
(2009) 01 SHI CK 0033
In the High Court Of Himachal Pradesh

L.C. Bhardwaj and Another	Vs	APPELLANT
State of Himanchal Pradesh and Another		RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 1 ShimLC 278

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Brief facts necessary for the adjudication of this writ petition are that petitioner No. 1 was appointed as Junior Engineer on 7.3.1988. Petitioner No. 2 was appointed as Junior Engineer on 27.6.1981. In the State of Punjab, the pay scales of the Soil Conservation Inspectors/Agricultural Inspectors/Soil Survey Assistants/Research Assistants were revised from Rs. 700-1200 to 2000-3500. The pay scales of the Sectional Officers in the State of Punjab were revised from Rs. 700-1200 to 1800/ 3200 vide notification dated 24.7.1991. However, vide notification dated 30.6.1993, the Government of Punjab had re-designated the posts of Agriculture Inspectors/Soil Conservation Inspectors/Research Assistants etc. to Soil Conservation Officers and their pay scales were revised from Rs. 2000-3500 to 2200-4000 after 8 years of service and Rs. 3700-5300 after 18 years of service. However, the Sectional Officers working in Conservation wing were not granted this pay scale. The Sectional Officers filed a writ petitions in the Hon"ble Punjab and Haryana High Court bearing No. 11511/93 and 12785/93. Their case, in nutshell, was that their post was comparable with post of Conservation Inspectors/Agriculture Inspectors/Soil Survey Assistants/Research Assistants designated as Soil Conservation Officer and they were also entitled to revised pay scale at par with them. The stand of the Punjab Government before the Hon"ble Punjab and Haryana High Court was that the qualification for the appointment to the post of Soil Conservation Officer is different vis-a-vis the category of the petitioners. The Hon"ble Punjab and

Haryana High Court allowed the writ petitions on 14.12.1995. The petitioners were held entitled to the same pay scales which were being granted to the Agriculture Inspectors. Soil Survey Assistants/Research Assistants.

2. In sequel to the judgment rendered by the Hon''ble Punjab and Haryana High Court on 14.12.1995, the State of Punjab took a conscious decision on 13.1.1997 (Annexure A-12). The text of letter dated 13.1.1997 reads thus:

In compliance with the orders in Civil Writ Petition No. 11571,12785, 7809, 8687, 9499 of 1993 and L.P.A's No. 581, 584 to 587 of 1996 passed by the Hon''ble Punjab and Haryana High Court the Governor of Punjab is pleased to grant revised pay scales of Sectional Officers (now known as Junior Engineers) as under:

Date from which scale Revised Pay Scale (iv) is to be revised

1.1.1986 2000-3500 1.1.1991 200-4000 Scale at the time of entry into service. 3000-4500 After eight years of service. 3700-5300 After 18 years of service. 1. The governor of Punjab is further pleased to order that the Sectional Officer. (Now Junior Engineer) will be treated at par for further placement on higher posts with the categories mentioned in para 1 at Sr. No. 1 of this Department Memo No. 12137/89-1 Agri. III/7730, dated 30.6.1993.

2. The Government of Punjab is further pleased to delete para II and IV of this Department order dated 30.6.1993. The entry qualifications of S.O's (now J.E.) and other categories will remain the same as were prescribed prior to this Department Order dated 30.6.1993.

3. These orders are subject to the out come of the SLP filed in the Hon''ble Supreme Court of India.

3. It will be pertinent to take note at this stage that against the judgment rendered by the Hon''ble Punjab and Haryana High Court, the State of Punjab had preferred an SLP which was dismissed on 19.3.1997 by the Hon''ble Supreme Court. In other words, the judgment rendered by the Hon''ble Punjab and Haryana High Court had attained finality.

4. It is not disputed that the State of Himachal Pradesh adopts the pay scales of the corresponding categories of employees serving in the State of Punjab for its own employees. The State Government took a conscious decision on the basis of the letter dated 13.1.1997 issued by the State of Punjab vide Annexure A-2 on 31.12.1997. The text of letter dated 31.12.1997 reads thus:

I am directed to refer to your letter No. Agr. H (1) B.5-11/79-Vol.II dated the 10th December, 1997 on the subject cited above and to convey the approval of the Government for the grant of revised pay scales to the Junior Engineers in the Agriculture Department on the basis of Punjab pattern with effect from 1.1.1991 as under:

Date from which scale Revised pay scale (Rs.) is to be revised

1.1.1986 2000-3500 1.1.1991 (i) 2200-4000 scale at the time of entry into service. (ii) 3000-4500 After eight years of service. (iii) 3700-5300 After 18 years of service. 2. These orders are subject to any outcome received from the Punjab Government with reference to their letter No. 4/2/93-I-Agri-III/616 dated 13.1.1997.

