
(2014) 04 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 139 of 2007

Prithvi Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Citation : (2014) FAJ 512

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : R.K. Malik, Senior Advocate and Mr. Mandeep Singh, Advocate for the Appellant; Ravi Dutt Sharma, DAG, Haryana, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Arun Palli, J.—This is an intra-court appeal, under Clause X of the Letters Patent, against the judgment rendered by the learned Single Judge, dated 25.08.2006, vide which the petition filed by the appellants was dismissed.

2. Briefly, the case set out appellants was dismissed. Briefly, the by the appellants for consideration, before the learned Single Judge, was that they were appointed as Government Food Inspectors in the Department of Health, said posts are either filled by direct recruitment or by way of promotion from Sanitary Inspectors, who are graduates. It was stated, that the pay scale of Food Inspectors was always higher in comparison to Sanitary Inspectors, as prior to 01.04.1979, the Sanitary Inspectors were in the scale of Rs. 120-250 and the pay scale of Food Inspectors was Rs. 140-300. With effect from 01.04.1979, the Sanitary Inspectors were afforded the scale of Rs. 420-700 and the Food Inspectors were afforded the scale of Rs. 420-760. However, w.e.f. 28.12.1984, there was revision in the scale of Sanitary Inspectors and they were, accordingly, placed in the scale of Rs. 525-1050 but there was no revision in the pay of Food Inspectors. Subsequently, w.e.f. 01.01.1986, the Sanitary Inspectors were also granted the scale of Rs. 1400-2600 but the Food Inspectors were kept in the scale of Rs. 1200-2040. The Sanitary Inspectors were re-designated as

Multipurpose Health Supervisors (Male) [for short, "MPHS (M)"] and w.e.f. 01.01.1996 were placed in the scale of Rs. 5000-7850 though, the Food Inspectors who were holding the higher post, were still kept in the scale of Rs. 4000-6000. Thus, despite the fact that Food Inspector was a higher post in comparison to Sanitary Inspector and, resultantly, upto December, 1984, the pay scales of Food Inspectors were always higher vis-a-vis the feeder post of Sanitary Inspectors. However, post-December, 1984, Sanitary Inspectors were granted higher scale although it was Food Inspectors who always occupied the higher post and were entitled to higher scale.

3. It was maintained that, certain Food Inspectors of the Department, who were identically placed, approached this Court vide Civil Writ Petition No. 11021 of 1993 titled "Ram Singh and others v. State of Haryana and others" with a grievance that they are holding higher posts, having higher qualifications and higher duties and responsibilities but still they are being granted the scale of the lower post and the said petition was allowed by a judgment dated 12.05.2000 (Annexure P-1).

4. In compliance of the judgment rendered by this Court (Supra), the respondents granted the requisite scales to the petitioners in the said case and they were, accordingly, placed in the scale of Rs. 600-1100 w.e.f. 28.12.1984 and scale of Rs. 1600-2660 w.e.f. 01.01.1986 and Rs. 5450-8000 w.e.f. 01.01.1996.

5. Appellant No. 1, with reference to the decision of this Court on 12.05.2000, represented the department to afford them the same pay scales, which were being granted to the other Food Inspectors i.e. the petitioners in the Civil Writ Petition No. 11021 of 1993. Since, the representation made by the appellants yielded no result, they even approached this Court vide Civil Writ Petition No. 4867 of 2001. A Division Bench of this Court disposed of the said writ petition in limine, vide order dated 30.03.2001 and directed the respondents to consider and decide the claim of the petitioners in the light of the decision rendered by this Court in CWP No. 6159 of 1992, decided on 12.05.2000, and pass appropriate orders in accordance with law.

6. The Department, pursuant to the said order, considered the claim of the appellants and vide a detailed order dated 01.10.2001, expressed his inability to grant the scales being prayed for, as the very judgment on the basis whereof the relief was being claimed, the department had already filed a review application, and the matter could be examined further only after a decision in the said application.

7. That being so, the appellants, once again, approached this Court vide Civil Writ Petition No. 4458 of 2002. It was prayed, inter alia, that the present writ petition be allowed in the same terms as Civil Writ Petition No. 11021 of 1993 (Annexure P-1).

