
(2016) 03 SHI CK 0120
In the High Court Of Himachal Pradesh
Case No : LPA No. 127 of 2015

H.P. University

APPELLANT

Vs

Swadesh Singh Thakur

RESPONDENT

Date of Decision : 19-03-2016

Acts Referred:

Citation : (2016) ILRHP 418

Hon'ble Judges : Mansoor Ahmad Mir, CJ. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. J.L. Bhardwaj, Advocate, for the Appellant; Ms. Shikha Chauhan, Advocate, for the Respondent No. 1; Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals and Mr. J.K. Verma, Deputy Advocate General, f

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan J.—The moot question involved in this appeal is as to whether the learned Writ Court could have granted the revised pay scale to the respondent only on the ground that he was a senior citizen, more especially when the revision of pay scales of his category had not so far been decided by the appellant-University and the State. The facts, in brief, may be noticed.

2. The writ petitioner/respondent herein retired as Finance Officer from the appellant University on 30.9.2002. His pension was fixed as per letter dated 30.9.2002. The University Grants Commission subsequently framed a scheme on 30.12.2008, whereby it revised the pay scales of the post of Registrar, Deputy Registrar, Assistant Register, Controller of Examination, Finance Officer, Deputy Finance Officer and Assistant Finance Officer following the revision of pay scales of Central Government Employees effected on the recommendations of the Sixth Pay Commission. The pay scales of the Registrar/Finance Officer/Controller of Examination was revised from Rs. 16400-22400 to pay band of Rs. 37400-67000 with the grade pay of Rs. 10,000. Likewise, pay scale for the post of Deputy Registrar/Deputy Finance Officer/Deputy Controller of Examination was revised

to pay band of Rs. 15600-39000 with grade pay of Rs. 7600 and whereas pay scale of the post of Assistant Registrar/Assistant Finance Officer/Assistant Controller of Examination was put in the pay band of Rs. 15600-39100 with the grade pay of Rs. 5400.

3. The State Government vide notification dated 1.7.2010 (Annexure P-2), revised the pay scales of the Controller of Examination, Addl. Controller of Examination, Planning and Development Officer, Secretary to VC, Deputy Registrar, Assistant Registrar, Public Relations Officer and Administrative Manager (IIHS), as per the following table:

Sl.No.

Category

Pre-revised pay scale

Revised pay structure Pay Band

Grade Pay

1.

Controller of Examination/Addl. Controller of Examination/Planning & Development Officer/Secretary to VC

16400-450-20900-500-22400

37400-67000

8900

2.

Deputy Registrar

12000-420-18300

15600-39100

7800

3.

Asstt Registrar/Public Relations Officer/Administrative Manager (IIHS)

8000-275-13500

15600-39100

5400

4. It is not in dispute that though the pay scales of all other categories were revised, but the same qua the post of Finance Officer was not revised and, therefore, even the pension of the petitioner was not revised. The petitioner on

3.9.2010 got issued legal notice for the redressal of his grievance, but his case was rejected vide letter dated 18.4.2011, constraining the petitioner to approach this court by medium of Writ petition, wherein he prayed for the following reliefs:

"(i) That this Hon^{ble} Court be kindly pleased to call for the records of the case and pass appropriate orders and issue the writ or direction to consider the petitioner for the revision of pension as has been done in the case of other administrative officers vide Annexure P-2."

5. In response to the petition, appellant/University filed its reply, wherein it was averred that the revision of pay scales of the Registrar and Finance Officer had not been decided so far.

6. When the matter came up before the learned Writ court, it held that the Finance Officer was one of the Administrative Officer of the University and since pay scales of all other officers of the University had been revised and, therefore, exclusion of the category of the writ petitioner amounted to discrimination and thereafter allowed the petition in the following terms:

"13 Accordingly, the Writ petition is allowed. Annexure P-4 dated 18.4.2011 is quashed and set aside along with letter dated 4.10.2010. The Court would have ordered the respondents to consider the case of the petitioner for revision of pay scales on the basis of notification dated 31.12.2008, but taking into consideration that the petitioner is a senior citizen and in the interest of justice, the category of Finance Officer would be deemed to be included in the notification dated 30.6.2010 in the revised pay scale of Rs.37400-67000 with grade pay of Rs. 8900 w.e.f. 1.1.2006, for all intents and purposes. The respondents are directed to revise the pension of the petitioner in the pay scale of Rs. 37400-67000 with grade pay of Rs.8900 within a period of four weeks from today. The revised pension shall carry interest @ 9% per annum from the due date."

7. Aggrieved by the judgment, the appellant has approached this court with the short submission that the prerogative to grant a particular scale only vests with the employer and, therefore, there was no question of the writ court itself fixing the pay scales particularly when State Government was already seized of the matter.

We have heard the learned counsel for the parties and have gone through the records of the case.

8. At the outset, we may note that during the pendency of the appeal, State Government in fact has taken a decision on 16.4.2015 whereby claim of the writ petitioner/respondent has been rejected.

9. It is otherwise more than settled that the question relating to constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, though obviously subject to certain limitations or restrictions envisaged in the

Constitution and, therefore, it is not for the statutory tribunals or the Courts at any rate to direct the Government to have a particular method of recruitment or eligibility criteria for further promotion as held by the Hon^{ble} Supreme Court in P.U. Joshi and others v. Accountant General, Ahmedabad and others (2003) 2 SCC 632 as under:

"10. "We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern ,nomenclature of posts, cadres, categories, their creation/abolition prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

10. It would also be noticed that the learned Writ court proceeded on the premises that the category of the petitioner i.e. Finance Officer had been excluded, which is contrary to the record. It was the specific stand of the respondents that they were yet to take a decision with regard to the same and the matter had been referred to the State Government, (who took a decision during the pendency of the appeal on 16.4.2015). Thus, there was no occasion for the learned Writ court to have presumed that a decision had already been taken by the respondents to exclude the category of the petitioner.

11. The learned writ court has though observed that it was for the Government to consider the case of the petitioner for revision of the pay scale on the basis of notification dated 31.12.2008, but then surprisingly it after taking into consideration the fact that the writ petitioner was a senior citizen, directed the

category of the petitioner i.e. Finance Officer to be deemed to be included in the notification dated 30.6.2010 and proceeded to grant the pay scale which was impermissible in law.

12. There can be no quarrel with the proposition that granting of pay scales is the prerogative of the Government and the further question as to whether there is parity of pay scales etc., is again in the exclusive domain of the executive government. It also cannot be disputed that the courts would not ordinarily interfere in the grant of pay scales or pay fixation or parity unless the decision is patently irrational, unjust. The grant of pay scales, nomenclature of posts and fitment are policy decision of Government and it should be decided by Government and expert bodies. The courts will be loathe to interfere unless there is invidious discrimination between the similarly situated persons or there is patent arbitrariness. At best, the court can direct the authorities to consider the case, but cannot issue a writ of mandamus commanding the respondents-authorities to release a particular pay scale as has been done in the instant case.

13. Having said so, the judgment rendered by the learned writ court is obviously not sustainable and the same is accordingly set aside. However, the petitioner is at liberty to question the consideration order passed by the State Government dated 16.4.2015.

14. With these observations, appeal is allowed in the aforesaid terms leaving the parties to bear the costs.