

(2023) 05 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : CWPOA No.2507 Of 2019

Nank Chand And Others

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 03-05-2023

Acts Referred:

Himachal Pradesh Civil Services (Category/Post Wise Revised Pay) Rules, 2012 — Rule 3, 9

Citation : (2023) 05 SHI CK 0009

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Bhuvnesh Sharma, Parav Sharma, Mr.Rupinder Singh Thakur, Y.P.S. Dhaulta

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Respondents granted revised pay band and grade pay to the post of DPE from 01.11.2014. Petitioners were serving as DPEs on 01.10.2012 i.e. the date from which this benefit was released to 19 other categories/posts in the Education Department. All the petitioners retired before 01.11.2014. They could not get benefit of revised pay band & grade pay. Their grievance in the instant petition is that the aforesaid benefit was required to be released to them w.e.f. 01.10.2012.

2. Facts

2(i) Petitioners were initially appointed as Physical Education Teachers (PET)/ Junior Basic Teachers (JBT) and further promoted as DPEs. All the petitioners have now retired. Their initial dates of appointment, dates of promotion as DPEs and dates of retirement given in the petition are as under :-

Applicant

No.

Applicant Name

Initial

Appointment

Appointment

as D.P.E.

Date & Place of
retirement

1.

Nanak Chand

29.04.1980

P.E.T.

as

02.11.1989

31.03.2013 Dy.

Director Higher Education, Hamirpur

2.

Kishan Chand

01.09.2000

P.E.T.

as

05.02.2005

30.04.2013

Bara (Hmr.)

GSSS

3.

Nikka Ram

29.10.1981

J.B.T.

as

16.01.2002

30.11.2013 GSSS

Dangar (Bilaspur)

4.

Dina Nath

26.06.1986

P.E.T.

as

29.04.1998

31.10.2014 GSSS

Dadhol (Bilaspur)

5.

PritamSingh

06.06.1991

P.E.T.

as

June 1999

31.03.2013

Maharal (Hmr.)

GSSS

6.

Tripta Devi

01.09.1987

P.E.T.

as

July 2009

31.03.2014 G(B)SSS

Hmr.

2(ii) In exercise of powers conferred by Rule 9 of Himachal Pradesh Civil Services (Category/Post wise Revised Pay) Rules, 2012 read with Rule 3 of the Rules ibid, the respondents issued a notification on 27.09.2012 (Annexure A-1). In this notification, 19 categories/posts were included under Sr. No. 7 "Education

Department". For better comprehension of the issue involved, it would be appropriate to extract hereinafter some parts of this notification :-

"7. Education Department

Sr.No.

Name of the category/post

Pay Band

Grade Pay

Remarks, if any

Date from which applicable

1.

JBT

(i) 5910-20200

3000

11470

Initial Start

Already existing

(ii) 10300- 34800

4200

This PB

& GP

will be given after 2

years of regular service

01.10.2012

2.

Head Teacher

10300-34800

4400

.....

01.10.2012

7.

Drawing Master

(i) 10300-

34800

3200

13500

Initial start

Already existing

(ii) 10300-

34800

4400

This PB

& GP

will be given after 2

years of regular service

01.10.2012

8.

PET

(i) 10300-

34800

3200

13500

Initial start

Already existing

(ii) 10300-

34800

4400

This PB

& GP

will be given after 2

years of regular service

01.10.2012

18.

Master Technical-II (Secondary Education)

(i)

10300-

34800

3200

13500

Initial start

Already existing

(iii)

10300-

34800

3600

This PB

& GP

will be given after 2

years of regular service

01.10.2012

19.

Multi Instructor (Secondary Education)

5910-20200

2400

....

01.10.2012"

The category/post of DPE in the Education Department held by the petitioners did not figure in the above table. It is worthwhile to notice here that for all the 19 categories/posts of Education Department included in the above table, the revised pay band and grade pay was made admissible w.e.f. 01.10.2012. The notification granting revised pay band and grade pay to 19 categories/posts in Education Department was issued on 27.09.2012, whereby revised pay band and grade pay was made applicable w.e.f. 01.10.2012.

