
(2016) 08 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 14900 of 2012

Parmar Digvijaysingh B.

APPELLANT

Vs

State of Gujarat Thro Secretary

RESPONDENT

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 GCD 2078 : (2016) LIC 3912

Hon'ble Judges : Smt. Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Ms. Tejal Vashi for Mr. Jal S. Unwalla, Advocates, for the Petitioner; Mr. R.K. Purohit, Advocate, for the Petitioner; Ms. Snusha Joshi, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Smt. Abhilasha Kumari, J. (Oral)—By preferring this petition under Article 226 of the Constitution of India, the petitioners (82 in number) have prayed for the issuance of a writ of mandamus or any other appropriate writ, or direction, to the respondents to quash and set aside the impugned communication dated 24.07.2012, issued by respondent No.1 - State Government through its Home Department and the communication dated 31.07.2012 of respondent No.3 Additional Director General of Police (Armed Forces), Gujarat State, whereby a decision has been taken to place the petitioners in the regular pay-scale after the completion of their probation period, instead of placing them in the said pay-scale after the completion of their respective periods of training.

2. The petitioners herein are serving as Police Sub Inspectors (Armed), Class-III, under the respondent Department. They have been selected and appointed by direct recruitment and are, at present, serving at their respective places of posting, in various parts of the State of Gujarat.

3. Respondent No. 4 Chairman, Armed Police Sub Inspector Recruitment Board,

issued an advertisement on 27.02.2009, which was published in the daily vernacular newspaper "Sandesh", for filling up 143 posts of Armed Police Sub Inspectors, Class-III, by direct recruitment. Out of 143 posts, 123 posts were to be filled up by male candidates and 20 posts were to be filled up by female candidates. Pursuant to the said advertisement, the petitioners applied for the said posts. They successfully passed the competitive examination and, after following the due process of recruitment, were selected as Police Sub Inspectors (Armed) Class-III. The petitioners were appointed by different appointment orders, dated 27.11.2010 and 06.04.2011. The copies of some of the appointment orders of both the above dates have been annexed with the petition as Annexure-B collectively.

4. In the appointment orders issued to the petitioners, it is stated that they are required to undergo training for a period of twelve months and after the completion of the training period, they would be under probation for a period of eighteen months. It is further stated that during the period of training, the petitioners would be entitled to receive fixed pay of Rs. 6,000/- per month and after the completion of the training period, they would be placed in the regular pay-scale of Rs. 9300-34800 (PB-2).

5. The grievance of the petitioners is that, after the completion of their training periods, they were not placed in the regular pay-scale as stipulated in the appointment orders. Instead, the respondents continued to give them fixed pay throughout the period of their probation. Some of the petitioners made representations to respondent No.3, requesting him to place them in the regular pay-scale with all consequential benefits, from the date of completion of their training period as per Condition No. 6 in the appointment order. However, the representations of the petitioners were rejected on the ground that the issue is pending before the State Government for consideration. Thereafter, respondent No. 3 addressed a communication to respondent No. 1, in respect of the very same subject matter, requesting him to review the decision and place the petitioners in the regular pay-scale after the training period of twelve months is complete. However, respondent No.1, by the impugned communication dated 24.07.2012 addressed to respondent No.3, stated that the petitioners would be placed in the regular pay-scale only after the completion of their period of probation. This decision of the State Government has been reiterated by respondent No. 3 by the impugned communication dated 31.07.2012. Aggrieved by the above two orders, the petitioners have approached this Court for the redressal of their grievances.

6. Ms. Tejal Vashi, learned advocate for Mr. Jal S. Unwalla, learned advocate for the petitioners, has submitted that though, as of date, the petitioners have all been placed in the regular payscale, however, they have not received the regular payscale from the date on which they were entitled to it as per their orders of appointment. It is submitted that the appointment orders of the petitioners dated 27.11.2010 and 06.04.2011, are identically worded and contain the same terms

and conditions. Condition No. 6 in the said appointment orders states that the petitioners would have to undergo a training course for twelve months starting from 05.12.2010, for those petitioners appointed by the appointment orders dated 27.11.2010 and from 19.04.2011, for those petitioners who have been appointed by the appointment orders dated 06.04.2011. Condition No. 8 in the said appointment orders stipulates that after the completion of their training, the petitioners would be placed under probation for eighteen months. As per Condition No. 9, during the period of probation, the petitioners would have to undergo the training of Commando/ PSO. Learned counsel for the petitioners has laid emphasis on Condition No. 10 in the appointment orders of the petitioners by submitting that, this condition clearly stipulates that during the period of training the petitioners would be entitled to receive fixed salary of Rs. 6,000/- and after the period of training is over, they would be placed in the regular pay-scale of Rs. 9300-34800 (PB-2) (Grade Pay Rs. 4400/-) with allowances.

