 14.6.2010 and through it, the benefit of bunching has been withdrawn besides directing recovery from the pay of the petitioners. Respondent No.4, accordingly, refixed the pay of the

petitioners and had directed recovery.

Mainly, it is stated that this action has been taken without affording any opportunity of hearing to the petitioners and thus, this order, which results in effecting recovery from the pay and allowances of the petitioners, is passed in violation of principle of natural justice. It is stated that there was no misrepresentation or fraud on the part of the petitioners and as such the amount, if paid in excess, in any manner cannot be recovered as per the ratio of law laid down in **Sahib Ram's case(supra)**.

Reference is also made to the earlier case, where similar controversy regarding grant of bunching increments and withdrawal thereof had been considered by a Division Bench of this Court in the case of **Om Parkash(supra)**. This Court had quashed the impugned order, whereby the increments had been withdrawn after having been granted.

The bunching increment is regulated by Rule 7, which relates to fixation of pay in the revised scale even in the Rules of 2008. The rule of fixation of initial pay in the revised scale is contained in Rule 7. The proviso under the earlier rule read as under:-

“Provided further that where in the fixation of pay, the pay of Government servants drawing pay at more than four consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised scale at the same stage, the pay in the revised scale of such of these Government servants, who are drawing pay beyond the first four consecutive stages in the existing scale shall be stepped up to the stage where such bunching

occurs, by the grant of increments in the revised scale.”

In 2008 Rules, also proviso is identically worded and is as under:-

“Where, in the fixation of pay, the pay of Government servants drawing pay at two or more consecutive stages in an existing scale gets bunched, that is to say, gets fixed in the revised pay structure at the same stage in the pay band, then, for every two stages so bunched, benefit of one increment shall be given so as to avoid bunching of more than two stages in the revised running pay bands. For the purpose, the increment will be calculated on the pay in the pay band. Grade pay would not be taken into account for the purpose of granting increments to alleviate bunching.”

The counsel for the petitioners, accordingly, contends that the bunching increment was allowed to the petitioners on the basis of this proviso, which is identical in both the Rules and hence, the action of the respondents in withdrawing the bunching increments would be illegal in view of ratio of law laid down in **Om Parkas's case(supra)**.

Mr. Rathee, however, would join issues with the counsel for the petitioners. By referring to the reply filed in the writ petition, Mr. Rathee contends that in the amended Rules, Note 2 has been incorporated in the Rules itself, which is as under:-

**“Note 2:-** Where a post has been upgraded as indicated in Part B of the First Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with clause A(i) and (ii) of Rule 7 by multiplying the

existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of 10. The Grade pay corresponding to the upgrade scale as indicated in column 6 of the Part-B of the First Schedule will be payable in addition. Illustration 4 in this regard is in Explanatory Memorandum of these rules.”

As per Mr. Rathee, the position that was considered and was applicable in the case of **Om Parkash (supra)** would not arise in the present case as earlier the bunching increment was withdrawn on the basis of executive instructions but in the present case this is being done on the basis of rule position that this order has been so passed.

Be that as it may, the fact remains that the action to withdraw the bunching increments is ordered without following the principle of natural justice. The issue whether a recovery can be ordered in view of law laid down in **Sahib Ram's case(supra)**, would also arise in this case. Since this order has been passed without issuing show cause notice to the petitioners, certainly, it can be viewed that the order would suffer from violation of principle of natural justice. Even if these increments are to be withdrawn on the basis of rule position as contained in the amended Rules, the respondents can be expected to issue show cause notice before passing any order adverse to the interest of the petitioners. It can be urged that if the position was so clear in the Rules in the form of a Note then why at the first instance, the Government had decided to allow the bunching increments. Once the bunching increments were allowed being fully conscious about the rule position contained in the amended rules, withdrawal thereof could not have been ordered

without following the principle of natural justice. The issue of recovery would also have to be considered by the Government in terms of the law laid down in **Sahib Ram's case (supra)** .

In view of the above, the present writ petitions are disposed of on the short ground without going into the challenge raised by the petitioners on merit. The impugned orders are set aside due to violation of principle of natural justice. The case would go back to the respondents and they are granted liberty to issue a show cause notice to the petitioners and after obtaining their reply can pass fresh order in accordance with law. It would be appropriate if the respondents pass a well reasoned order making the petitioners understand as to how they are not entitled to the bunching increments and how the ratio of law laid down in **Om Parkash's case (supra)** would not be attracted in this case. The petitioners, if still feel aggrieved against any order so passed, they would be at liberty to approach any appropriate to determine for redressal of their grievance.

At this stage, counsel for the petitioners point out that impugned orders have been passed by respective BEO/DEEO. In this background, it would be appropriate to direct that the show cause notices are issued to all the petitioners even by BEO/DEEO, but, thereafter, the order be passed by the Director (Primary) DPI to maintain uniformity.

September 14, 2011  
monika

( RANJIT SINGH )  
JUDGE