
(2016) 02 P&H CK 0153
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18272 of 2011

Mangat Raj and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 — Rule 14-B

Citation : (2016) 2 SCT 800

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Yatinder Sharma, Addl. A.G, Punjab, Swarn Sandhir, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J. - Present petition has been filed seeking a writ of certiorari quashing the order dated 2.6.2009 (Annexure P-6) and the order dated 31.8.2007 (Annexure P-4) in so far as it orders that the petitioners be placed and not promoted as Readers Grade I, II and III.

2. The petitioners are all Readers in the Courts in Sessions Division, District Sangrur. They are seeking the benefit of recommendations of the First National Judicial Pay Commission which are as follows:

It had been recommended that there would be three grades of Readers for the three levels of Courts;

The pay scales of the three grades of readers would be different and they would have different responsibilities as they would be attached to different levels of Courts;

Reader Grade III and II would be appointed from different sources, while Reader Grade I would be promoted from the cadre of Readers Grade- II/Superintendents Grade II; and

The three cadres of Readers were recommended for three levels of Courts not only having regard to the work load of such Courts, but also to provide more promotional opportunities to existing staff.

3. The above said recommendations of the First National Judicial Pay Commission were accepted by the State of Punjab and vide its letter dated 22.7.2005 (Annexure P-1), the Government of Punjab was pleased to grant the pay scales recommended by the Shetty Commission with immediate effect to the staff of Subordinate Courts in the State of Punjab. The State of Punjab vide its letter dated 10.12.2009 (Annexure P-2) further decided to implement the recommendations of the Shetty Commission from 1.4.2003. The Registrar General of this Court vide letter dated 24.12.2009 (Annexure P-3) forwarded the decision of the State of Punjab to implement the recommendations of the Shetty Commission to all the District and Sessions Judges in the State of Punjab for taking necessary action in this regard. Vide order dated 31.8.2007 (Annexure P-4), the petitioners Nos. 1 to 10 and 13 were placed as Reader Grade I, II and III by the District and Sessions Judge, Sangrur. Similar order dated 19.12.2008 was passed in the case of petitioners no. 11 and 12. Pursuant to the above said order Annexure P-4, the petitioners were placed at (i) the Court of Civil Judge (Junior Division)/Magistrate; (ii) the Court of Civil Judge (Senior Division)/CJM and (iii) the Court of District Judge/Addl. District Judge. The grievance of the petitioners is that despite being placed in Readers Grade II, they have not been granted monetary benefits attached to their posts. The representation dated 11.5.2009 (Annexure P-5) was made in this regard. The representation was dismissed by the Distt. and Sessions Judge, Sangrur vide order dated 2.6.2009 (Annexure P-6). The service appeal dated 20.7.2009 (Annexure P-7) has been dismissed by this Court vide order dated 28.9.2010 (Annexure P-9) on administrative side on the sole ground that the same is not maintainable under Rule 14-B of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997.

4. Learned counsel for the petitioners has further argued that as per the recommendations of the First National Judicial Pay Commission (Shetty Commission), three cadres of Readers were recommended for three levels of Court as under:

Reader Grade III

Court of Civil Judge (Jr. Divn.)

Reader Grade II

Court of Civil Judge/Addl. Civil Judge (Sr. Divn.)

Reader Grade I

Court of Distt. and Sessions Judge/Addl. Distt. and Sessions Judges

5. This was done to provide more promotional opportunities to the existing staff.

The post of Reader Grade-I, II and III were distinct posts which carry their own pay scale and have been created to provide promotional opportunities to the staff of the Subordinate Courts. The State of Punjab accepted the recommendations of the Shetty Commission w.e.f. 1.4.2003. When the petitioners were placed in Reader Grade-II, it would amount to promotion for all intents and purposes as three separate grades of pay scales were provided while accepting the recommendations of the Shetty Commission which are as under:-

(i) Reader Grade-III- RS. 5800-9200 [existing pay scale admissible to Assistants i.e Sr No.12 of the General Pay Scales]

(ii) Reader Grade II- RS. 6400-10640 [next promotional scale i.e SI No.13 of the General Pay Scales].

(iii) Reader Grade I- RS. 7000-10980 [Sr. No.14 of the General Pay Scales]

6. Separate scales have been reflected for the three Grades. Learned counsel for the petitioners has referred to the Supreme Court judgment in the case of Director, General Rice Research Institution, Cuttack v. Khetra Mohan Das, 1995 (1) SCT 653, wherein it has been observed as under:

".....in C.C. Padmanabhan v. Director of Public Instructions, 1980 (Supp) SCC 668 : (AIR 1981 SC 64) this Court observed that "promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfied either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service or class....."

7. While referring to the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (Annexure P-10), he has further argued that the post of Reader Grade-II and Superintendent Grade-II is in the promotional scale of RS. 6400-10640. Thus, the post of Reader Grade-II is equivalent to the post of Superintendent Grade-II. Superintendent Grade-II is a promotional post and has to be filled up from amongst the Assistants with 3 years experience on the basis of seniority-cum- merit and Assistants have to be appointed by promotion from amongst the graduate Clerks having five years experience on the basis of seniority-cum-merit. For all intents and purposes, the appointment to the post of Superintendent Grade-II from the post of Assistant was a promotion. As per the recommendations of Shetty Commission, an Assistant would be equivalent to Reader Grade-III in the scale of RS. 5800-9200. Hence for all intents and purposes, if an Assistant is to be promoted as Reader Grade-II or Superintendent Grade-II he has to have experience of three years. Apart from the promotion it carries a higher pay scale as well and hence on account of using the word placement, the higher pay scale is being wrongly denied to the petitioners.

