
(2008) 10 P&H CK 0124
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5021 of 2006

Dr. Raj Kumar Sindhu

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-10-2008

Acts Referred:

Citation : (2009) 1 ILR (P&H) 500

Hon'ble Judges : Mehtab S. Gill, J; Augustine George Masih, J

Bench : Division Bench

Advocate : Alka Chatrath, for the Appellant; Harish Rathee, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—In this petition, the Petitioner is praying for quashing of the order dated 26th July, 1999 (Annexure P-I1) rejecting the claim of the Petitioner for the grant of scale of Rs. 10000--13900 as admissible to the District Dairy Development Officer after completion of five years of service and further quashing of the order dated 17th May, 2005 (Annexure P-20) passed by the Director. Animal Husbandry and Dairying, Haryana-Respondent No. 2 and order dated 8th September, 2005 (Annexure P-I7) and order dated 6th October, 2005 (Annexure P-I9) passed by the Deputy Director, Intensive Cattle Development Project, Safidon Road, Jind withdrawing the scale of Rs. 8000--13500 with effect from 10th January, 1996 and fixing the pay of the Petitioner in the pay scale of Rs. 6500--10500 with effect from 10th January, 1996 and further ordering recovery of Rs. 2,57,935 drawn by the Petitioner while working on the post of District Dairy Development Officer which was given to him,--vide order dated 5th August, 1997 in view of the qualification possessed by the Petitioner, ignoring the fact that other similarly situated officers, who were working on the post of District Dairy Development Officers, have been granted the same pay scale in compliance with the order passed by this Court in CWP No. 933 of 1987 titled as S.P. Singh and Ors. v. State of Haryana and Anr. decided on

12th July, 1999.

2. It is the contention of the Petitioner that on 23rd April, 1991, the Petitioner was appointed as Demonstrator HVS Class-II in the pay scale of Rs. 2000--3500 in the Dairy Development Department, Haryana. The post of Demonstrator and the District Dairy Development Officer are governed by the Haryana Dairy Development (Group B) Service Rules, 1996. According to the said rules, the post of Project Officer and the District Dairy Development Officer is to be filled up from in the ratio of 50% by direct recruitment or by transfer and the remaining 50% by promotion from Demonstrators having five years experience. Before these rules came into effect in the year 1996, executive instructions held the filed and accordingly all appointments and promotions were made. Shri Sukhbir Singh Mehla and Shri Subhash Chander Sharma, who had been working on the post of Demonstrator HVS-II since 25th January, 1983 and 4th February, 1983 respectively, on their completing five years as Demonstrators, became eligible for promotion to the post of District Dairy Development Officers and accordingly, the submitted their representations for promotion to the posts which were lying vacant. The Financial Commissioner and Secretary to Government of Haryana, Department of Animal Husbandry and Dairying-Respondent No. 1 passed an order dated 24th June, 1992 transferring/posting Shri Sukhbir Singh Mehla on the post of Assistant Director and Shri Subhash Chander Sharma on the post of District Dairy Development Officer.

3. The Petitioner came to know that some officers having the qualification of B.V. Sc and A.H., who are working in the Haryana Dairy Development and Co-operative Federation Ltd., who had been declared surplus, have been taken on deputation on the senior post of District Dairy Officer and were likely to be finally absorbed in the said cadre, made a representation to the Government that in case of such absorption, he would be rendered junior to them and his claim against the senior post be, therefore, considered before considering the case of the deputationists for absorption. As per the representation of the Petitioner, the case of the Petitioner was considered and he was transferred and posted as District Dairy Officer, Narnaul on 27th April, 1994.

4. Respondent No. 1 vide order dated 10th January, 1996 revised the pay scale of District Dairy Development Officer, who was possessing the qualification of B.V. Sc and A.H. degree, with immediate effect from Rs. 2,000--3,500 to Rs. 2,200--4,000 with selection grade of Rs. 3,000--4,500 on completion of five years of regular satisfactory service and further scale of Rs. 4,100--5,300 as selection grade limited to 20% of the cadre posts after 12 years of satisfactory regular service.

