

(2016) 12 P&H CK 0117
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6619 of 2014

Baljit Singh

APPELLANT

Vs

Punjab and Haryana High Court, Chandigarh

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

High Court Establishment (Appointment and Conditions of Service) Rules, 1973 — Rule 18-A

Citation : (2017) 1 SCT 787

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Amandeep Singh, Advocate, for the Petitioners; Naresh Joshi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. - Rule 18-A of the High Court Establishment (Appointment & Conditions of Service) Rules, 1973 prescribes for Junior Assistants the following:-

"Vacancies in the cadre of Junior Assistants shall be filled up by placement to the extent of 100% out of the Clerks who have an experience of working as such for a minimum period of 5 years at the time of placement on the basis of seniority-cum-merit."

2. The note to Rule 18-A reads:-

"Note:- The post of clerks shall be bifurcated into posts of Clerks & Junior Assistants in the ratio of 50:50 and the posts of Junior Assistants are to be filled up as per conditions laid down in Notification No.7/1/97-FPI/8978 dated 4.9.2000 of the Punjab Govt."

3. The rules have been inserted by Notification No.197 dated 23.8.2012. The petitioners are Junior Assistants working on the establishment of this Court who have presented this petition seeking directions to the respondents to grant them

additional pay of 20% as envisaged in letter dated February 27, 2012 issued by the Government of India, Ministry of Law & Justice, Department of Justice, New Delhi. The decision of the Government of India is addressed to the Registrar General of this Court for necessary information and compliance. These instructions have been issued by the Government of India pursuant to the directions issued by this Court in CWP No. 15833 of 2009 (O&M), Hari Mohan Dixit and others v. Punjab and Haryana High Court, Chandigarh and others and the order dated January 13, 2012 passed in COCP No.1619 of 2011, titled Sanjeev Verma and others v. Smt. Neela Gangadharan, Secretary (Justice) and conveys the approval of the competent authority paving way for grant of additional pay @20% of pay drawn (i.e. pay in the Pay Band+Grade Pay) of the employees of the Punjab & Haryana High Court, Chandigarh (other than Clerical cadre) w.e.f. January, 01 2006. The post of Junior Assistant falls at Sr. No.14 of the letter in the Pay Band of Rs. 5910-20200 with Grade Pay Rs. 2800/-. The letter has been issued in concurrence with the Ministry of Finance (Department of Expenditure) vide their UO dated February 27, 2012. Since these instructions have been issued consequent upon the detailed order and directions issued in COCP No.1619 of 2011 dated September 21, 2012 in Sanjeev Verma's case, it would be appropriate to reproduce para.8 of the interim order which has material bearing on adjudication of this case:-

"[8]. Similarly, another set of employees comprising promotee Clerks are rightly ventilating that non-grant of 20% additional pay to them on the intermediary promotional post of Clerks has caused disparity in pay. The said additional pay was admissible to promotee clerks as Restorers etc. and shall be re-admissible on the next promotional post of Junior/Senior Assistants also. The Three Judges' Committee though recommended a uniform pay scale for Clerks irrespective of their source of recruitment but the single pay scale appears to have stagnated the promoted clerks in terms of actual emoluments as with 15 years" or more service in the feeder cadre before their promotion, their pay was already fixed at par with what they got on promotion as clerks. There is no legal compulsion of parity in "pay/emoluments" between "promotee" and "directly recruited" Clerks as a promotee, irrespective of his seniority, can draw higher pay/emoluments based upon his length of service. It, thus, appears justified and desirable to consider the claim for 20% additional pay to the promotee clerks."

4. In para.9 this Court issued the following directions while discharging rule:-

"[9]. Knowing the limits of adjudicatory scope of a contempt court and more so when the Authorities are fairly and favourably inclined to resolve the left out grievances of High Court employees, I deem it appropriate to dispose of these proceedings with the following clarificatory directions:-

[i] the Registrar [Rules] shall submit a supplementary proposal for the grant of 10% [in addition to 10% already granted] additional pay to the left-out employees justifying the parity vis-a-vis other employees to whom 20% additional pay has already been granted. The Officers' Committee shall consider

the proposal sympathetically, uninfluenced of its previous decision and take a holistic view within a period of four months.

