

(2011) 04 SHI CK 0095
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 8897 of 2008

Jaswant Singh

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Himachal Pradesh Civil Services (Revised Pay) Rules, 1998 — Rule 2, 2(2)

Citation : (2011) 04 SHI CK 0095

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed mainly the following reliefs in the petition:

- (a) Quash Annexure A-1 being issued illegally and arbitrarily;
- (b) Quash the condition contained in HP Civil Services (Revised Pay) Rules, 1998, which does not make the new pay scales applicable to the contract employees being arbitrary, illegal and unconstitutional inasmuch as it creates unreasonable classifications amongst the employees discharging similar nature of duties and has no nexus with the object sought to be achieved;
- (c) Quash the impugned action of the Respondents whereby they are not allowing the pay scale of Rs. 5480/- plus other allowance to the applicant, in the revised scale of Rs. 5480-8925/- on the principle of equal pay for equal work, being arbitrary, malafide and illegal;
- (d) Direct the Respondents to pay at least the minimum of the scale in the Revised Pay Scale with DA etc and other allowances for the same post held by the regular counterparts, i.e.; Lecturer, to the applicant w.e.f. date of their initial appointments along with arrears and interest @ 18% thereon and all other consequential benefits;

(e) Direct the Respondents to pay the salary for the period of vacations/holidays to the applicant and also pay salary for six days casual leave;

(f) Direct the Respondents to pay Medical Allowance to the applicant w.e.f. initial appointment along with interest @ 18% thereon till the payment of the same;

(g) Restrain the Respondents permanently from effecting the recovery from the applicant of the amount already paid to the applicant and repay the amount if already recovered arbitrarily and illegally;

(h) Direct the Respondents to produce all the relevant documents along with their reply for perusal by this Hon'ble Tribunal;

2. The brief facts of the case are that Petitioner was engaged as TGT (Arts) on contract basis vide Officer Order dated 02.12.1996 at fixed salary of Rs. 1650/- plus allowance per month. He continued as such. The Petitioner is performing the duties equal to the regular counterparts. The qualification for regular appointment and contract appointment is the same and Petitioner is possessing the requisite qualification. The pay scale for regular hand for the same post as per 1998 Revised Pay Rules is Rs. 5480-8925/-. On the contrary, the Petitioner was being paid Rs. 1650/- plus allowance for similar job which after revision of pay scale for Lecturer is fixed Rs. 8178/- and for DPE Rs. 7576/-.

3. At the time of initial engagement of the Petitioner, there was a specific stipulation in the agreement that Petitioner shall be paid monthly honorarium equal to the basic pay in the pay scale of Rs. 1650/- fixed plus other allowances admissible at the station on the basic pay including HRA and CCA. It has been alleged that initial pay was thus equal to the scale of the regular hand in the pre-revised scale. On revision of the pay scale, Petitioner was entitled for revised scale of Rs. 5480/- plus other allowances at the station including HRA and CCA. But the Petitioner was not fixed on such scale, rather, he was fixed as per formula evolved by the Respondents.

4. The Respondent-department has now formulated a different formula for giving DA to contract teachers vide memo dated 07.08.2002 vide which it was decided that the contract teachers would be paid basic pay minimum of the pre-revised pay scale of the post, DA at the rate of 203% which was being paid prior to the issuance of Finance Department letter dated 08.11.1999, interim relief first, second and third installments and other allowances as admissible in the respective areas. The new formula will adversely affect the salary being paid to Petitioner and shall cause financial loss without affording an opportunity to the Petitioner of being heard before resorting to new formula. It has been alleged that directions have been issued to the District Treasury Officer, who are now going to give effect to these instructions thereby reducing salary of the Petitioner by an amount of Rs. 1500-1800/- per month.

5. The condition contained in Himachal Pradesh Civil Services (Revised Pay) Rules, 1998 which does not make the new pay scale applicable to the contract

employees is arbitrary, illegal and unconstitutional inasmuch as it creates unreasonable classifications amongst employees discharging similar nature of duties and has no nexus with the object sought to be achieved.

6. I have heard learned Counsel for the parties. The Respondents have not filed reply, rather, their right to file reply was closed on 22.06.2007 when the matter was pending before the erstwhile Tribunal. Rule-2 of Himachal Pradesh Civil Services (Revised Pay) Rules, 1998 (for short Rules) is as follows:

2. Application. (1) Save as otherwise expressly provided by or under these rules, they shall apply to all the persons appointed to the services and posts in connection with the affairs of the State of Himachal Pradesh.

(2) They shall not apply to the:

(a) Members of the All India Services serving in connection with the affairs of the State of Himachal Pradesh;

(b) Persons not in the whole time employment of the Government of Himachal Pradesh;

(c) Persons paid out of contingencies;

(d) Employees whose scales of pay have been determined on the recommendations of the University Grants Commission (U.G.C.);

(e) Work-charged employees;

(f) Persons employed on contract basis, except when the contract provides otherwise; and

(g) Persons specifically excluded wholly or in part from the operation of these rules.

It is the pleaded case of the Petitioner that when he was, initially, engaged there was specific stipulation in the agreement that the Petitioner shall be paid monthly honorarium equal to the basic pay in the pay scale of Rs. 1,650. The Petitioner has accepted contractual appointment with terms and conditions applicable to him, now he has taken the stand that stipulation in Rules that the Rules will not apply to contractual appointment is wrong and illegal.