2(iii) On 01.11.2014, the respondents came up with another notification in exercise of powers conferred by Rule 9 of Himachal Pradesh Civil Services (Category/Post wise Revised Pay) Rules, 2012 read with Rule 3 of the Rules *ibid*. Under this notification, an addition was made to the categories of posts in the previous notification dated 27.09.2012. By way of addition, the post of DPE held by the petitioners was also included and figured at Sr. No. 20. Revised pay band & grade pay for this post was ordered to be released w.e.f. the date of issuance of the notification i.e. 01.11.2014. Being germane for adjudication of the dispute raised herein, it will be apt to extract this notification :-

"NOTIFICATION

No. FIN(PR)B(7)23-/2010-II Dated: Shimla-2, the 1st November, 2014

In exercise of the powers conferred by Rule 9 of Himachal Pradesh Civil Services (Category/Post wise Revised Pay) Rules, 2012, read with Rule 3 of rules *ibid*, the Governor, Himachal Pradesh, is pleased to add the following words and figures after Sr. No. 19 under heading "7. EDUCATION DEPARTMENT" of the Schedule appended to the rules *ibid*, notified vide this Department's notification number Fin. (PR)-B(7) 64/2010 dated 27th September, 2012 as under :-

7. EDUCATION DEPARTMENT

Sr.No

.

Name of the category/post.

Pay Band.

Grade Pay.

Remarks, if any

Date from which applicable

(1)

(2)

(3)

(4)

(5)

(6)

20

PET

(i)

10300-

34800

3600

14430

Initial start

Already existing

(ii)

10300-

34800

5000

This PB & GP will be given after

2 years of regular service

01.11.2014

,

By order

Principal Secretary (Finance) to the Government of Himachal Pradesh."

2(iv) The petitioners retired as DPEs on varying dates shown in table drawn in para 2(i) above. Since all the petitioners had retired prior to issuance of notification dated 01.11.2014 (Annexure A-3), revised pay band & grade pay was not released to them. Hence they have instituted present petition for the following substantive reliefs :-

"i) That the notification dated 01.11.2014 at Annexure A-3 may kindly be quashed and set aside to the extent the cut-off date for grant of revised pay-band and grade pay for DPE has been fixed as 01.11.2014 instead of 01.10.2012 as per notification at Annexure A-1.

ii) That the applicants may kindly be held entitled for the grant of revised pay band of Rs. 10,300-34,800 with initial start of Rs. 14,430/- + grade pay of Rs. 5,000/-w.e.f. 01.10.2012 with all consequential benefits of arrears of pay and re-fixation of their pension accordingly."

3. Submissions

The grievance of the petitioners is that notification dated 01.11.2014 is unjust. It grants revised pay band and grade pay to the post of DPE w.e.f. 01.11.2014, whereas for the other 19 categories/posts in the Education Department, the revised pay band and grade pay was released w.e.f. 01.10.2012 under

notification dated 27.09.2012. Learned Senior Counsel for the petitioners contends that allowing revised pay band & grade pay to the incumbents of post of DPE w.e.f. 01.11.2014 is a discriminating act of the respondents. This illegal notification has deprived revised pay band & grade pay of the post of DPE to the petitioners who retired prior to 01.11.2014.

Learned Additional Advocate General, on the basis of reply filed by the respondents, submitted that the State Government in exercise of powers conferred by Rule 9 of Himachal Pradesh Civil Services (Category/Post wise Revised Pay) Rules, 2012, read with Rule 3 on 01.11.2014 had notified the entry at Sr. No. 20 under the heading "7.Education Department". It was on 01.11.2014 that the post of DPE was entered at Sr. No. 20 of the notification. Therefore, revised pay band and grade pay was not admissible to this category/post prior to 01.11.2014. The petitioners having retired prior to 01.11.2014 cannot be released the revised pay band and grade pay which was released only on 01.11.2014.

4. Observations

Having heard learned counsel on both sides and on going through the case file, I am of the view that petitioners are entitled to revised pay band & grade pay of DPE as per notification dated 01.11.2014, with effect from 01.10.2012. This is on account of the following reasons :-

4(i) Notification dated 27.09.2012 (extracts reproduced in para 2 (ii) above) was issued by the respondents-State, wherein different categories/posts of Education Department were granted revised pay band plus grade pay w.e.f. 01.10.2012. 19 categories/posts of Education Department were included in this notification. It appears that post of DPE held by the petitioners somehow did not figure in the notification.