7. Learned counsel for the petitioners has submitted that the terms and conditions in the orders of appointment of the petitioners constitute their service conditions which cannot be changed unilaterally, without granting an opportunity of hearing to the petitioners. In the present case, even though the appointment orders clearly stipulate that the petitioners would be placed in the regular pay-scale after the completion of the training period, the respondents have taken a contrary decision and given them fixed salary throughout their period of probation, in contravention of the stipulations in the appointment orders.

8. It is submitted that this decision of the respondents as conveyed by the impugned orders, travels beyond the scope of the advertisement and the appointment orders issued to the petitioners by the respondents, which is impermissible in law.

9. Learned counsel for the petitioners has further submitted that Constables who are junior to the petitioners are being paid the regular pay-scale. They have received higher pay than the petitioners after the completion of their training periods. By way of example, learned counsel for the petitioners has drawn the attention of the Court to the payslip of one such Constable, annexed at running Page-148 of the Paper-Book. She has submitted that this aspect has not been denied by the respondents in the affidavits-in-reply filed by them.

10. In support of the submission that the service conditions of the petitioners cannot be changed unilaterally, learned counsel for the petitioners has placed reliance upon a judgment of the Supreme Court in the case of Grid Corporation of Orissa v. Rasananda Das - (2003) 10 SCC 297.

11. On the above grounds, it is submitted that the prayers made in the petition be granted.

12. Ms. Snusha Joshi, learned Assistant Government Pleader has resisted the petition by submitting that it is clearly stated in the advertisement, as well as in the appointment orders of the petitioners, that they are required to undergo a

period of probation. Referring to Clause-10 of the appointment orders, it is submitted that this clause states that the petitioners would be placed in the regular pay-scale after the completion of the probation period, therefore, the decision of the respondents is in accordance with law. Referring to the affidavit-in-reply filed by respondent No.1, it is submitted that this decision has been conveyed to respondent No.3 by a communication dated 29.08.2009.

13. Learned Assistant Government Pleader has then referred to the affidavit-in-reply filed on behalf of respondent No.3 and has contended that during the period of training, the petitioners were initially granted fixed pay of Rs. 6,000/- which has since been increased to Rs. 10,000/- per month. She has submitted that the regular pay-scale can only be granted to the petitioners after the probation period is over.

14. Learned Assistant Government Pleader further submits that respondent No.3 has written to the State Government for clarification of the issue by letter dated 12.08.2011. As per the clarification given by the State Government by letter dated 03.09.2011, it is stated that the petitioners would be granted regular pay-scale only upon the completion of their periods of probation. It is submitted that in this view of the matter, the Court may not grant the prayers made by the petitioners as they are not justified, especially as now all the petitioners have been placed in the regular pay-scale.

15. On the basis of the above submissions, it is prayed that the petition be rejected.

16. This Court has heard learned counsel for the respective parties at length, perused the averments made in the petition, the contents of the impugned orders, the other documents on record and the affidavits-in-reply filed on behalf of respondents Nos. 1 and 3.

17. The issue arising for the decision of the Court is in a very narrow compass; namely, whether the petitioners are entitled to receive the regular pay-scale after the completion of their period of training or after the completion of their period of probation.

18. All the petitioners have been selected and appointed as Police Sub Inspector (Armed), Class-III, after following the due process of recruitment and selection, pursuant to the advertisement dated 27.02.2009 issued by respondent No. 4. Upon being selected to the said posts, the petitioners have been appointed by appointment letters dated 27.11.2010 (in case of some of them) and 06.04.2011 (in the case of others). Though the appointment letters are of different dates, they are identically worded, as can be seen from the copies of the said letters that are placed on record at Annexure-B collectively. The said appointment letters contain thirteen terms and conditions of appointment. We are only concerned with the relevant conditions. Condition No.6 states that the petitioners would have to undergo a training course for a period of twelve months with effect from 05.12.2010 (for those appointed vide appointment orders dated

27.11.2010) and 19.04.2011 (for those appointed vide appointment orders dated 06.04.2011). Condition No. 8 stipulates that after the successful completion of the training course, the petitioners would have to undergo a probation period of eighteen months. There is no ambiguity regarding the fact that the petitioners would have to complete the training period of twelve months and, thereafter, a probation period of eighteen months.

