
(2010) 08 SHI CK 0166
In the High Court Of Himachal Pradesh

Krishan Chand Malhotra and Others

APPELLANT

Vs

Himachal Pradesh State Electricity Board

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Citation : (2010) 08 SHI CK 0166

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Initially, petitioners were appointed as Control Room Operators and thereafter the post of Control Room Operator was re-designated as Junior Engineer (Control Room) in the year 1982. Respondent-Board vide office order No. 12/HPSEB (SECTT.)/91 dated 31.1.1991 has introduced a scheme to allow time bound benefit of promotional scales to its employees after completion of 9/16 years of Regular/Ad hoc service in the Board to the subordinate employees having a maximum scales upto Rs. 3500/- except to the categories where the benefit of time bound placement to higher scale is applicable on Himachal Pradesh Government pattern, as in the case of teachers etc. In devising the scale, case of the direct recruit was to be taken, who presumably entered service on minimum of the scale on 1.1.1986. Petitioner made joint representation to the Secretary of the respondent-Board for releasing time bound benefit of promotional scales on 21.5.1998. Petitioner No. 3 submitted individual representation also which was forwarded by the Superintending Engineer, Generation Circle, HPSEB, Bhabanagar on 19.9.1998 vide Annexure A-8 to the Chief Engineer (Generation), HPSEB, Sundernagar. The text of letter dated 19.9.1998 reads as under:

Er. Dila Ram Negi, J.E. (P/House) presently working in the office of Resident Engineer, Bhaba Power House Division, HPSEB, Bhabanagar under this circle has completed 9 years service as on 18.4.87 and 16 years of service on 18.4.94 right from his initial appointment as Control Room Operator vide Chief Engineer (OP)

memorandum No. CEO/ET-14/Giri/78-4639-44 dated 7.4.78 (copy enclosed) and the post of Control Room Operator re-designated as J.E. (P/House) by the Board (copy enclosed) and is entitled for the grant of 1st and 2nd time bound promotion/devised promotional scale in pursuance to the Secretary, HPSEB, Shimla office order No. 12/HPSEB (SECTT)/91 dated 31.1.91 and even No. 13/HPSEB (SECTT)/91 dated 31.1.91.

The case for 1st and 2nd time bound promotional/devised promotional scale after completion of 9/16 years of service as J.E. (P/House) duly recommended alongwith service book in four parts (Vol. 1 to IV) and performance report on the proforma are sent herewith for further necessary action please. The delay in submission of this case due to correspondence with the field units.

It is, therefore, requested that the sanction for the 1st/2nd time bound promotional/devised promotional scale may kindly be accorded in favour of the above named official at earliest please.

2. Petitioner No. 2 also made a separate representation, which was forwarded by the Superintending Engineer, Generation Circle, HPSEB, Palampur on 13.8.1998 to the Chief Engineer (Generation), HPSEB, Sundernagar. Thereafter the Chief Engineer, HPSEB, Palampur forwarded the representation of petitioner No. 2 to Secretary of the respondent-Board. It will be apt at this stage to take note that in Annexure A-8, nomenclature of the post which the petitioners were holding was mentioned as Junior Engineer (Power House).

3. Mr. Dilip Sharma has strenuously argued that since his clients had not opted for the revised pay scale, their cases were to be considered for releasing time bound benefit of promotional scales as per Annexure A-5. He then argued that there is no comparable post of Junior Engineer (Power House) existing in the Punjab State Electricity Board and in these circumstances independent decision was required to be taken by the Board.

4. Ms. Anjula Khajuria has strenuously argued that the petitioners have not exercised their options for old scale and there is no post of Junior Engineer (Power House) in the existing cadres of respondent-Board.

5. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

6. The post of Control Room Operator was re-designated as Junior Engineer (Control Room) in the year 1982. In Annexure A-8 dated 19.9.1998, Annexure A-9 dated 13.8.1998, Annexure A-10 dated 22.8.1998 and Annexure A-11 dated 19.9.1998, the nomenclature of the post is Junior Engineer (Power House). In these circumstances, there is no merit in the contention of Ms. Anjula Khajuria that the post of Junior Engineer (Power House) is not existing in the respondent-Board. The Superintending Engineer and Chief Engineer have favourably recommended the cases of petitioners and have brought to the notice of the higher authorities that the petitioners should not be deprived of the benefits,

which have been enjoyed by the Junior Engineers (Civil/Mechanical/Electrical/Inst/Tel) as per letter dated 31.1.1991.

7. Ms. Anjula Khajuria has also argued that respondent-Board follows Punjab State Electricity Board's pattern as far as releasing of pay scale is concerned and in the Punjab State Electricity Board, time bound benefit of promotional scales has not been allowed to Junior Engineer (Control Room). The petitioners cannot be deprived of the benefit of Annexure A-5 dated 31.1.1991 only on the ground that in the Punjab State Electricity Board, time bound benefit of promotional scales has not been given to the category of Junior Engineers (Control Room). As noticed above, the post of Junior Engineer (Control Room) was further re-designated as Junior Engineer (Power House).

8. Their Lordships of the Hon"ble Supreme Court in State of Himachal Pradesh Vs. Shri. P.D. Attri and Others, have held that each State has its own individualistic way of governance under the Constitution. One State is not bound to follow the rules and regulations applicable to the employees of other State or if it had adopted the rules and regulations, it is not bound to follow every change brought in the rules and regulations in the other State. Their Lordships have held as under:

5. The case of the respondents is not based on any Constitutional or any other legal provisions when they claim parity with the posts similarly designated in the Punjab & Haryana High court and their pay-scales from the same date. They do not allege any violation of any Constitutional provision or any other provision of law. They say it is so because of "accepts policy and common practice" which according to them are undisputed. We do not think we can import such vague principles while interpreting the provisions of law. India is a union of States. Each State has its own individualistic way of governance under the Constitution. One State is not bound to follow the rules and regulations applicable to the employees of the other State or if it had adopted the same rules and regulations, it is not bound to follow every change brought in the rules and regulations in the other State. The question then arises before us is if the State of Himachal Pradesh has to follow every change brought in the States of Punjab & Haryana in regard to the rules and regulations applicable to the employees in the States of Punjab & Haryana. The answer has to be in negative. No argument is needed for that as anyone having basic knowledge of the Constitution would not argue otherwise, True, the State as per "policy and practice" had been adopting the same pay-scales for the employees of the High court as sanctioned from time to time for the employees of the Punjab & Haryana High court and it may even now follow to grant pay-scales but is certainly not bound to follow. No law commands it to do so.

9. It is true that it is for the employer to decide what pay is to be paid to a particular employee. However, it is also equally settled that if pay fixation is unreasonable, unjust and in prejudice to a section of employees and the decision has been taken in ignorance of material facts, Courts can interfere.

10. Their Lordships of the Hon''ble Supreme Court in Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S. Uppal and Others, have held as under:

16. There is no dispute nor can there be any to the principle as settled in the above-cited decisions of this Court that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well-settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. [see K.T. Veerappa and Others Vs. State of Karnataka and Others,

11. Cases of the petitioners have been strongly recommended by the Superintending Engineer and Chief Engineer and despite that grievance of the petitioners has not been redressed by the respondent-Board. A bare perusal of Annexure A-5 reveals that it is not applicable to all the categories and it is applicable only to the subordinate employees having maximum scales up to Rs. 3500/-. No separate categories have been mentioned in Annexure A-5 and as such petitioners cannot be discriminated against by the respondent-Board since the time bound benefit of promotional scales has been given to the categories of Junior Engineers (Civil/Mechanical/Electrical/Inst/Tel) etc. Moreover, the petitioners have also not opted for new pay scales.

12. Accordingly, in view of the observations made hereinabove, the petition is allowed. Respondent is directed to allow the petitioners time bound benefit of promotional scales/devised promotional scale on completion of 9/16 years of service with all the consequential benefits in terms of scheme contained in Annexure A-5 dated 31.1.1991. Needful be done within a period of two months from the date of production of certified copy of the judgment by the petitioners. No costs.