The Petitioner, who was working as District Dairy Development Officer in the Haryana Dairy Development Department having not been granted the scale of Rs. 2,200--4,000 although he was possessing the qualifications of B.V. Sc and A.H. degree, submitted a representation dated 5th August, 1996 to Respondent No. 1 for the grant of the said revised pay scale. On consideration of the

representation of the Petitioner, the Milk Commissioner and Director, Dairy Development, Haryana, passed order dated 5th August, 1997 (Annexure P-8) granting the Petitioner the scale of Rs. 2,200--4,000 as per the Government Letter dated 10th January, 1996 as claimed by the Petitioner.

5. Thereafter, some similarly placed District Dairy Development Officers of the Dairy Development Department challenged the action of the Respondents in confining the revised scale of Rs. 2200--4000 only to those District Development Officers, who possess the degree of B.V. Sc. and A.H. and excluding the officials who have been possessing the degree in Dairy Science or Animal Science by way of filing CWP No. 933 of 1987 titled as S.P. Singh and Ors. v. State of Haryana and Ors.. This writ petition was allowed by this Court,--vide order dated 12th July, 1999 by holding that the Government could not discriminate while granting the revised pay scales by confining the same to the District Dairy Development Officers, who possess the degree in Veterinary Science and Animal Husbandry only to this extent, the condition was thus quashed. The effect thereof was that the Petitioners in that writ petition and all other District Dairy Development Officers, who were possessing the degree of B.V. Sc. and A.H. degree, were granted the revised pay scale. It is the submission of the Petitioner that in pursuance to the judgment dated 12th July, 1999 passed by this Court, Shri Sukhbir Singh Mehla and Shri Subhash Chander Sharma, who were similarly situated as the Petitioner, were granted -the scale of Rs. 2,200-4,000 with effect from 10th January, 1996 and thereafter, the scale of Rs. 3,000-4,500 with effect from 6th July, 1997 i.e. after the completion of five years of regular service. Other similarly situated persons apart from the Petitioners in CWP No. 933 of 1987 were also granted the pay scale of Rs. 3,000--4,500 after completion of service of five years as District Dairy Development Officers.

6. The Petitioner was not granted this scale and, therefore, he submitted a representation to the department for the grant of pay scale of Rs. 3,000--4,500 on completion of his five years. The Milk Commissioner-cum-Director. Dairy Development, Haryana, rejected the said claim of the Petitioner,--vide order dated 26th July, 1999 on the ground that the pay scale has been granted to only those District Dairy Development Officers, who were working on regular post. The Petitioner challenged the said action of the Respondents by filing CWP No. 6451 of 2000. He further prayed for directions to the Respondents to consider his case for regular promotion on the post of District Dairy Development Officer. The said writ petition stands admitted in this Court for final adjudication.

7. The Government of Haryana issued Notification dated 14th May, 2003 merging the Haryana Dairy Development Department along with its staff, posts. Programmes, Schemes, assets and liabilities and infrastructure with the Animal Husbandry Department, Haryana, with immediate effect. In pursuance to the said Notification, the Director, Animal Husbandry, Haryana,--vide his order dated 5th June, 2003 posted the Petitioner at Jind under the Principal, Haryana Veterinary Training Institute, Hissar alongwith the post on which the Petitioner

was working i.e. District Dairy Development Officer. Similarly Shri Sukhbir Singh Mehla and Shri Subhash Chander Sharma were posted in Haryana Veterinary Training Institute, Hisar. The Director, Animal Husbandry and Dairy Development, Haryana,--vide order dated 17th May, 2005 intimated the Deputy Director Intensive Cattle Development Project, Safidon Road, Jind, that the pay of the: Petitioner has been refixed in the pay scale of Rs. 6,500--10,500 with effect from 10th January, 1996 and as a result, an amount of Rs. 2,56,513 has become payable to him on account of excess payment made to the Petitioner for the period 10th January, 1996 to 30th April, 2005. Accordingly, the Deputy Director, Intensive Cattle Development Project, Safidon Road, Jind, issued show cause notice dated 17th August, 2005, which was received by the Petitioner on 6th September, 2005 and before the Petitioner could submit his reply, passed order dated 8th September, 2005 to the effect that he is not entitled to the pay scale of Rs. 8,000--13,500 with effect from 10th January, 1996 and the pay of the Petitioner be refixed in the scale of Rs. 6,500--10,500. Recovery of Rs. 2,57,935 was also ordered. The Petitioner, thereafter, filed the reply to the order dated 8th September, 2005 on 10th September, 2005, which was passed by the Deputy Director without waiting for reply to the show cause notice and requested to reconsider the matter. The Deputy Director, Intensive Cattle Development Project, Safidon Road, Jind--Respondent No. 3 rejected the request for reconsideration,--vide his order dated 6th October, 2005. The Petitioner has thus filed this writ petition challenging the order dated 26th July, 1999 (Annexure P-1) order dated 17th May, 2005 (Annexure P-20) order dated 8th September, 2005 (Annexure P-17) and order dated 6th October, 2005 (Annexure P-19).

