
(2011) 03 SHI CK 0074
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 8287 of 2008

Milap Singh

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Contract Act, 1872 — Section 23

Citation : (2011) 03 SHI CK 0074

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was appointed as T.G.T.(Science) on regular basis in June, 1996. He joined his duties. However, vide Annexure A-1, dated 4th November, 1996, he was posted in Government Senior Secondary School Chowari (Chamba) against the post of Lecturer in his own pay scale. He was directed to teach concerned subject to the students of +1 and +2 classes in the school, where he was posted, i.e., Government Senior Secondary School, Chowari. He joined his duties at Chowari on 02.12.1996 as a Lecturer in Physics against the vacant post. Though he discharged the duties of Lecturer (School Cadre), however, he was granted the pay scale of T.G.T's, i.e., Rs. 5480-8940/- instead of Rs. 6400-10640/-. He was also transferred on 2nd April, 1999 vide Annexure A-2 as Lecturer (School Cadre) from Government Senior Secondary School Chowari to Government Senior Secondary School, Haripur, Kangra. He was subsequently promoted as Lecturer on regular basis on 24th August, 2000 in the pay scale of Rs. 6400-10640/-.

2. Mr. K.C. Sankhyan, learned vice counsel for the Petitioner has strenuously argued that his client was entitled to pay scale of Rs. 6400-10640/- on the principle of "equal pay for equal work", since he has worked as a Lecturer (School Cadre) w.e.f. 02.12.1996 till the date of his regular promotion, i.e., 24th August, 2000.

3. Mr. P.M. Negi, learned Deputy Advocate General has vehemently argued that it was made clear in Annexure A-1, dated 4th November, 1996 that the Petitioner would be posted as Lecturer in Government Senior Secondary School in his own pay scale. He further argued that the Petitioner has been promoted as a Lecturer (School Cadre) on 24th August, 2000 and has been paid the pay scale of Rs. 6400-10640/-.

4. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

5. It is not in dispute that the Petitioner was initially appointed as T.G.T. (Science) on regular basis in the month of June, 1996. While he was on probation, he was posted as a Lecturer and was specifically directed to teach the classes of +1 and +2 at Government Senior Secondary School, Chowari. He resumed his duties at Government Senior Secondary, Chowari on 02.12.1996. He had been discharging the same duties, which were being discharged by the regularly appointed Lecturers (School Cadre). He was directed to teach +1 and +2 classes. Even in Annexure A-2, dated 2nd April, 1999, the designation of the Petitioner has been shown as Lecturer (School Cadre) when he was transferred from Government Senior Secondary School, Chowari to Government Senior Secondary School, Haripur. Petitioner has also made a representation vide Annexure A-3 on 07.06.2001, seeking the pay scale of the post of Lecturer w.e.f. 02.12.1996 till 24th August, 2000. The representation made by the Petitioner was rejected by Respondent No. 2 in the month of July, 2001 vide Annexure A-4. Action of the Respondents to deny the pay scale of Rs. 6400-10640/- is arbitrary. The Petitioner ought to have been paid this pay scale on the principle of "equal pay for equal work". Petitioner was possessing the requisite essential qualification for appointment to the post of Lecturer and had been teaching +1 and +2 classes. +1 and +2 classes are taught in Government Senior Secondary Schools only by the Lecturers (School Cadre). Merely mentioning that the Petitioner will work against the post of Lecturer in his own pay scale, will not deprive him to get the pay scale of Lecturer (School Cadre). It is settled law by now that while considering the principle of "equal pay for equal work", the Court has to take into consideration the duties performed by an incumbent, responsibilities, experience, method of recruitment etc. In this case, the Petitioner was fully qualified and he has worked as Lecturer (School Cadre). He has discharged the responsibilities entrusted to him.

6. Their Lordships of the Hon"ble Supreme Court in Secretary-Cum-Chief Engineer, Chandigarh v. Hari Om Sharma and Ors. (1998) 5 Supreme Court Cases 87 have held that an agreement that if a person is promoted to the higher posts or put to officiate on that post or, as in the instant case, a stop gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would therefore be unenforceable in view of Section 23 of the Contract Act, 1872. The mere mentioning in the letter that the Petitioner will not

claim seniority or higher pay scale will not preclude him from seeking higher pay scale on the principle of "equal pay for equal work". Their Lordships have held as under;

8. Learned Counsel for the Appellant attempted to contend that when the Respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the Appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The Respondent being an employee of the Appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.

7. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Respondents are directed to pay and release the Petitioner the pay scale of Rs. 6400-10640/- w.e.f. 02.12.1996 till 24.08.2001, within a period of eight weeks from the date of production of a certified copy of this judgment by the Petitioner.