19. The grievance of the petitioners flows from the interpretation of Condition No.10 by the respondents. This condition stipulates that trainee Police Sub Inspectors (Armed) (Platoon Commander) will be entitled to receive a fixed pay of Rs. 6,000/- per month from the time when he reports for training till the completion of the training and after the completion of the training, he will be placed in the regular pay-scale of Armed Police Sub Inspector in the scale of Rs. 9300-34800 (PB-2) (Grade Pay Rs. 4400/-) with all allowances. Condition No. 10 in the appointment orders of the petitioners is quite clearly worded and is quite unambiguous. A perusal of the same indicates that the petitioners would be entitled to receive fixed pay only during the period of their training. Upon the successful completion of the training period, they would be placed in the regular pay-scale of Police Sub Inspector (Armed), which is Rs. 9300-34800 (PB-2) (Grade Pay of Rs. 4,400/-) with all permissible allowances. There can be no two meanings or interpretations of Condition No. 10. However, the respondents are trying to interpret this condition differently, by introducing their own intention in it, contrary to the wording of the said condition, which is to deprive the petitioners of the regular pay-scale during the period of probation and to grant them this pay-scale only after they complete the probationary period. This interpretation of the respondents does not flow from the manner in which Condition No. 10 is worded. This condition is one of the conditions on which the petitioners have been appointed and is binding not only upon the petitioners but also on the respondents themselves.

20. This glaring aspect was noticed by respondent No. 3 who has, by his letter dated 17.10.2011 addressed to respondent No.1, clearly stipulated that Police Sub Inspectors (Armed) are required to be placed in the regular pay-scale after the completion of their training period and not after the completion of their probationary period. He has further recommended to the State Government to take a decision in this regard. This letter has been written in reference to the letter dated 29.08.2009, addressed by the State Government to respondent No.3, wherein it is stated that Police Sub Inspectors (Armed) would be placed in the regular pay-scale after their training/ probation is over.

21. Further, In the letter dated 17.10.2011, respondent No.3 has clearly stated that the decision of the State Government that regular pay-scale is to be granted only after the period of probation is over, is against the advertisement as well as the appointment letters issued to the selected candidates. The submissions advanced by the learned Assistant Government Pleader and the averments made in the affidavits-in-reply are also contrary to the advertisement and Condition

No.10 in the appointment orders of the petitioners.

22. A perusal of the advertisement dated 27.02.2009 on the basis of which the petitioners were appointed makes it clear that the said posts would carry a fixed pay during the training period and after the training the selected candidates would be placed in the regular pay-scale of Rs. 5500-175-9000.

23. In the affidavit-in-reply filed on behalf of respondent No. 1, an attempt has been made to distinguish the duties performed by Police Sub Inspectors who are posted in the State Reserve Police Force as Platoon Commanders and Sub Inspectors in the Police Department. According to this affidavit in reply, the demand of the petitioners for regular pay-scale immediately after the completion of the training period is not justified in view of the difference in the duties. However, there is no answer to the fact that in Condition No. 10, it is clearly stated that the petitioners would be placed in the regular pay-scale after the completion of their training period.

24. The advertisement issued by the State Government is an invitation to the public at large and in the nature of an offer to eligible candidates to make applications for the posts in question. In the said advertisement itself, it has been clearly specified that the candidates would receive fixed salary during the period of training and would be placed in the regular pay-scale after the training is complete. It is true that after the completion of the training period, the successful candidates were to be placed under probation. However, the question is not regarding the probationary period of the petitioners but regarding when the benefit of the regular pay-scale is to be given to them. Would the petitioners be entitled to receive the regular pay-scale after the completion of their training period or after the probationary period? From the advertisement and Condition No. 10 in the appointment letters of the petitioners, it is clear that during the period of training, the petitioners would be placed in the fixed pay-scale of Rs. 6,000/- and after the completion of the training period they would be placed in the regular pay-scale of Police Sub Inspectors (Armed). Thus, the regular pay-scale is to be given to them after their training period. The stipulations in the advertisement and Condition No. 10 in the appointment letters of the petitioners constitute their service conditions. As per the settled position of law, the service conditions of an employee cannot be changed unilaterally by the employer to the detriment of the employee, after he or she has been appointed.

25. In *Grid Corporation of Orissa v. Rasananda Das* (supra), relied upon by the learned counsel for the petitioner, the Supreme Court has held as below:

"..... Apart from the order of this Court passed in the aforementioned appeals, the High Court in the impugned order, referring to Section 60 of the Electricity (supply) Act, 1948, pointed out to the order passed in OJC No.4507 of 1992 that the service conditions of such employees are to be protected and cannot be changed to their disadvantage or detriment of their interest by virtue of the regulation of the Board. As already stated above, the special leave petition

against the said order was dismissed by this Court. The High Court was right in taking the view that although the service conditions of such employees could not be changed to their disadvantage by reducing their scales of pay or taking away any other service benefit, it cannot be understood as depriving of the benefit of higher scale of pay to them as given to other employees of the same employer. The High Court in the said order also observed that there was a bar to change the service conditions of such employees to their detriment and there was no bar to offer such employees better prospects."

