(1996) 12 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 588 of 1984

Naranjan Dass and Others — APPELLANT

Vs

State of H.P. and Others — RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 6, 6A
Constitution of India, 1950 — Article 226

Citation : (1997) 2 ShimLC 124

Hon'ble Judges : M. Srinivasan, C.J;Lokeshwar Singh Patna, J

Bench : Division Bench

Advocate : Shrawan Dogra, for the Appellant; M.L. Chauhan, Assistant A.G. for Respondent No. 1, Ramakant Sharma and Kuldip Singh, for Respondent Nos. 3, 4 and 6 to 9, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The Petitioners joined the service of the second Respondent M/s. Jogindra Central Co-operative Bank Limited, Nalagarh which is a Co-operative Society governed by the provision of Himachal Pradesh, Co-operative Societies Act, 1968. First five Petitioners joined the service in 1970 and the sixth Petitioner joined in 1973 The Petitioners were appointed as Recovery Supervisors in the pay scale of Rs. 60-4-80/5-120 This scale was revised to Rs. 70-5-175/- It was further revised to Rs. 110-250 on the Punjab pattern. Respondents No. 3 to 9 entered service as Junior Clerks in the year 1970. According to the Petitioners they were all juniors to them when they entered service. The scale of pay of the Respondents originally was Rs. 60-4-80/5-120 but later on revised to Rs. 210-430 on Punjab pattern The Petitioners made representations to the second Respondent to integrate these two categories of post, namely, junior clerks and recovery supervisors, in 1980. The Executive Committee of the second Respondent resolved that the two categories be integrated in the scale of Rs. 210-430 from the date of respective appointments. The resolution also said that the Petitioners will not claim arrears on the basis of such integration. The Board of Directors accepted all the recommendations of the Executive Committee and passed a resolution accordingly. The matter was referred by the Board of Directors to the Registrar of the Co operative Societies who passed the order on 10-8-1982. The relevant portion of the order reads as follows:

The representation of Recovery Supervisors regarding fixation of seniority and grant of arrears after fixation of pay etc has been considered in this office and keeping in view the proposal of the management of Bank forwarded to this office vide letter No. 2659/JCBN-81-82, dated 27-1-1982, it has been decided to treat Recovery Supervisors at par with the Junior Clerks with the following provisions:

1. The qualifications for both the posts shall be equivalent.

2. The Bank shall maintain joint seniority list of Recovery Supervisors and Junior Clerks. The Junior Clerks already in high scale will be senior to the recovery Supervisors.

3. Both the posts shall be inter-changeable.

4. The recovery supervisors shall also be eligible for promotion to the senior clerks.

5. The recovery supervisors will be fixed in the scale of Junior Clerks with immediate effect and will not be eligible for any arrears.

You are, therefore, requested to make provisions in the service rules accordingly.

2. The Petitioners were aggrieved by the directions of the Registrar that the Junior Clerks already in the high scale will be senior to the Recovery Supervisors and Recovery Supervisors will not be eligible for any arrears. They filed the petition for review before the Registrar in November 1982 and that was rejected by a commudication dated 26th September, 1983. The Petitioners filed an appeal before the Secretary (Co-operation) to the Government of Himachal Pradesh who passed an order on 4-3-1993 dismissing the same and upholding the order of the Registrar.

3. But soon after filing the appeal before the Secretary, the Petitioners approached this Court with this writ petition for quashing the orders passed by the Registrar originally. In this writ a direction was given by this Court on the 27th August, 1992 to the Secretary to dispose of the said appeal within a period of four months from that date. The court also directed that the copy of the decision shall be placed on record in this case. The copy of the order passed by the Secretary (Co-operation) is at Annexure R 1/1. The Petitioners filed an amendment to the writ petition challenging the order of the Secretary also.

4. There can be no doubt whatever that when the Petitioners were appointed and for long time thereafter their scale of pay was much lower than the scale of the Junior Clerks. In 1974 the scale of pay of the Junior Clerks was revised to Rs. 210-430. No doubt, according to the Petitioners that was done by merging the D.A. with the basic salary and the scale was fixed According to the Petitioners,

such merger was not provided for the Petitioners and other Recovery Supervisors They had continued to be in the scale of Rs. 145-360 according to them at that time. The Petitioners have made allegations in the rejoinder that at the time of merger of two cadres the scale of Recovery Supervisors was at Rs. 215-360. There is no record whatever before us as to when exactly the scale came into force but in the reply filed by the society as well as the reply filed by the State Government it is not disputed that the scale of the Recovery Supervisors was Rs. 215-360 at the time of merger of two cadres But in paragraph 3 of the preliminary objections contained in the reply by the State Government it is mentioned that the Petitioners were drawing the pay scale of Rs. 145-360 at the relevant time. And even if D.P. of Rs. 70 was to be added their effective scale was Rs. 215-360 It is not very clear from the reply of the State Government or from the reply of the society as to whether the scale was actually increased to Rs. 215-360 or they have only mentioned the actual position by adding D.P. to the scale which was prevailing at that time. Whatever it may be there can be no dispute that the maximum pay scale applicable to the Petitioners was only Rs. 360 while maximum applicable to the Junior Clerks was Rs. 430. It is also not in dispute that the pay scale of Rs. 210-430 in respect of Junior Clerks was fixed long before the Petitioners scale was fixed at Rs. 215-360.