[ii] the Committee shall give a serious thought to the cause of heart-burning amongst the promotee Clerks keeping in view the observations made in Para No. 8 above and if so justified, shall retain 20% additional pay on the promotional post also;

[iii] formal sanction granting 10% additional pay to the left-out categories shall be issued within four weeks from today.

[iv] If the affected employees are still left with any grievance against the decision to be taken in terms of directions at Sr. Nos. [i] and [ii] above, they shall be at liberty to approach the appropriate forum."

5. The directions have been incorporated in the instructions of the Government of India and are therefore, binding not only by their own force but now reflected through implementation by the competent authorities in the Government of India.

6. The claim of the petitioners was put up to the Committee of Hon"ble Judges in the meeting held on July 11, 2013. The decision taken in the minutes of meeting rejecting their claim for additional pay reads as under:-

"Item No. 6

The Committee has considered the representation regarding grant of higher pay scale to the post of Junior Assistant and matter regarding grant of 20% additional pay to the Junior Assistants. It is recommended that Junior Assistants are not entitled to the grant of higher pay scale as well as 20% additional pay. The representations are accordingly recommended to be rejected."

7. The petitioners complain that the decision is non-speaking and does not disclose reasons why the claim has been recommended to Hon"ble the Chief Justice for rejection.

8. For an effective adjudication of the present case, a brief summary of facts would be in order. The Punjab Civil Service (Revised Pay) (First Amendment Rules), 1998 were promulgated on May 19, 1998. As per Schedule-II; Sr. No. II of these rules Junior Assistants are placed in a higher pay scale than Clerks. The post is 100% promotional one and placement is from amongst Clerks who have experience of five years on seniority-cum-merit basis. On September 04, 2001 the Punjab Government decided and accordingly informed the Registrar of this Court that instead of promotion from the post of Clerk to Junior Assistant there should be placement in the higher scale and necessary changes have been made vide notification dated September 04, 2000. The financial benefits already granted were protected. By an initiation of process in the Government of India in the Ministry of Law & Justice a decision was taken and conveyed vide letter dated August 26, 2011 to this Court according approval of competent authority that existing un-revised pay scale of Rs. 5000-8100 be granted to the Clerical cadre

of the High Court w.e.f. April 01, 2003 to bring them at par with their counterparts in the Subordinate Courts. At that stage, the Government of India held opinion that 20% additional pay entitlement of all other employees of the Punjab & Haryana High Court in para.2 was such that acceptance would lead to repercussions on the other employees of the State Government. This would require process of rationalization to be conducted for which a separate proposal had to be prepared. It was at this stage that the learned Single Judge in contempt jurisdiction seized of the matter in COCP No.1619 of 2011 issued the directions reproduced above in paragraphs 8 & 9 of the order which directions have found their way into the instructions duly implemented vide letter dated February 27, 2012.

9. It was in this background that a meeting note was prepared for consideration of the committee of Hon"ble Judges on the administrative side of this Court following directions issued in the contempt petition. That is how the petitioners filed a representation dated February 18, 2013 for consideration of the Committee of the Hon"ble Judges. The special note prepared in respect of grant of 20% additional pay to Junior Assistants and grant of higher pay scale on the post of Junior Assistant was recommended to be rejected.

10. In the reply filed by the High Court the case has been contested. The only ground taken is that the petitioners have not been "promoted" but have been "placed" in the pay scale of Junior Assistant and it is not a promotional post of Clerk but is a placement into higher scale after notification dated September 04, 2000.