8. Upon notice having been issued to the Respondents, the Respondents have admitted the factual aspect. However, it has been submitted that the Petitioner is not entitled to the pay scale, which the Petitioner is claiming. It is the contention of the Respondents that the Petitioner was appointed,--vide order dated 23rd April, 1991 as Demonstrator in the Dairy Development Department, Haryana, in the pay scale of Rs. 2,000--4,500. While he was working as such, he was transferred and posted as District Dairy Development Officer at Narnaul against a vacant post and officiated the duty of higher post i.e. District Dairy Development Officer till 8th July, 2003. It is submitted that the pay scale of the post of Demonstrator and the Dairy Development Officer were equivalent at the time of his posting as Dairy Development Officer but the next promotional post of Demonstrator was District Dairy Development Officer. Since the post of District Dairy Development Officer was of a higher responsibility to that of the Demonstrator, hence the Petitioner was given one additional increment for performing the higher responsibility. The Petitioner was never promoted as District Dairy Development Officer till date. The pay scales for the post of Dairy Development Officers, which were revised with effect from 10th January, 1996, were Rs. 2,200-4,000 (T.S.), selection grade of Rs. 3,000--4,500 on completion of five years of regular satisfactory service. Selection Grade of Rs. 4,100--5,300 limited to 20% of the cadre posts provided they have put 12 years or more of

satisfactory regular service. It is the contention of the Respondents that the then Milk Commissioner, Dairy Development Department, Haryana, wrongly granted the petition the scale of District Dairy Development Officer i.e. Rs. 2,200--4,000,--vide order dated 5th August, 1997 (Annexure P-8). This was in violation of the direction and order issued by the Government,--vide its order dated 10th June, 1996 (Annexure R-I) and letter dated 16th January, 1997 (Annexure R-II) while the Petitioner was entitled to the pay scale of Rs. 2,000--3,500 (further revised as Rs. 6,500--10,500 with effect from 10th January, 1996) the order dated 5th August, 1997 (Annexure P-8) were; withdrawn by the Government,-- vide order dated 4th March, 2002 (Annexure R-III). The Petitioner,-- vide this order was directed by the Respondents to recover the overdrawn or excess amount received by the Petitioner. The Petitioner, who was himself the Drawing and Disbursing Officer, did not comply with the said orders and continued to draw the pay as per order dated 5th August, 1997 (Annexure P-8). On the merger of the Department of Haryana Dairy Development with the Animal Husbandry Department, Haryana,-- vide Notification dated 14th May, 2003 (Annexure P-13), the services of the Petitioner were placed at the disposal of the Principal, Haryana Veterinary Training Institute, Hisar along with the post as Demonstrator. This fact of wrong concession given by the Milk Commissioner when came to the knowledge of the Deputy Director, Intensive Cattle Development Project, Safidon Road, Jind-- Respondent No. 3, a show cause notice dated 17th August, 2005 (Annexure P-16) regarding recovery of excess amount of Rs. 2,56,513 and fixing his pay in the scale of Rs. 6,500--10,500 as Demonstrator was served on the Petitioner. Order dated 8th September, 2005 (Annexure P-17) was passed by Respondent No. 3 as no reply was received from the Petitioner within the stipulated period. The reply of the Petitioner dated, 10th September, 2005 (Annexure P-18) was received and thereafter,--vide order dated 6th October, 2005 (Annexure P-19), pay of the Petitioner was fixed in the pay scale of Rs. 6500--10500 as Demonstrator under the rules and a recovery of Rs. 2,57,935 was ordered on the basis of payment of excess salary given to the Petitioner.