3. Pay in the revision scales will be fixed strictly in accordance with the Rule/ instructions issued by the Government from time to time.

4. Necessary proposal regarding further placement on higher posts of Junior Engineers may please be furnished to this Department immediately for further necessary action.

5. Accordingly the petitioners were held entitled to pay scales of Rs. 2200-4000 at the entry into service, Rs. 3000-4500 after 8 years of service and Rs. 3700-5300 after 18 years of service. It is evident from para 2 of the letter dated 31.12.1997 that the revision of the pay scale from Rs. 2000-3500 as indicated above was subject to the outcome received from the Punjab Government with reference to letter dated 13.1.1997. The petitioners were released these pay scales. In fact the petitioners were also granted the master pay scales vide letter dated 9.1.1998. However, the Director of Agriculture i.e. respondent No. 2 on 10.6.2004 issued fresh order whereby the pay scale of Rs. 3000-4500/3700-5300 earlier allowed to the Extra Assistant Engineers/Junior Engineers after 1.1.1996 was withdrawn. The petitioners were held entitled to pay scale of Rs. 5800-9200. The letter dated 10.6.2004 reads thus:

Consequent upon the revision of pay scale vide Notification No. Fin (PR) 8 (7) 1/98, dated 1.9.1998, the Extra Asstt. Engineers/ Junior Engineers have been allowed the pay scale of Rs. 5800-9200 w.e.f. 1.1.1996. Therefore, the pay scale of Rs. 3000-4500/ 3700-5300 earlier allowed to the Extra Asstt. Engineers/ Junior Engineers of this Deptt. on or after 1.1.1996 vide this Directorate Office Order No. Agr. H (1)(B) 5-11/80, Vol.III dated 7.2.1998, 26.3.1990, are hereby withdrawn. However, the E.A. Es./J. Es. who were allowed the pre-revised pay scale of Rs. 2200-4000 in the Deptt. prior to 1.1.1996 are allowed the revised pay scale of Rs. 7220-11320 w.e.f. 1.1.1996 as a personal measures to them. Accordingly orders of re-pay fixation of the officials concerned are being issued separately.

6. Mr. Lokender Paul Thakur, Advocate has strenuously argued that no notice was ever issued to the petitioners before the issuance of office order dated 10.6.2004. He further submitted that once a conscious decision has been taken by the State Government on 31.12.1997 on the basis of letter dated 13.1.1997, the same could not be withdrawn by the Director of Agriculture on 10.6.2004. In other words his submission was that the decision taken by the State Government could not be rendered otiose by the Director of Agriculture as he was not competent authority to do so. He has also relied upon letters dated 30.12.2002, 5.2.2004 and 7.7.2004.

7. Mr. R.K. Sharma, Senior Additional Advocate General has supported the order dated 10.6.2004.

8. I have heard the learned Counsel for the parties and perused the record carefully. It is evident from the reply filed by the respondent-State that the petitioners had been discharging their duties in soil conservation schemes/works, including their maintenance. They had been working in these schemes/works and extension activities. It is not in dispute that in the matter of revision of pay scales, the State of Himachal Pradesh adopts the pattern of the corresponding post made applicable in the State of Punjab. It is evident that the Sectional Officers in the State of Punjab were not granted the pay scale of Rs. 2000-3500, but their pay was revised from Rs. 700-1200 to 1800-3200 on 18.7.1994. The corresponding posts of Agriculture Inspectors/Soil Conservation Inspectors/Research Assistants etc. were re-designated as Soil Conservation Officers. This category was granted three tier pay scales. The category of Sectional Officers approached the Punjab and Haryana High Court for the redressal of their grievances. The Punjab and Haryana High Court allowed the writ petition preferred by the Sectional Officers on 14.12.1995. A conscious decision was taken by the State of Punjab whereby also allowed the three tier pay scales on the basis of letter dated 13.1.1997 to the Sectional Officers. The State of Punjab had also preferred an SLP against the judgment of the Punjab and Haryana High Court, which was dismissed by the Apex Court on 19.3.1997.

9. The State of Himachal Pradesh has also taken a conscious decision on 31.12.1997 whereby three tier pay scales were granted to the category of the petitioners. There was a rider in letter dated 31.12.1997 that the pay revision of the pay scales was made subject to the outcome of letter dated 13.1.1997. It has also been noted that as far as letter dated 13.1.1997 is concerned it was made subject to the outcome of further appeal preferred against the judgment of the Punjab and Haryana High Court. The judgment dated 14.12.1995 had attained finality after the dismissal of the SLP. Thus, the decision taken was in conformity with law and more particularly in tune with letter dated 13.1.1997. It will also be apt at this stage to take note of order dated 30.12.2002 issued by the State of Punjab which reads thus:

The Sectional Officers (Now Junior Engineers) of the Soil Conservation Department were allowed pay parity and were treated at par as in the case of Soil Conservation Officers (Now Agriculture Inspectors) vide this Department memo No. 4/42/ 93-I-Agri-III/614 dated 13.4.1997.

