
(2011) 05 SHI CK 0133
In the High Court Of Himachal Pradesh
Case No : CWP No. 7329 of 2010

Navneet Marwah and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2011) 05 SHI CK 0133

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The writ petition is filed with the following prayers:

- i) For issuing a writ of certiorari for quashing annexure P-9 dated 14.9.2010 whereby representation of the Petitioners has been rejected.
- ii) For issuing a writ of Mandamus to the Respondents to grant the pay scales to the Petitioners at par with those enjoyed by their counterparts i.e. incumbents of the same posts in State of Rajasthan. Or in the Alternative for issuing a writ of Mandamus to the Respondents to grant the pay scales to the Petitioners at par with those enjoyed by their counterparts i.e. incumbents of the same posts in the Centre.
- iii) For directing the Respondents to pay the arrears to the Petitioners, with retrospective dates that is w.e.f. their dates of joining the departments with interest along with all consequential benefits.

2. It is seen from the impugned Annexure P-9 order that the representation has been rejected mainly on the ground that in Punjab, Centre Pay Scales are not adopted. The State of Himachal Pradesh is historically linked with the Punjab pattern of pay scales, which is applicable to all the categories of employees.

3. On 24.2.2011, this Court passed the following order:

Placing reliance on the decision of the Apex Court in State of Himachal Pradesh

Vs. Shri. P.D. Attri and Others, it is submitted that the Punjab pattern of pay scale is not binding on the State of Himachal Pradesh. Learned Advocate General seeks time to verify whether there is any agreement between the Government and its employees or whether there is any such binding decision at the time of formation of the new State from the parent State of Punjab. Post on 4.4.2011. The second Respondent shall file an affidavit in respect of the instructions thus sought by the learned Advocate General.

4. Accordingly, the State has filed an affidavit, wherein it is stated at Paragraphs 3(i) and 3(j), as follows:

(i) The orders issued by the Punjab Government are not automatically made applicable to the employees of the State Government of Himachal Pradesh. The pay scales as applicable in Punjab are adopted after taking a conscious decision by the State Government. These orders are examined in detail and the issue of adopting/amending/modifying Punjab Pay Scales is decided only after deliberations by the Government of H.P. keeping in view all relevant factors. It is correct that the Government of Himachal Pradesh is following Punjab pay scales in respect of such posts which exist in both the States. There are many other posts which do not exist in Punjab and their pay scales are determined by the State of Himachal Pradesh after carefully examining factors such as educational qualifications of such posts, experience, nature of duties/ responsibilities and working conditions etc. This practice has continued since 1970 when for the first time the pay scales were revised on Punjab Pattern w.e.f.1.2.1968. It is submitted that the Punjab pay scales were adopted with the approval of the Government of India, in respect of the employees of Himachal Pradesh. It is correct that both the States of Himachal Pradesh and Punjab are federating units of Indian Republic having autonomy in taking their decisions regarding the employees working under their respective Governments. But in the matter of pay scales, a conscious decision was taken to follow Punjab pay scales, thus allowing savings on expenditure that would have been incurred on the appointment of Pay Commissions, requiring substantial infrastructure, money and time. It is further submitted that all the State Governments of the Indian Republic have not constituted their own Pay Commission. Such State Governments have adopted the pay pattern of other State Governments. For example, Haryana Government is following Central Pattern of Pay Scales in respect of its employees. The employees of the respective State Governments are governed by the Rules framed by it or adopted on the pattern of another State Government by Notification under Article 309 of the Constitution of India.

(j) The State Government of Himachal Pradesh, being an autonomous unit of the Indian Republic, is not blindly following the Punjab Pay Scales. Depending upon the natural factors as well as working conditions in the State of H.P. need based departures have been made in a number of cases.

5. Therefore, the position as stated in the affidavit is very clear to the effect that the State of Himachal Pradesh is an independent unit and it is not to blindly

follow the Punjab pattern. Its decisions are to be based on all relevant factors. In this connection, we may also refer to the stand taken at Paragraph-7, which reads as follows:

In the instant case, the Petitioners are seeking parity with the corresponding posts in the Government of Rajasthan and other State Governments, which cannot be accepted as it will create chaos amongst the employees of the various categories of the State Government and similar demands from various quarters will be received and the employees may approach this Hon?ble Court in large number of equating their categories for pay scale with corresponding categories in other States. Thus the entire pay structure of the State Government, which is based on the recommendation of the respective Pay Commission constituted by the Punjab Government and acceptance of the same by the Punjab Government, will collapse. It is further submitted that the pay scales of the employees are determined by the Pay Commission after due consideration and application of mind.

6. It is further submitted that the pay scales are determined by the Pay Commission after due deliberations and application of mind. According to the Petitioners, the Pay Commission had recommended the adoption of the Centre pattern as per Annexure P-10. However, no reference is made to all these relevant aspects.

7. The learned Deputy Advocate General though strenuously made an attempt to justify the impugned order on the basis of the stand taken in the affidavit, we are afraid that the stand cannot be appreciated. It is settled law that what is not stated in the impugned order cannot be sought to be explained in the counter affidavit.

8. In that view of the matter, we set aside the impugned order with a direction to the first Respondent to consider the matter afresh and take an independent decision having regard to all the relevant aspects including the Pay Commission report. This shall be done within a period of four months from the date of production of a copy of this judgment by the Petitioners.

9. With the above directions, the writ petition is disposed of, so also the pending miscellaneous application(s), if any.