

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

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

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 |

| | | | | | |
|-----|---------------|------------|------------|-----------|-------------|
| 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 mis-conducted 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

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

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

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 be 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

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

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

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

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)
JUDGE

July 20, 2011
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)
JUDGE

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