The respondents realized non-figuring of post of DPE in the notification dated 27.09.2012. Exercise was undertaken to bring the post of DPE within the ambit of the aforesaid notification. In furtherance of this exercise, a notification was issued on 01.11.2014 [extracted in para 2(iii) above] granting revised pay band & grade pay to the category/post of DPE including it at Sr. No. 20. Respondents' stand is that category/post of DPE was included only under notification dated 01.11.2014, therefore, benefit of revised pay band & grade pay cannot be released to the holders of post of DPE prior to 01.11.2014. It became admissible to them only w.e.f. 01.11.2014. Petitioners having retired as DPEs prior to 01.11.2014 cannot get this benefit.

4(ii) Reading of notification dated 01.11.2014 makes it evident that the respondents only added "Sr. No. 20" to the already existing categories that figured upto Sr. No. 19 in the notification dated 27.09.2012. In fact, the wording of notification dated 01.11.2014 clearly suggests that for all practical purposes, this notification was only an addendum to the notification dated 27.09.2012. In terms of this addendum, revised pay band and grade pay was to be given to

DPEs after two years of regular service. In all fairness, this notification was required to be made applicable from the date of applicability of original notification i.e. 27.09.2012, more so when the later notification rectified the error that had crept in the original notification dated 27.09.2012 wherein post of DPE was left out.

4(iii) Applying the notification dated 01.11.2014 w.e.f. 01.11.2014 for the post of DPE is an arbitrary act on the part of the respondents. The other 19 categories/posts of Education Department got the benefit of revised pay band & grade pay with effect from 01.10.2012. There is no reason why post of DPE should be denied the benefit of revised pay band & grade pay from the date it was released to the other categories/posts in the Education Department.

There is no nexus sought to be achieved by fixing 01.11.2014 as the cut off date for release of revised pay band & grade pay for the post of DPE. The resultant discrimination has created unequals amongst equals. All DPEs in service as on 01.10.2012 were entitled to revised pay band & grade pay. Petitioners were serving as DPEs on 01.10.2012. However, post of DPE somehow got left out from the purview of notification dated 27.09.2012 whereby revised pay band & grade pay was released to 19 categories/posts of Education Department w.e.f. 01.10.2012. Post of DPE was covered for grant of revised pay band & grade pay in the notification dated 01.11.2014, but by the time, all the petitioners had retired. The respondents cannot be heard to say that only such of DPEs in service as on 01.11.2014 will get the benefit of revised pay band & grade pay. Petitioners as DPEs in service as on 01.10.2012 are also entitled to revised pay band & grade pay that was released to 19 other categories/posts w.e.f. 01.10.2012. The benefit cannot be denied to them merely because respondents included post of DPE for release of benefits on 01.11.2014 when petitioners stood retired. DPEs in service as on 01.10.2012 formed one class as a whole. For release of revised pay band & grade pay to them, they cannot be divided into two groups, first group of those who superannuated before 01.11.2014 and second of those who were in service on 01.11.2014. It is the date 01.10.2012 that is material and requires to be taken into consideration for grant of revised pay band & grade pay and not 01.11.2014.

4(iv) One more aspect that needs to be kept in view is that post of PET is a feeder cadre post for promotion to the post of DPE. The petitioners were originally appointed as PET and thereafter promoted as DPEs as per the details given in the table in para 2(i) above. Under the notification dated 27.09.2012, the post of PET has been given the revised pay band and grade pay w.e.f. 01.10.2012, whereas revised pay band and grade pay has been made admissible to the post of DPE w.e.f. 01.11.2014. This cannot be held to be permissible. The incumbents holding the posts of DPEs as on 01.10.2012 cannot be discriminated and put to disadvantageous position merely because of their superannuation by the time the State issued notification dated 01.11.2014. Petitioners are also entitled to revised pay band and grade pay w.e.f. 01.10.2012.

5. For the aforesaid reasons, there is merit in the petition. Hence, the notification dated 01.11.2014 (Annexure A-3) is quashed and set aside to the extent it fixes 01.11.2014 as the cut off date for grant of revised pay band and grade pay for the post of DPE. The petitioners who were in service on 01.10.2012 are held entitled for grant of revised pay band and grade pay of Rs. 10300-34800 + Grade Pay of Rs. 5,000/- w.e.f. 01.10.2012. All consequential benefits including all arrears of pay and refixation of pension shall also be admissible to the petitioners. This exercise be undertaken by the respondents within six weeks from today.

With the aforesaid observations, the writ petition stands disposed of, so also the pending applications, if any.