

(2010) 12 SHI CK 0340
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 14358 of 2008

Hoshiar Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Citation : (2010) 3 SLR 76

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was appointed as Beldar in the year 1984. He was regularized as Fitter-cum-Mechanic Grade-II. Petitioner's category was converted/declared as Technician Grade-I in the pay scale of Rs. 4550-7200 as per letter dated 14.8.2001. Petitioner started drawing higher salary on the basis of designation/conversion to the higher post. However, vide office order dated 8.2.2006, letter dated 14.8.2001 has been withdrawn and the Petitioner has been designated as Junior Technician in the pay scale of Rs. 3120-5160.

2. Admittedly, the Petitioner has not been served with any notice before the issuance of office order dated 8.2.2006. He has suffered civil and evil consequences. He ought to have been heard before the issuance of office order dated 8.2.2006. The designation could not be altered unilaterally to the disadvantage of the Petitioner.

3. Their Lordships of the Hon'ble Supreme Court in Union of India and Ors. v. Jagdish Pandey and Ors, 2010 (6) Scale 651 have held that pay scale is a legitimate right of an employee and except for valid and proper reasons it cannot be varied. Their Lordships have held as under:

8. The Respondents in the present appeal had challenged the validity of the above order before the Tribunal on various grounds including that they have always been placed at parity with the goods driver, they have been given similar

scales and there was no reason, whatsoever, for altering the pay scale to the prejudice of the Respondents, which was in force for a considerable time. It will be useful for us to notice the findings recorded by the Tribunal. In paragraph 8 of its judgment the Tribunal noticed that both the parties have not placed on record any material to indicate as to what was the pay scale provided for the TW Ds pursuant to the various Pay Commission Reports. The Tribunal specifically noticed and recorded the finding that for the last 40 years, i.e. right from 1959 the Respondents were being paid the same pay scale as goods drivers. There was no disparity of pay scales between TW Ds and goods drivers after Union of India and Railways had accepted recommendations of the I Ind, II Ird, I Vth and even of Vth Pay Commissions. The Tribunal also specifically noticed vague denials of the Union of India and that such denials were hardly substantiated by any cogent material. Reliance was placed upon the judgment of the Calcutta High Court in relation to the grant of running allowance. In that Writ Petition, the only dispute raised by the parties related to the grant of running allowance and the Union of India did not raise the issue of disparity in pay scale. This order of the High Court had attained finality. We have already referred to the findings recorded by the Tribunal where it is specifically noticed that after acceptance of Vth Pay Commission Report by the Government, TW Ds were given the salary in the pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 and in the letter dated 15.4.1993 the concerned authorities noticed the disparity created even between the TW Ds i.e. in Sealdah division out of 32 TW Ds, 24 were getting pay scale of Rs. 1350-2200 (unrevised) and remaining 8 were getting the pay scale of Rs. 1320-2040 and it directed a uniform pay scale of Rs. 1350-2200 should be given to all the TW Ds. Another reason that weighed with the Tribunal was that no material has been produced to show as to what were the reasons or material on the basis of which the authorities had decided to discontinue the pay scale of Rs. 1350-2200 to these Respondents. The above reasoning and discussion in the order of the Tribunal clearly shows that the action on the face of it was arbitrary. This order of the Tribunal was confirmed by the High Court and the Respondents made no effort to place anything on record to show that they were different and distinct classes and were entitled to receive different pay scales. Even in the order dated 9th August, 2002 the Tribunal specifically noticed that it was not even averted that eligibility criteria for the post of TW Ds was different than that for the goods driver and their duties were substantially different. In other words, either before the Tribunal or before the High Court the Union of India never pleaded the essential basis for justifying payment of different pay scales to two categories of drivers i.e. TW Ds on the one hand and goods train drivers on the other. There has to be a substantial difference in method of recruitment, eligibility, duties and responsibilities before substantial disparity in scale can be justified. As far as recording of finding of facts is concerned, factual disputes can hardly be raised before this Court and in any case for the first time. Despite this the Union of India has failed to place any material to substantiate its decision before the Forum/Courts. The judgment of the Calcutta High Court, in relation to running allowances, has attained finality. At that time no other issue was raised by Union

of India that they are different and distinct posts with different pay scales and as such identical running allowances could not be paid. In fact, the judgment of the Calcutta High Court has duly been implemented now for years together without objection. Not only this, same pay scale as that of the goods train driver has been paid to these Respondents for years and there appears to be no justification on record for unilateral withdrawal of such a scale. Pay scale is a legitimate right of an employee and except for valid and proper reasons it cannot be varied, that only in accordance with law. None of these justifiable reasons exist in the present case. The impugned order itself does not give any reason. The expression "erroneously" used in the order can hardly justify withdrawal of such an existing right.

4. Accordingly, in view of the observations made hereinabove and the definitive law laid down by their Lordships of the Hon'ble Supreme Court, the petition is allowed. Annexure P-1 dated 8.2.2006 is quashed and set aside. However, liberty is reserved to the Respondents to proceed with the matter in accordance with law after duly hearing the Petitioner. No costs.