11. I'm afraid the Committee apparently did not notice or deal with the letter dated February 27, 2012 perhaps for lack of proper briefing by the office since Government of India had already approved the grant of 20% additional pay to Junior Assistants as well as a fallout of the directions issued by this court on its judicial side albeit in contempt jurisdiction but as much binding in the way the case deserves to be processed to its logical conclusion by the authorities in the Government of India. Moreover, the post of Junior Assistant being of a higher pay scale constitutes a separate category. Once the competent authority has granted an approval there is no reason for not granting the benefit to the petitioners.

12. It is argued by Mr. Joshi representing the respondent High Court that there is no co-relation between placement and rejection of grant of additional pay to Junior Assistants. All the same, the orders dated September 21, 2012 in COCP No.1619 of 2011 which have been given effect to by the Government of India in its concluding letter dated February 27, 2012 confers right on Junior Assistant to 20% additional pay. Neither on the judicial side nor in the instructions has the question of higher pay scale being considered and the present order is confined to right to additional pay of 20% to Junior Assistants in terms of the Government of India letter dated February 27, 2012.

13. I have heard Mr. Amandeep Singh, learned counsel for the petitioners and Mr.

Naresh Joshi, learned counsel for the High Court at length. I may record that Mr. Joshi has made a valiant effort but unsuccessfully to support the foundation of the impugned decision in its conclusion, even though non-speaking, taken under agenda Item 6 of the meeting that any interference would cause a huge financial implications if the prayer is accepted. I am unable to accept the plea based on financial burden as that would be a natural consequence of the directions issued by this Court as duly reflected in the letter of the Government of India February 27, 2012. This is no ground to deny the employees what is due to them in law. If the Government of India is prepared with the consequences, that should rest the matter thereat and given effect to. For plea of financial burden rejected as a ground of defence by the Supreme Court in a case involving "equal pay for equal work", see para. 12 in case titled Gopal Krishna Sharma v. State of Rajasthan, AIR 1993 SC 81. Similarly, in State of Maharashtra v. Manubhai Pragati Vashi, AIR 1996 SC 1 : (1995) 5 SCC 730 the Court ruled out plea of paucity of funds or otherwise when duty is cast on the State to afford grant-in-aid to recognised private colleges, similar to other faculties, which qualify for receipt of the grant. These cases are cited only for the principle that court will not be swayed by the financial impact of its order, though the factual matrix of the cases is for other causes. If Court is easily blinded by the financial burden or fears it might create in passing an order when the cause is just it will end up mostly doing injustice to employees and justice in a one sided manner in favour of the exchequer. This would be abdicating authority to decide a case in accordance to law.

14. The learned Single Judge (Surya Kant, J.) appositely observed in a series of orders cajoling the Union of India to better sense and held that persons like the petitioners are rightly ventilating their grievance as to nongrant of 20% additional pay to them on the intermediary promotional post of Clerk which has caused disparity in pay. The Court held that the said additional pay was admissible to promotee Clerks and Restorers etc. and shall be re-admissible on the next promotional post of Junior/Senior Assistants also. A three Judges' Committee had earlier recommended a uniform pay scale for Clerks irrespective of the source of recruitment. It appeared to the Court as justified and desirable to consider the claim for 20% additional pay to promotee Clerks. There are eminently sufficient reasons contained in the interlocutory order passed on the judicial side shedding light on the way forward and duly accepted and reflected in the Government of India letter dated February 27, 2012 that the minutes of the meeting held by the three Judge Committee on July 11, 2013 under Item No.6 was an erroneous decision which deserves to be set aside. It is ordered accordingly set aside. The rights of the petitioners will be governed and operated in terms of the orders passed in COCP No.1619 of 2011 read with the Government of India letter dated February 27, 2012.

15. As a result, the writ petition is allowed with respect to right to additional pay of 20% to Junior Assistants. The orders passed by this Court on the judicial side were ignored while taking the impugned decision by the Committee and that too by a non-speaking order containing no reasons. The impugned decision suffers

from error and certiorari is hereby issued invalidating the decision by restoring the rights of the petitioners to avail the service benefit. Arrears be determined and disbursed to the rightful claimants within reasonable time after making the necessary financial arrangements.