5. In such circumstances, we have no doubt whatever that the view expressed by the Registrar and confirmed by the Secretary is correct and un-assailable. It is a general principle of service law that it is the maximum in the scale of pay which has to be taken into account for the purpose of fixing relevant seniority between the two categories of a cadre. Our attention is drawn to Rules 6 and 6-A of the CCS. (CCA) Rules and Government of India orders passed thereunder. No doubt, the rules as such may not apply but the principle is applicable generally in service law. That shows that the maximum salary carried by a particular post in the scale of pay is the relevant matter for deciding the seniority.

6. The learned Counsel for the Petitioners has placed reliance upon the appointment of one Rajinder Singh who was previously working in H.P. State Co-operative Bank Ltd. and transferred to second Respondent-Bank pursuant to an agreement entered between the Bank in about 1976. But it has been pointed out by the Secretary in the appellate order that the position of Rajinder Singh depended upon the terms of the agreement between the two Banks. It is also pointed out that Rajinder Singh was having higher scale of pay when he was working in H.P. State Co-operative Bank Ltd. though as Recovery Supervisors, hence the Petitioners cannot claim to be in the same class as Rajinder Singh. The order passed with regard to Rajinder Singh cannot help the Petitioners to claim that they should get the same benefit and placed seniors to Junior Clerks. It is also contended that all the Junior Clerks cannot be enblock placed as seniors to the Recovery Supervisors According to the learned Counsel it is the date of appointment and the date of joining the service with regard to each employee that is relevant to be taken into account. Learned Counsel for Respondents No. 3 to 9 has placed reliance on the judgment of the Supreme Court in Kewal Krishan

Bagga v. The Chairman, Railway Board and Ors. 1976 (2) SLR 497. The court has said as follows:

9. It was finally urged that clerks in the old establishment were wrongly accorded seniority over godown keepers in the cadre of clerks in the Northern Railway in which both clerks and godown keepers were assimilated. This argument overlooks the basic consideration that clerks in the Amritsar godown while working under the Punjab Government were placed in a higher scale of pay than godown keepers The decision to treat clerks as senior to godown keepers was therefore not arbitrary or irrational. In fact, some injustice done earlier to clerks by fixing their inter se seniority with godown keepers in the new establishment on the basis of their length of service in the respective cadres was later rectified by providing that clerks will be considered as senior to godown keepers.

7. That principle will apply in this case and there is no error whatever in the order passed by the Registrar that the Junior Clerks shall be placed above the Recovery Supervisors in the seniority list.

8. Learned Counsel for the Respondents has raised an objection as to the maintainability of this writ petition. Reliance is placed upon the judgment of this Court in C.K, Malhotra v. H.P. State Co-operative Bank and Ors. 1993 (2) ShimLC 243 The Division Bench has rejected the contention that if the challenge in the writ petition is to an order passed by a statutory authority then the writ petition will be maintainable, even though the matter relates to an order passed by Co-operative Society The Division Bench took the view that the order which was passed by the Registrar in that case was only under the relevant bye-laws of the society and the Registrar was only exercising the powers under such bye-laws and not under statutory law.

9. Learned Counsel for the Petitioners pointed out that the Full Bench of this Court has considered the question and decided that if an order is passed by a statutory authority in exercise of statutory powers then the writ petition is maintainable under Article 226 of the Constitution of India, on Ajmer Singh v. The Hamirpur District Co-operative Marketing and Consumer Federation Ltd. and Ors. 1995 (2) SLJ 951 . The Full Bench has placed reliance on the judgment of the Supreme Court in Tikaram Vs. Mundikota Shikshan Prasarak Mandal and Others,

10. The question in this case will be whether the Registrar was exercising the statutory powers or he was only exercising powers under the bye-laws of the society. Learned Counsel for the Petitioners refers to Rule 56 of the H.P. Co-operative Societies Rules. Under Sub-rule (1), the Registrar is empowered to specify the conditions of service of the employees of the societies Under sub rule (3), no Co operative society shall employ a salaried officer or servant with the total monthly emoluments exceeding rupees one thousand without the previous permission of the Registrar and the promotion of an employee to a higher post shall be deemed to be an appointment under the sub-rule. According to the

learned Counsel this is a matter in which the service conditions of the Petitioners was considered and that is why the Board of Directors made a reference to the Registrar as is evident from the resolution passed on 12-1-1982 vide Annexure F. It is seen from the impugned order of the Registrar as found in Annexure G that he has directed the society to make provisions in the service rules according to that order That shows that the Registrar was exercising his powers under Rule 56(1) of the Co-operative Societies Rules Consequently, he was exercising his powers under statutory rules in the present case. Hence the ruling of the Full Bench in Ajmer Singh''s case, will apply in this case and this will not be governed by the ruling in C.K. Malhotra''s case.

11. Though we have held that the writ petition is maintainable, we hold against the Petitioners on merits. We find that they have not made out a case as to how the order of the Registrar confirmed by the Secretary is erroneous. Hence the writ petition is dismissed.

In view of the dismissal of the writ petition, all the C.M.Ps. stand disposed of.