2. That vide Notification No. 7/1/97-2-FP-1/7/7370 dated 19.5.1998 and subsequent Notification No. 7/1/97-II-FP-I/11348 dated 28.11.2000, the Soil Conservation Officers (Now Agriculture Inspectors) were allowed revision in pay scales w.e.f. 1.1.1996 in implementation of the recommendation of the 4th Pay Commission. However, the posts of Junior Engineer were not included in these notifications for the revisions of pay scales w.e.f. 1.1.1996.

3. The matter has been considered by the Government and it was observed that the Sectional Officers (Junior Engineers) were allowed parity in the matter of pay scales with Soil Conservation Officers (Now Agriculture Inspectors) in compliance with the "orders of Hon"ble Punjab and Haryana High Court.

4. The Governor of Punjab is therefore now pleased to allow parity to those incumbents of the posts of Junior Engineers who were appointed prior to 1.1.1996 in the matter of revised pay scales with those Soil Conservation Officers. (Now Agriculture Inspectors) who were getting the pay scale of Rs. 2200-4000 (Entry scale) Rs. 3000-4500 (after 8 years) and Rs. 3700-5300 (after 18 years) service, as measure personal to them.

5. This issues with the concurrence of Department of Finance issued vide their I.D. No. 1/46/99/11/1371 dated 13.11.2002.

10. It is evident from the bare reading of the order dated 30.12.2002 that Junior Engineers, who were appointed prior to 1.1.1996 were given parity in the matter of revision of pay scales with those Conservation Soil Officers, who were getting pay scale of Rs. 2200-4000 at the time of entry into service, Rs. 3000-4500 after 8 years of service and Rs. 3700-5300 after 18 years of service as measure personal to them. The State of Punjab vide notification dated 7.7.2004 has changed the designation of the Sectional Officers to Soil Conservation Officers. Vide notification dated 5.2.2004 issued by the Government of Punjab, the posts of Agriculture Inspector/Soil Conservation Inspector/Research Assistant/Soil Survey Assistant Agriculture Inspector (Soil Survey Assistant Soil Conservation Officer/Divisional Soil Conservation Officer/Map Officer were merged as single cadre. Accordingly it is held that the petitioners who were working in the Soil Conservation Branch are entitled to get parity with Sectional Officers working in the State of Punjab now re-designated as Soil Conservation Officers.

11. The stand of the respondent-State is that the petitioners are not discharging the same and similar duties which are being discharged by the Officers i.e. Sectional Officers now re-designated as Soil Conservation Officers in the State of Punjab. Its further stand is that the qualifications of the Junior Engineers prescribed in the State of Himachal Pradesh are different from the one provided in the State of Punjab in the Recruitment and Promotion Rules for the post of Junior Engineer. It has also been taken note of by the Court that the petitioners are also working in the soil conservation wing and are taking care of soil schemes/works and extension activities with Block Development Officers. A similar plea was also raised before the Hon"ble Punjab and Haryana High Court whereby it was stated that the works of civil engineering nature are got executed through the Sectional Officers and the rest of the departmental works are got done through the Agricultural Inspectors etc. This plea was repelled by the Punjab and Haryana High Court. Consequently, it is held that the petitioners were discharging the same and similar duties which were being discharged by their counterparts in the Conservation Department of Punjab.

12. The other plea raised by the learned Senior Additional Advocate General is that the petitioners have been granted the pay scales of the post of Junior Engineer which has been paid to all the Junior Engineers working in other departments on the basis of notification dated 19.5.1998. This similar plea was also raised before the Punjab and Haryana High Court but the same was also repelled by the Punjab and Haryana High Court. It appears from the pleadings of the parties that in the State of Punjab after revising the pay scales of Sectional Officers, their qualifications were altered, however, the same were later on deleted and earlier qualifications were restored. The observation to this effect has also been made by respondent No. 2 in one of the communications made by him to State on 17.3.1997.

13. The matter is also required to be viewed from another angle. The petitioners had been granted the pay scales vide Annexures A-2 and A-4. The same have been withdrawn by respondent No. 2 without issuing notices to them. It is settled law by now that any order which has civil consequences must be passed in conformity with the principles of natural justice. The orders Annexure A-1 is also liable to be struck down being violative of the principles of natural justice.

14. Accordingly in view of the analysis and the observations made hereinabove, the writ petition is allowed.

15. The impugned order Annexure A-1 dated 10.6.2004 is quashed and set aside. The petitioners are held entitled to pay scales which have been allowed to them vide Annexures A-2 and A-4, respectively. There will, however, be no order as to costs.