8. Mr. Swaran Sandhir, counsel for respondents no. 2 and 3 has argued that the

placement of Readers in category I, II and III is neither any promotion nor any specific procedure has been prescribed for categorisation of these posts. Order dated 31.8.2007 (Annexure P-4) is merely an order of redesignation giving nomenclature to different posts as per the notification. The Shetty Commission in its report has recommended three grades of Readers to three levels of Courts i.e Reader Grade-I (in scale of 7220-11660), Reader Grade-II (in scale of 6400-10640) and Reader Grade-III (in scale of 5800-9200). These recommendations were accepted by the Government of Punjab, Department of Home Affairs and Justice vide notification dated 22.7.2005 and the senior most Assistants working in Sangrur Sessions Division were placed as Reader Grade-I and Reader Grade-II as per their seniority. He has further referred to the orders passed by this Court on administrative side in the case of Sh. Kapil Dev who was granted benefit of one increment on his promotion to the post of Reader Grade-I from the post of Reader Grade-II as per orders dated 1.5.2009 (Annexure R/2-3/1). In the case of petitioner no.2, Sh. Kewal Krishan, the prayer for grant of one additional increment on being promoted to the post of Reader Grade- II was declined by the Court on 28.9.2010 (Annexure P-9). The High Court has clarified vide order dated 1.5.2009 (Annexure R2-3/1) that the post of Reader Grade-II is not to be considered as promotional post and ordered that the writ petition deserved to be dismissed on this ground alone.

9. After hearing counsel for the parties and going through the contents of the writ petition, I am of the view that this writ petition deserves to be allowed.

10. Counsel for the petitioner has placed on record the information received under the RTI Act (Annexures P-11 and P-12). This information has been received from the District and Sessions Judge, Ferozepur and District and Sessions Judge, Ludhiana where the post of Reader Grade-II in the pay scale of RS. 6400-10640 (new pay scale RS. 10300-34800=4200/- grade pay) is being treated as promotional post from Reader Grade-III in the pay scale of RS. 5800-9200 (new pay scale of RS. 10300-34800=3800/- grade pay) by this office and benefit of one increment with grade pay of respective post has been granted only to those officials who are working on the promotional post i.e Reader Grade-II. Vide order dated 11.3.2013, the respondents were granted a short adjournment to file a specific response to the information as set out by the petitioners. An affidavit of OSD Vigilance, Punjab was filed on 8.1.2016, wherein it was stated that the Rules governing the appointment and conditions of service after implementation of report of Shetty Commission namely "Punjab Subordinate Courts (Recruitment and General Conditions of Service) Rules, 2011 are yet to attain finality and the matter to bring uniformity in the implementation of the above mentioned report was placed before the Hon'ble Rules Committee (other than CPC), Punjab and Haryana High Court, Chandigarh constituted by this Court and after discussing the Rules Committee (other than CPC) has passed the resolution in its meeting held on 2.11.2015 and the copy of the same was enclosed as Annexure A-1.

11. As per the recommendations of the Shetty Commission, Readers have been placed at three levels of Courts. As per Rules (Annexure P-10), the respondents are not disputing that the pay scale of Reader Grade-II and Superintendent Grade-II are the same. For the purpose of appointment to the post of Superintendent Grade- II an Assistant has to have three years experience and Assistants have to be appointed by promotion from amongst the graduate Clerks having five years experience on the basis of seniority-cummerit. Hence for all intents and purposes, an Assistant who has to be promoted as Superintendent Grade-II should have an essential experience of three years and Assistants as per the Shetty Commission recommendations has been placed as Reader Grade-III. Further the placement of these Readers in different Courts is as under:-

Reader Grade III

Court of Civil Judge (Jr. Divn.)

Reader Grade II

Court of Civil Judge/Addl. Civil Judge (Sr. Divn.)

Reader Grade I

Court of Distt. and Sessions Judge/Addl. Distt. and Sessions Judges

12. Keeping in view the responsibility attached to these Courts, promotional avenues have been provided. The respondents have not denied that as per the information received under RTI Act (Annexure P-11 and P-12) that for all intents and purposes the appointment to the post of Reader Grade-II in the scale of RS. 6400- 10640 has been treated as promotional post from Reader Grade III which is in the pay scale of 5800-9200 and one increment has been granted to Reader Grade II on promotion from Reader Grade-III. Applying the ratio of the judgment of Director, General Rice Research Institution, Cuttack's case (supra), the placement of the petitioners as Readers Grade-II would amount to promotion as it involves holding of higher responsibility as well as higher pay scale. If an Assistant after serving for three years is placed as Reader Grade-II and in a higher pay scale, than he is entitled for one additional increment as this would amount to promotion which in the present case has not been done.

13. Having regard to the aforesaid, order dated 2.6.2009 (Annexure P-6) and the order dated 31.8.2007 (Annexure P-4) are hereby set aside and the petitioners are held entitled to payment of one additional increment on being promoted as Reader Grade-II in the pay scale of RS. 6400-10640 or 14.Reader Grade-III in the pay scale of RS. 5800-9200.

15. Petition stands allowed accordingly.