9. We have heard counsel for the parties. The counsel for the Petitioner has submitted that the Petitioner is entitled to the benefit of the judgment passed by this Court in CWP No. 933 of 1987 titled as S.P. Singh and other v. State of Haryana and Anr. decided on 12th July, 1999. The Petitioner cannot be deprived of the same benefit as has been granted to the Petitioners, who had filed the said writ petition as the Petitioner is similarly situated as the Petitioners in the said writ petition and possess the same qualifications rather better qualifications than the Petitioners in the writ petition. The Petitioner is having the qualification of B.V. Sc. and A.H. and M.V. Sc. The counsel for the Petitioner submits that the Petitioner will be satisfied in case the same benefit is given to the Petitioner as was granted to the Petitioners in CWP No. 933 of 1987 titled as S.P. Singh and Ors. v. State of Haryana and Anr.. For this contention, the counsel for the Petitioner submits that paras 18 and 19 of the petition and the assertions made

therein have been admitted by the Respondents and in the light of the said submissions, this prayer of the Petitioner is required to be accepted by this Court. Counsel for the Respondents contests this.

10. To test the assertions of both the counsel, paras 18 and 19 of the writ petition as well as the reply are reproduced hereinbelow:

18. That it is a matter of record that some similarly placed District Dairy Development Officers of Dairy Development Department challenged the action of the Govt, in confining the revised scale of Rs. 2200--4000 only to those District Dairy Development Officers who possess the degree of B.V. Sc. and A.H. degree and excluding the officials who were possessing the degree in Dairy Science or Animal Science, by way of filing Amended CWP No. 933 of 1987 titled as S.P. Singh and Ors. v. State of Haryana and Ors.. The abovesaid writ petition was allowed by the Hon''ble Court,--vide order, dated 12th July, 1999 and the Hon''ble Court was pleased to hold the action of the Govt, as arbitrary in confining the pay scale of Rs. 2200--4000 to only such District Dairy Development Officers who possess the degree of Bachelor of Veterinary Science and Animal Husbandry and was pleased to quash the condition. The relevant extract is reproduced below:

Resultantly, the Government has discriminated the Petitioners in the grant of revised pay scales,--vide Annexure P-7 by confining the same to such District Dairy Development Officers, who possess the degree in Veterinary Science and Animal Husbandry only and to this extent, the impugned order, copy Annexure P7 is held to be discriminatory and violative of Articles 14 and 16 of the Constitution of India and the said condition is liable to be quashed. It is held that the condition of application of the revised pay scales to the District Dairy Development Officers who possessed only the degree in Veterinary Science and Animal Husbandry is discriminatory and arbitrary and violative of Articles 14 and 16 of the Constitution of India and is accordingly quashed.

The writ petition is allowed to the extent indicated above.

Copy of the judgment is annexed as Annexure P-9 19. That in pursuance to the decision of the Hon''ble Court passed in CWP No. 933 of 1987 titled as S.P. Singh and Ors. v. State of Haryana and Ors., Subhash Chander Sharma who is similarly situated to the Petitioner and who was posted as District Dairy Development Officer on 6th July, 1992 was granted the scale of Rs. 2200-4000 with effect from 10th January, 1996 and the scale of Rs. 3000-- 4500 with effect from 6th July, 1997 i.e. after completion of five years regular satisfactory service. Similarly, Shri Sukhbir Singh Mehla, who was working as District Dairy Development Officer like the Petitioner, was granted the revised pay scale of Rs. 2200--4000 with effect from 10th January, 1996 and the scale of Rs. 3000--4500 after completion of five years regular satisfactory service and they are getting the scale till date. Copy of the order is annexed as Annexure P-10.

11. The corresponding reply of the Respondents to paras 18 and 19 reads as

follows:

18. That the contents of para No. 18 of the civil writ petition are admitted to the extent that a Civil Writ Petition No. 933 of 1987, S.P. Singh and Ors. v. State of Haryana and Anr. was allowed by this Hon"ble High Court and held that the condition of application of the revised pay scale to District Dairy Development Officers, who possessed only the degree in Veterinary Science and Animal Husbandry was discriminatory and arbitrary and violative of Articles 14 and 16 of Constitution of India.

