
(2008) 07 RAJ CK 0001
In the Rajasthan High Court

Jaswant Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2008) 07 RAJ CK 0001

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—This writ petition has been filed by the petitioners for following reliefs:

(a) the impugned orders of the State Government Annexures 5 and 14 dated 10.3.1999 & 2.2.2006 respectively denying the petitioners benefit of Pay Scales Rules of 1998 may kindly be quashed and set aside;

(b) That consequent to aforesaid it may be directed that petitioners are entitled to be fixed in the pay prescribed by the Pay scale Rules of 1998 on and from the date their counterparts employed in the State Government or in various corporations have been so fixed;

(c) That consequent to aforesaid fixation the arrears which may accrue, may as well be directed to be paid to the employees of the Bhandar;

2. The case of petitioners is that they are entitled for benefit of Revised Pay Scale Rules, 1998 and though respondent No. 3 after considering the claim of petitioners for grant of revision of pay scale in accordance with Rules of 1998 recommended the case to the State Government for approval but vide Annex.14 the Joint Registrar (consumer) has passed an order dated 2.2.2006, whereby he has restrained the respondent No. 3 to grant benefit of revision of pay scale to the petitioners. Similarly, vide Annex.5 dated 10.3.1999 a restriction was

imposed to grant revision of pay scale to employees of the Bhandar and it is ordered that without any approval no revision of pay scale shall be allowed to the Cooperative Societies which are Commercial Establishments.

3. Learned Counsel for the petitioners vehemently argued that petitioners are employees of Jodhpur Sahakari Upbhokta Wholesale Bhandar Limited, Jodhpur and a decision was taken by the Bhandar to grant benefit of revision of pay scale as per Pay Scale Rules, 1998 to their employees but the Government has refused to grant approval for the same while issuing Annex.14, which is illegal because revision of pay scale is required to be allowed to the petitioners as the State Government has allowed the said benefit to number of local bodies of State Government and in particular RAJFED & CONFED, which too are governed by the Cooperative Act and employees of said Cooperative Societies are getting the benefit of Revised Pay Scale Rules, 1998, therefore, denial of such benefit to petitioners, who are employees of respondent No. 3 is totally in violation of Article 14 and 16 of the Constitution of India.

4. As per petitioners, the benefit of Revised Pay Scale Rules have been extended to many cooperative bodies including RSRTC, Vidhyut Vitran Nigam, RTDC though they are continuously sustaining losses but the case of petitioners is altogether different because financial condition of respondent No. 3 is upto the mark, therefore, petitioners, who are employees of Bhandar are entitle for grant of benefit of Revised Pay Scale Rules, 1998 but Joint Director (Consumer) vide annex.14 without assigning logical reasons declined to approve the benefit of pay scale as per Revised Pay Scale Rules, 1998, therefore, action of denial of respondent is arbitrary hence it is violative of Article 21 of the Constitution of India.

5. Further, it is argued that the State Government has clearly lost sight of the fact that pay fixation and pay recommendations are made by expert body keeping in view so many factors including living index, therefore, recommendations of 5th Pay Commission which is allowed to many autonomous bodies cannot be denied to the employees of respondent No. 3, which is Cooperative Society running in profit, therefore, action of State Government declining to extend the benefit of Revised Pay Scale Rules, 1998 is totally unwarranted and violative of fundamental rights granted by the Constitution of India. Learned Counsel for the petitioners has invited the attention of the Court towards Annex.A by which benefit of Revised Pay Scales Rules, 1998 was allowed to various Cooperative Societies and petitioners are claiming their right at par with employees of those cooperative societies and prayed that order Annex.14 may be set aside.