26. The communication dated 29.08.2009 of respondent No. 1, addressed to respondent No. 3, is also very clear that after the completion of the training period, Police Sub Inspectors (Armed) would be placed in the regular pay-scale. This letter has been discussed by respondent No. 3 in his communication dated 12.08.2011, addressed to the State Government, wherein it is requested that the petitioners are required to be given regular pay-scale after the completion of the training period and not after the completion of the probationary period, as clarified in the letter dated 29.08.2009.

27. Despite the above recommendations of respondent No. 3 who, in the view of this Court, has correctly interpreted the clear stipulations in the advertisement and Condition No.10 in the appointment letters of the petitioners, respondent No.1 has reiterated its decision not to grant the regular pay-scale to the petitioners after the completion of the training period, as per the promise held out in the advertisement and the above mentioned condition in the letters of appointment. In the view of this Court, it does not behove the State Government to promise and make an offer of certain conditions regarding the advertised posts to the general public, appoint persons such as the petitioners as per the said conditions and then do a volte face and resile from the said conditions unilaterally, without even granting an opportunity of hearing to the petitioners. The respondents are as bound to honour the conditions of appointment as are the petitioners. To change the service conditions on their own, behind the backs of the petitioners after granting them appointments, would amount to arbitrariness on the part of the respondents. The petitioners have also stated that certain Constables junior to them were placed in the regular pay-scale immediately after their training period. An example of this has been given at running page 148 of the paper-book. There is no denial to this in any of the affidavits-in-reply filed by the respondents. The action of the respondents in deviating from the advertisement and conditions in the appointment letters of the petitioners is, therefore, discriminatory as well as arbitrary, and thus constitutes a violation of Article 14 of the Constitution of India.

28. In *H.L. Trehan And Others v. Union of India And Others* - (1989) 1 SCC 764, the Supreme Court has held that:

"11. One of the contentions that was urged by respondents 1 to 4 before the High Court at the hearing of the writ petition, as noticed above, is that unguided and arbitrary powers have been vested in the official by subsection (1) of Section

11 for the alteration of the terms and conditions of service of the employees. It has been observed by the High Court that although the terms and conditions of service could be altered by CORIL, but such alteration has to be made "duly" as provided in subsection (2) of Section 11 of the Act. The High Court has placed reliance upon the ordinary dictionary meaning of the word "duly" which, according to Concise Oxford Dictionary, means "rightly, properly, fitly" and according to Stroud's Judicial Dictionary, 4th edn., the word "duly" means "done in due course and according to law". In our opinion, the word "duly" is very significant and excludes any arbitrary exercise of power under Section 11 (2). It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power pre-judicially affecting the existing conditions of service of a Government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice."

(emphasis supplied)

29. Further, in *BCPP, Mazdoor Sangh & Anr. v. N.T.P.C. & Ors.* AIR 2008 SC 336, the Supreme Court has held as below:

"29. The Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity of predecisional hearing and the same would amount to arbitrary and violative of Article 14. As pointed out earlier, in the case on hand, the employees are neither party to tripartite Agreement nor they have been heard before changing their service condition. Therefore, the action of the management is violative of Article 14 of the Constitution of India..."

30. The above judgments would be squarely applicable in the case of the petitioners.

31. Tested on the principles of law enunciated by the Supreme Court in the above quoted judgments, this Court finds that the action of the respondents in not granting the petitioners the regular pay-scale with effect from the dates on which they successfully completed their training is unjust, arbitrary, discriminatory and violative of the principles of natural justice. The said action, therefore deserves to be quashed and set aside.

32. In view of the above, the following order is passed:

(1) The impugned communications dated 24.07.2012, issued by respondent No. 1 and dated 31.07.2012, issued by respondent No. 3, are hereby quashed and set aside.

(2) The respondents are directed to grant the petitioners the benefit of the regular pay-scale with effect from the dates on which they completed their respective periods of training, along with all permissible allowances and consequential benefits. The said benefits shall be granted to the petitioners within a period of three months from the date of the receipt of a copy of this judgment.

33. The petition is allowed, in the above terms. Rule is made absolute, accordingly. There shall be no orders as to costs.

34. Impugned orders quashed and set aside.