7. As per Rule 2(2)(f), Rules apply even to contract employees if there is provision to this effect in the contract. The Petitioner has not placed on record terms and conditions of his appointment by way of contract. The Petitioner has challenged the conditions in the Rules which excludes the application of the Rules to contract employees by terminating such condition arbitrary, illegal and unconstitutional. According to the Petitioner, it creates unreasonable classifications amongst the employees discharging similar nature of duties. According to the Petitioner, it has no nexus with the objective sought to be achieved.

8. The concept of contract employment in the government is in vague since long. It is common knowledge that up to certain level of posts in some departments, the government is giving employment on contract basis to begin with. Later on, the contract employees keeping in view the terms and conditions of employment or policies of the government, are regularized. The contract employees to begin with cannot be treated equal to regular employees.

9. In *State of Punjab and Ors. v. Surender Singh and Anr.* (2007) 13 SCC 231. The Supreme Court has held as follows:

6. The principle of equal pay for equal work has undergone a sea change. Earlier the view of this Court was that if two persons are discharging the same functions, they will be entitled to same wages. Subsequently this view has been changed and now the view of this Court is that there should be complete and total identity between the two persons similarly situated so as to grant equal pay for equal work. Recently this Court has held that identity between two persons has to be complete and total. In case of a regular appointee, he has undergone a selection process and his services are regular. Even if a daily wage employees is discharging the same functions as a regular employee the authorities are not bound to grant equal pay to such a person who is appointed on daily-wage basis i.e. is appointed for a short term and has not faced the selection process. Thus, the principle of equal pay for equal work has to be granted only if there is a total and complete identity between the two persons. In this view, we are supported by a decision of this Court in *S.C. Chandra and Others Vs. State of Jharkhand and Others*, which has referred to earlier decisions of this Court.

10. In *Official Liquidator Vs. Dayanand and Others*, it has been held as follows:

95. The ratio of *Randhir Singh v. Union of India* (1992) 1 SCC 618 was reiterated and applied in several cases - *Dhirendra Chamoli and Another Vs. State of U.P.*, , *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, , *Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others*, , *The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, and *Jaipal v. State of Haryana* (1988) 3 SCC 354 and it was held that even a daily-wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, , *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, , *V. Markendeya and Others Vs. State of Andhra Pradesh and Others*, , *Harbans Lal and Others Vs. State of Himachal Pradesh and Others*, , *State of U.P. and Others Vs. J.P. Chaurasia and Others*, , *Grih Kalyan Kendra Workers" Union Vs. Union of India and others*, , *Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others*, , *State of Haryana and Others Vs. Jasmer Singh and Others*, , *State of Haryana Vs. Surinder Kumar and others*, , *Union of India (UOI) and Others Vs. K.V. Baby and Another*, , *State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc.*, , *Utkal University and Another Vs. Jyotirmayee Nayak*

and Others, , State of Haryana and Another Vs. Tilak Raj and Others, , Union of India (UOI) Vs. Tarit Ranjan Das, , Apangshu Mohan Lodh and Others Vs. State of Tripura and Others, , State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., , Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, , Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another, and Canteen Mazdoor Sabha Vs. Metallurgical Engg. Consultants (I) Ltd. and Others, the Court consciously and repeatedly deviated from the ruling of Randhir Singh Vs. Union of India (UOI) and Others, and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value" judgment, responsibilities, reliability, experience, confidentiality, functional need, etc.

11. The law laid down in "State of Punjab" and "Official Liquidator" (supra) by the Supreme Court is clear. There should be complete and total identity between the two persons similarly situated so as to claim equal pay for equal work. The regular appointee has undergone the selection process and his services are regular. In case of daily wage employee merely on the ground that he is discharging the same functions as discharged by regular employee the authorities are not bound to grant equal pay to such a person. This principle applies equally to a contract employee also. The similarity in the designation or quantum of work are not enough for equal pay scales. The factors like source and mode of recruitment/appointment, qualifications nature of work, value judgment, responsibilities, reliability, experience, confidentiality, functional need, etc. are relevant for granting equal pay. The Petitioner has put forward his case that he has same qualification as regular employee and is discharging the same functions. In view of law laid down by the Supreme Court noticed above, the factors relied by the Petitioner in themselves are not determinative to allow equal pay to Petitioner, as claimed by him and for the same reasons, it cannot be said that condition in the Rules excluding applicability of the Rules to contract employees is illegal, arbitrary and unconstitutional.

12. The Petitioner has prayed for direction to the Respondents to pay salary for the period of vacations/holidays to the Petitioner and also pay salary for six days casual leave. A direction has also been prayed against the Respondents to pay medical allowance to Petitioner with effect from initial appointment along with interest. There is yet another prayer in the petition restraining the Respondents from recovering any amount already paid to the Petitioner and repay the amount if already recovered arbitrarily and illegally.

13. There is no foundation in the petition for the reliefs of payment of salary for vacation/holidays, six days casual leave, payment of medical allowance and restraining the Respondents from making the recovery. But, simultaneously, it is made clear that in case the Respondents have paid salary to other similarly

situated contract teachers like Petitioner of vacations/holidays, casual leave and paid medical allowance then, Petitioner shall not be discriminated by the Respondents for payment of salary of vacations/holidays, casual leave and medical allowance. In so far as recovery is concerned, the law has been laid down by the Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, and for effecting recovery, if any, the Respondents shall follow "Syed Abdul Qadir". In view of observations made above, the petition is liable to be dismissed and is accordingly dismissed.