

(2023) 01 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 157 Of 2019

Desh Raj Awasthi

APPELLANT

Vs

State Of H.P. & Another

RESPONDENT

Date of Decision : 02-01-2023

Acts Referred:

Citation : (2023) 01 SHI CK 0003

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Subhash Sharma, Desh Raj Thakur, Narender Thakur

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for the following substantive reliefs:-

"i). Annexure A-8 may kindly be quashed and set aside.

ii) That the respondent department may kindly be directed to rectify the above said anomalous position with respect to the grant of PGT Scale in favour of the applicant.

iii) That the respondent department may kindly be further directed to grant the same pay scale to the applicant retrospectively from the date when the above said juniors, i.e. Roshan Lal and Gian Chand have been granted with all consequential benefits."

2. Petitioner was appointed as Trained Graduate Teacher (TGT) along with other incumbents vide office order dated 6.10.1975. The petitioner approached the H.P. State Administrative Tribunal by filing O.A. No. 957 of 2003, with a grievance that he was being paid less pay than his juniors in the same cadre. His representation to the competent authority had been rejected on untenable

grounds.

3. Petitioner averred that his name figured at Sr. No. 36 of office Order dated 6.10.1975, whereas, the names of S/Sh. Roshan Lal and Gian Chand figured at Sr. No. 42 and 54 respectively of the same office order. In all the subsequent seniority lists of TGTs, petitioner was placed higher than the said S/Sh. Roshan Lal and Gian Chand. Despite the fact that the said S/Sh. Roshan Lal and Gian Chand were juniors to petitioner, they were drawing higher pay than the petitioner. Petitioner represented his grievance to the Director of Education vide representation dated 18.8.1999 and 21.12.2000, through proper channel. His representation was forwarded by District Education Officer to the Director of Education vide communication dated 29.1.2001. However, the Director of Education vide letter dated 22.3.2001 rejected the claim of petitioner in following terms:-

"On perusal of the detail furnished/given in the letter referred to above it is found that the anomaly has arisen due to the option exercised by the junior w.e.f. 1.11.1979 on the grant of PGT scale, therefore, the pay of Sh. Desh Raj, Lecturer cannot be stepped up against Sh. Roshan Lal, Lecturer. The service book of Sh. Roshan Lal Lecturer is returned herewith."

4. The petitioner again made a request on 29.8.2001 for reconsideration of his grievance but the same remained unanswered. The Original Application of the petitioner came to be transferred to this Court and was registered as CWPOA No. 157 of 2019 on abolition of the Tribunal.

5. Respondents have contested the claim of petitioner on the grounds firstly that it was a highly belated attempt. The representation of the petitioner was rejected on 12.3.2001, whereas petitioner approached the erstwhile Tribunal on 4.5.2003 and secondly, it has been submitted that the juniors of petitioner, as referred to in the petition had opted for grant of PGT scale and as such, they were placed in higher pay scale than the petitioner. As per respondents, petitioner did not exercise the option for grant of pay scale of PGT, hence he was not entitled to any relief.

6. I have heard the learned counsel for the parties and have also gone through the record carefully.

7. As regards the objection in respect of belated claim, it can be noticed that the petitioner raised the grievance when he came to know about the anomaly. Thereafter, he represented and his representation was rejected on 12.3.2001. Petitioner again made a representation for reconsideration of his case on 29.8.2001, which remained pending and undecided and in this view of the matter, the O.A. preferred by the petitioner on 4.5.2003 cannot be said to be inordinately delayed. It is not the case of the respondents that the petitioner was aware about the grant of higher pay scale to his juniors from the very beginning. Keeping in view the conduct of petitioner, it cannot be said that the petitioner had slept over the matter or was grossly negligent in pursuing his remedy.

Accordingly, the objection with respect to the belated claim of petitioner cannot be sustained.

8. The respondents have accused the petitioner of not having exercised the option for grant of PGT Scale. There is nothing in the reply of the respondents that the petitioner was ever afforded with such an option. On the other hand, it is categoric case of the petitioner that no such option was given to him. Petitioner has rightly contended that had such option been given to him, there was no reason why he should not have opted for higher scale.

9. The facts of the case clearly suggest existence of an anomalous situation having been created for which, the petitioner cannot be blamed. The incumbents serving in the same category of TGT, are being paid higher scale than the petitioner despite being juniors to him.

10. The denial of the right of petitioner to have the same pay scale as his juniors is unsustainable, especially in absence of any legal and justifiable reason. As the petitioner was never afforded any option to opt the PGT Scale, the reason for rejection of the representation of the petitioner vide Annexure A-8 also cannot be sustained.

11. The Hon'ble Supreme Court of India, in Gurcharan & another vs. Punjab State Electricity Board & others reported in 2009 (3) SCC, 94 has observed that as a settled principles of law, senior cannot be paid lesser salary than his juniors and, in such circumstances, even if, there was difference in incremental benefits in the scale given to the government servant, such anomaly should not be allowed to continue and ought to be rectified by fixing the pay in parity with the juniors.

12. The respondents have not been able to justify their action. The State Government cannot ignore the principle of equality and also cannot discriminate without showing rational of its administrative decision.

13. In result, the petition is allowed. Respondents are directed to grant the same pay scale to the petitioner, as his juniors S/Sh. Roshan Lal and Gian Chand mentioned at Sr. No. 42 and 54 of office order dated 6.10.1975 (Annexure A-1) were paid and from the same date when the said S/Sh. Roshan Lal and Gian Chand were made entitled thereto. The needful be done within six weeks from the date of production of a copy of this judgment. The arrears will be payable to the petitioner from three years prior to filing O.A..

14. The petition is disposed of. Pending applications, if any, also stand disposed of.