It is further submitted that Shri S.C. Sharma and S.S. Mehla, the Petitioners in Civil Writ Petition No. 933 of 1987, both demonstrators were transferred and posted as District Dairy Development Officers,--vide order, dated 24th June, 1992 of the government but have not been promoted as District Dairy Development Officer. Consequent upon the merger of Dairy Development Department with Animal Husbandry Department,--vide notification, dated 14th May, 2003, Shri S.C. Sharma and S.S. Mehla were posted as demonstrator at Haryana Veterinary Training Institute, Hisar,--vide order No. 5578-AH-3-2003/9995, dated 24th July, 2003 (Annexure P-15) hence, never been promoted till date. However, Shri S.C. Sharma and S. S. Mehla (both Demonstrators) have been getting the pay scales and benefits for the post of District Dairy Development Officer as per direction of the Hon"ble High Court.

19. That in reply to para No. 19 of civil writ petition, is admitted being matter of record.

12. A perusal of the above leaves no doubt at all that the Petitioner is similarly situated as Shri Sukhbir Singh Mehla and Shri Subhash Chander Sharma who were Petitioners in CWP No. 933 of 1987, which was allowed by this Court,--vide order, dated 12th July, 1999. The only reasoning put forth by the Respondents for not granting the Petitioner the scale of Rs. 2200--4000 is that the Petitioner was not promoted as District Dairy Development Officer, however, the Respondents have accepted that Shri Sukhbir Singh Mehla and Shri Subhash Chander Sharma, who also have not been promoted as District Dairy Development Officers, as the Petitioners have been getting the benefit of the post of District Dairy Development Officer in compliance of the order of the Court. Strange as if it may sound that while the Respondents are admitting that the Petitioner is similarly situated as Petitioners in CWP No. 933 of 1987 still the Respondents are forcing the Petitioners to approach this Court for the similar benefit which has been granted to the Petitioners of CWP No. 933 of 1987. This Court in Satbir Singh and Ors. v. State of Haryana and Ors. 2002 (2) SCT 354 has held that Government employees, who are similarly placed as the Petitioners in the writ petition, where the judgment of the Court has attained finality should not be forced to approach the Court separately for the grant of the same relief. The Government should once having accepted the judgment, grant similar relief to the other similarly situated employees. The burden of the Courts would be to a great extent reduced if such employees are granted the relief on the basis of the

settled preposition of law on that issue.

13. In the present case, since the Petitioner was already getting the pay scale of Rs. 2200--4000 as per his qualification there was no cause of action or occasion to approach this Court for grant of similar relief as has been granted to petitioners of CWP No. 933 of 1987. The Petitioner has now approached this Court when this scale has been withdrawn by the Respondents. The Petitioner is similarly placed as admitted in reply to paras 18 and 19 (reproduced above) by the Respondents, therefore, the Petitioner is; entitled to the same benefit as has been granted to Shri Sukhbir Singh Mehla and Shri Subhash Chander Sharma. In the light of this, impugned order, dated 17th May, 2005 (Annexure P-20) passed by the Director, Animal Husbandry and Dairying Haryana-Respondent No. 2 and order, dated 8th September, 2005 (Annexure P-17) and order, dated 6th October, 2005 (Annexure P-19) passed by the Deputy Director, Intensive Cattle Development Project, Safidon Road, Jind-Respondent No. 3, cannot be sustained and, therefore, deserved to be quashed. As regards the order dated 26th July, 1999 (Annexure P-19). It is not in dispute: that the said order is under challenge in CWP No. 6451 of 2000 filed by the Petitioner, which stands admitted and is pending before this Court. Therefore, no relief qua the said order can be granted in this writ petition.

14. In the light of what has been held above, this petition is allowed. Orders dated 17th May, 2005 (Annexure P-20) passed by the Director, Animal Husbandry and Dairying, Haryana-Respondent No. 2 and order dated 8th September, 2005 (Annexure P-17) and order dated 6th October, 2005 (Annexure P-19) passed by the Deputy Director, Intensive Cattle Development Project, Safidon Road, Jind, are hereby quashed. A direction is issued to the Respondents to grant the same benefits to the Petitioner as have been granted to Shri Sukhbir Singh Mehla and Shri Subhash Chander Sharma, Petitioners in CWP No. 933 of 1987 titled as S.P. Singh and Ors. v. State of Haryana and Anr..