
(2021) 08 SHI CK 0279

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition Original Application No. 1013 Of 2019

Prem Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

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

Citation : (2021) 08 SHI CK 0279

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Surinder Saklani, Rajinder Dogra

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following substantive reliefs:

(i) That a writ of mandamus may very kindly be issued thereby directing the respondents to grant the benefit of enhanced grade pay of Rs.5000/- from the date from which same was given to other categories i.e. 1.10.2012 alongwith arrears/consequential benefits.

2. Case of the petitioner is that initially, he was engaged as Physical Education Teacher (PET) by respondents on tenure basis. His services were regularized w.e.f. 01.04.1994. Petitioner was promoted as D.P.E. in the year 2009, and he was superannuated from the same post on 28.02.2014.

3. Respondent No.1, vide notification dated 27.09.2012, issued in exercise of the powers conferred by Rule 9 of Himachal Pradesh Civil Services (Category/Post wise Revised Pay) Rules, 2012, enhanced the pay scales of different categories of teachers w.e.f. 01.10.2012. As per said notification, Trained Graduate Teacher

(TGT) was granted pay scale of 10300-34800 with 5000 as Grade Pay with effect from 1.10.2012. This benefit was however, made applicable to the persons having rendered 2 years regular service.

4. The category of DPEs was not including in above noted notification. It is alleged that the matter was represented to the respondents and in response thereto Government of Himachal Pradesh issued notification dated 1.11.2014 under the Himachal Pradesh Civil Services (Category/Post wise Revised Pay) Rules, 2012, and thereby allowed the same pay scale with similar grade pay to the DPEs w.e.f 01.11.2014 as was granted to TGTs vide notification dated 27th September, 2012 w.e.f. 1.10.2012.

5 Petitioner has alleged the discrimination caused to DPEs vis-à-vis TGTs in grant of enhanced pay scale and grade pay with effect from different dates. By way of instant petition, petitioner has sought parity in respect of payment of enhanced pay scale and grade pay from the same date as was applicable in the case of TGTs.

6. On notice, respondents filed their reply and have stated that grant of pay scale is prerogative of the Government and the parity of pay scale as well as determination of service conditions are exclusively within the realm of executive government.

7. Respondents, in support of their contentions, quoted the citations of various judgments passed by this Court as well as Hon'ble Supreme Court. Interestingly, there is not even a whisper in the reply of respondents as to on what considerations, the DPEs were not included in notification dated 27.09.2012 and when a subsequent notification dated 1.11.2014 was issued in respect of the category of DPEs, why they were discriminated vis-à-vis TGTs by granting them benefit of enhanced pay and grade pay w.e.f. 1.11.2014 as against the TGTs who were granted the same benefits w.e.f. 1.10.2012?

8. It has not been disputed by respondents that the category of DPEs was not to be treated at par with TGTs. No such reason has been assigned for placing both the categories i.e. DPEs and TGTs at different pedestals.

9. At this stage, this Court is reminded of observations in Naresh Shridhar Mirajkar & Others Vs. State of Maharashtra & Another, AIR 1967 Supreme Court Cases 1, which is as under:-

"When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue and then applies the relevant law to the said facts. Whether the findings of fact record by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court.

10. In the instant case, the dilemma of this Court is that respondents have not raised any issue of fact. The only assertion made with vehemence is that State

has acted in exercise of its rights.

11. With due deference to the judicial precedents quoted by respondents in their reply, this Court has no hesitation to hold that none of these precedents allow or grant an indefeasible right to the Government to act in a manner which apparently is in violation of the Constitutional guarantee of equality. Clear interdict of law is that equals cannot be treated unequally. As noted above, the respondents have not stated anything to support the discrimination meted out to the category of DPEs vis-a-vis TGTs.

12. It is evident from the conduct of respondents that they impliedly admitted the category of DPEs to be at par with TGTs. Had it not been so, the notification dated 1.11.2014, would not have been issued to grant the same pay scale and grade pay to DPEs as was granted to TGTs almost two years back. Thus, this Court has no hesitation to hold that the category of DPEs was at par with the category of TGTs, therefore, the petitioner was entitled to the enhanced pay band and grade pay from the same date as was given to TGTs i.e. 1.10.2012.

13. In view of above, discussion, the present petition is allowed, respondents are directed to consider the case of petitioner in respect of grant of enhanced pay band and grade pay w.e.f 1.10.2012, as was done in the case of TGTs, in the light of observations made herein above within a period of six weeks from the date of this judgment.

Accordingly, the writ petition stands disposed of, so also the pending miscellaneous application(s), if any, leaving the parties to bear their own costs.