6. In reply to the claim of petitioners, it is submitted by respondents that service conditions of employees of Rajasthan Cooperative Societies are governed by Rajasthan Cooperative Societies Rules, 1966 and as per Rule 41 of the Rules the Registrar, Cooperative Societies, Rajasthan has issued order dated 10/3/1999 (annex.5) by which instead of granting revision of pay scales directions have

been issued for incentive to the employees of respondent No. 3 and that cannot be questioned by the petitioners. Further it is submitted that order dated 2.2.2006 was rightly issued by the Joint Registrar that there was no parity of the petitioners with the employees of State Government, therefore, incentive which is granted by the State Government is perfectly in accordance with Rules. Further it is submitted that under Rule 39 of the Rules of 1966 the Registrar, Cooperative Societies have the power to frame service conditions and in the present case Registrar has not made any order for applicability of 5th Pay Commission, therefore, contention raised by petitioners for benefit of revised pay scale Rules, 1998 is not tenable and have no foundation to stand before eye of law. It is further submitted that petitioners cannot claim as a matter of right the benefit of recommendations made by 5th Pay Commission, therefore, this writ petition deserves to be dismissed.

7. After hearing both the parties and particularly Annex.11 dated 17.12.2005 it is clear that after considering the financial position of the respondent No. 3 the matter was recommended to the Registrar, Cooperative Societies, Jaipur for grant of benefit of revision of pay scales in accordance with 5th Pay Commission. Annex.11 reads as under:

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fo"k; % tks/kiqj lgdkjh miHkksDrk gksylsy HkaM+kj fy-] tks/kiqj ds deZpkjh;ksa dks ikapok osru vk;ksx vUrxZr osrueku iznku djus ds IEcU/k es A

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mijksDr fo"k;kUrxZr fuosnu gS fd tks/kiqj lgdkjh miHkksDrk gksylsy HkaMkj fy-] tks/kiqj ds egkizcU/kd ds i= ewy esa layXu dj vuqjks/k gS fd laLFkk vius dk;Z O;kikj esa yxkrkj o`f) dj jgh gS ftlds dkj.k laLFkk ds ykHk es Hkh o`f) gqbZ gS A laLFkk us o"kZ 2001&2002 dh rquyuk eas O;kikj 263-32 izfr"kr] ldy ykHk 157-28 izfr"kr o`f) ykHk esa 220-38 izfr"kr o`f) jgh gS A laLFkk dk okf"kZd "kq) ykHk 60-00 yk[k :- jgrk gS A ikapos osru dk ykHk nsus ij laLFkk dks 5-00 yk[k :- dk vfrfjDr O;; bl en esa gksus dh laHkkouk gS] ;g O;;Hkkj laLFkk ogu djus es l{ke gS A

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8. The employer under whom petitioners are working took decision to grant the said benefit and matter was recommended for approval after taking resolution in the meeting dated 27/5/2005 (Annex.9) and repeatedly reminders were sent by respondent No. 3 for granting approval but vide Annex.14 the prayer for extending benefit of revision of pay scale was rejected on the ground that incentive scheme has been made applicable.

9. In my opinion, the order Annex.14 dated 2.2.2006 is patently illegal &, discriminatory because most of the departments of State Government including various cooperative societies and even aided schools were allowed the benefit of revision of pay scale in accordance with Pay Scale Rules, 1998, more specifically vide Annex. A the benefit of revision of pay scales have been allowed to employees of other Cooperative Societies, therefore, the reason which is disclosed in Annex.14 for refusing approval of Pay Scale Rules, 1998 is totally arbitrary and unconstitutional. The State Government is not required to release any finance or to grant aid for the fulfilment of condition, for approval the matter was referred by the Principal employer after taking resolution but without any lawful reason the approval has been denied which is discriminatory action of the respondent.

10. Admittedly, employees of RAJFED and CONFED were granted benefit of Revised Pay Scales Rules, 1998 and employees of many other autonomous bodies like RSRTC, Vidhyut Vitran Nigam, RTDC, who are continuously sustaining loss, have been extended the said benefit, therefore, refusal of approval by the State Government vide Annex.14 for the employees of respondent nO.3 Bhandar is totally unfounded.

11. In view of the above discussion, the order Annex.14 dated 2.2.2006 is hereby quashed. Since the respondent No. 3 as per its resolution dated 17/12/2005 (Annex.10) and letter dt:17/12/2005 (Annex.11) is ready to bear the financial responsibility and mere approval is required, therefore, the Registrar, Cooperative Societies is directed to grant approval for extending benefit of recommendations of 5th Pay Commission to the petitioners because said benefit has been extended to most of the autonomous bodies and also to some cooperative societies.

12. The Writ petition is allowed in above terms. No order as to costs.