

(2014) 05 P&H CK 0436

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 13456, 14429, 15776 of 1992, 330 of 1995 and 17172 of 2003

Dr. Manmohan Kumar, Reader, Deptt. of History and Others

APPELLANT

Vs

The Maharishi Dayanand University, Rohtak and Others

RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 05 P&H CK 0436

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Amrit Paul, Advocate for the Petitioners in CWP No. 14429 of 1992 and C.W.P. No. 330 of 1995, Mr. Bikramjit S. Patwalia, Advocate for the Petitioners in C.W.P. No. 6827 of 2003 and Mr. Shailendra Jain, Advocate for the Petitioners in C.W.P. No. 13456 of 1992, Advocate for the Appellant; Lalit Rishi, Advocate for Mr. Anurag Goyal, Advocate for Respondent No. 1 in CWP Nos. 14429, 15776, 13456 of 1992, for Respondent No. 3 in C.W.P. No. 6827 of 2003 and Mr. Rahul Sharma-I, Addl. A.G., Haryana, Advocate for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—All the writ petitions are connected and brought together for disposal with consent of the respective counsel.

2. Of the six writ petitions, C.W.P. Nos. 14429 and 1992 and 330 of 1995 are at the instance of the promotee Readers who have a grievance that in the manner of application of revised scales, there is a practice of discrimination. The factual basis is that promotee Readers and direct appointees as readers in the University had a parity on salary upto 17.06.1987. Revised scales were introduced w.e.f. 1.1.1986 through the impugned notification providing for the revision of pay scales issued by the Government of India, Ministry of Human Resource Development, Department of Education on 17.06.1987. It stated that revised scales for promotee Readers who had been promoted before 17.06.1987 will have a parity on salary with direct recruits at a scale of Rs. 3700-5700 and in

respect of such of those promotees who are promoted subsequent to that date, the scales will be Rs. 3000-5000. This according to the petitioners constituted an arbitrary categorization of scales for the same cadre of teachers as Readers in the University. The second instance of discrimination that is pointed out is that there was no justification or a rational basis for providing for varying scales for promotee Readers and direct recruits as Readers, for both of them performed the same duty and the discrimination will fall foul of Article 14 being violative of principle of equal pay for equal work.

3. The defence by the University was that at the time when the scales were introduced, they were asked to give an option to be regulated either by the old scales or the revised scales that provided for the differential treatment of the promotee Readers and direct recruits as Readers. The contention in defence, therefore, was that the petitioners who had opted for being governed by a pre-revised scheme were estopped from pleading for any discrimination and for challenging regulations.

4. The two areas of discrimination practiced are per se untenable and they have no rational basis at all. The issues of what are canvassed are brought through two decisions of the Supreme Court for each one of the issues raised. In U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd., U.P. Vs. Its Workmen, , the three Bench of the Supreme Court was considering an instance of higher wages to one group of promotees from a particular back date while the promotees of another group were denied such a benefit if they were promoted after a particular date. That is precisely the incident that happened in this case by providing to persons higher scales of Rs. 3700-5700, while denying to persons who had been promoted subsequently that benefit. There was literally no basis for such a discrimination. In yet another decision in Jaipal and Others Vs. State of Haryana and Others, , the Supreme Court was considering the mode of recruitment of Instructors as either recruits in the open market or promotees as a justification for applying different scales was found to be bad and violative of the principles of equal pay for equal work. This in this case is the second point which we have examined just now. The two decisions of the Supreme Court find echoes elsewhere from the other Courts as well. In the decision in Dr. R.R. Gupta and Others Vs. State of Rajasthan, , a Division Bench of Rajasthan High Court was actually considering a very same notification issued by the Government and held it to be bad in law. A Division Bench by Andhra Pradesh has also examined the revised scales brought through the notification in the decision in Osmania University Teachers Association and Others Vs. State of Andhra Pradesh and Others, to come to the similar conclusion. The grounds urged by the petitioners are well founded and the writ petitions would require to be allowed.

5. The writ petitions in CWP Nos. 14429 of 1992 and 330 of 1995 are allowed.

6. The manner of disposal in the above two writ petitions will have a direct bearing to the points raised for consideration in the other four writ petitions. In these batch of cases, the contention is that in the matter of promotion from the

Reader's post to the still higher post as Professor, the qualification assessed is the particular scale which was drawn under the revised scales placed at Rs. 3700-5700. If I have held in the above two cases that irrespective of whether he was promoted as Reader or a direct recruit as Reader and irrespective of whether he had been promoted before 17.06.1987 and after 17.06.1987, the scales have to be similar, then the right of consideration to the still higher post ought to follow without any discrimination. The writ petitions seek for such a prayer and for consideration for promotion have to be favourably considered and all the writ petitions are required to be allowed.

7. If the petitioners have been denied the right of consideration to the promotion post, their candidature shall be considered for promotion and they will be considered as notionally promoted and the scales applicable to the higher post shall be worked and the actual benefit shall be issued from a period of 38 months prior to the date when the respective writ petitions were instituted.

8. The writ petitions are allowed with the above directions.