8. The Department filed a detailed written statement and opposed the claim of

the appellants. It was clarified that the Civil Writ Petition No. 11021 of 1993 titled "Ram Singh and others v. State of Haryana and others", upon which the reliance was being placed by the petitioners, was actually clubbed with another Civil Writ Petition No. 6159 of 1992 titled "Ramesh Kumar Dangi and others v. State of Haryana and others". The said petition pertained to the Fisheries Department involving the pay scales of Assistant Fisheries Officers and the Fisheries Officers. Since this Court was of the view that the post of Assistant Fisheries Officers was a lower post than the Fisheries Officers and carried a lower scale than the scale in which the Fisheries Officers were placed, this Court had said, that the pay scale of post in the promotional cadre has to be higher than the post in a feeder cadre. Thus, the facts involved in CWP No. 11021 of 1993 could not be said to be identical to the facts in CWP No. 6159 of 1992. It was pleaded, that in fact CWP No. 11021 of 1993 should have been decided by the Court by a separate order on its own merit than through a common order based on facts in CWP No. 6159 of 1992. It was also revealed that the department had moved a Review Application No. 319 of 2001 in the said petition. In nutshell, the stand put-forth by the department was that the post of Sanitary Inspector was never a feeder cadre post to the post of Food Inspector. The post of Food Inspector was filled only by way of direct recruitment and there was no similarity vis-a-vis with the nature of duties of the two categories of posts.

9. It would be apposite to point out here, that the learned Single Judge considered the petition filed by the appellants along with the review application, filed by the department, in CWP No. 11021 of 1993. On a consideration of the matter, the learned Single Judge was of the view that the error of accepting the post of Sanitary Inspector as feeder cadre post was apparent on the face of the record. It was observed that the counsel for the petitioners was unable to show any rule, regulation or instruction that the post of Sanitary Inspector/MPHS(M) is the feeder cadre post to the post of Food Inspector. The learned Single Judge, even considered the matter on merits and found that the claim of the appellants and the petitioners in CWP No. 11021 of 1993, was devoid of merit. Resultantly, the application for review was allowed, vide order dated 25.08.2006, and the order dated 12.05.2000 passed in CWP No. 11021 of 1993 was set aside. The writ petition was, accordingly, dismissed with costs as the learned Single Judge was of the view that the clear factual position was not pointed out to him while disposing of the aforesaid petition. Likewise, the Civil Writ Petition No. 4458 of 2002, filed by the appellants was also dismissed by an order of even date.

10. Thus, this Letters Patent Appeal.

11. We have heard learned counsel for the parties and perused the records.

12. Learned counsel for the appellants drew our attention to paragraphs 4, 5 and 6 of the grounds of the present appeal and submits that upto March, 1990, the pay scale of the Government Food Inspector was either higher or equal to the Sanitary Inspector. It was post 16.03.1990, the pay scales of Sanitary Inspectors were revised w.e.f. 28.12.1984 and they were placed in a higher scale than the

Food Inspectors. It is further submitted that although the post of Food Inspector could only be filled by way of direct recruitment, however, many a times, the qualified Sanitary Inspectors were also considered for appointment as Food Inspectors. Not only that, he submits that even the Director Health Services had recommended a pay scale of Rs. 1640-2900 to the Food Inspectors. That being the case, the appellants were entitled to the relief prayed for.

13. Evidently, the appellants had prayed for the pay scale at par with the other District Food Inspectors, who had earlier approached this Court, vide CWP No. 11021 of 1993 titled "Ram Singh and others v. State of Haryana and others". Needless to assert, the whole case was based upon the decision rendered by the learned Single Judge in the said petition on 12.05.2000 (Annexure P-1). Concededly, on a review application filed by the department, the order dated 12.05.2000, passed in CWP No. 11021 of 1993, was recalled and the petition was, accordingly, dismissed with costs, vide a detailed order dated 25.08.2006. As pointed out above, by an order of even date, the learned Single Judge also dismissed the petition filed by the appellants. Learned State counsel points out that the order dated 25.08.2006, passed by the learned Single Judge, was not assailed any further by the petitioners in CWP No. 11021 of 1993 and, resultantly, the benefit which was afforded to the petitioners was withdrawn.

14. Be that as it may, even otherwise the claim of the appellants, indeed, is misconceived and untenable, and thus cannot be accepted, as is being demonstrated hereafter.

15. It would be apposite to point out here that the department in its written statement also made a detailed reference to the nature of duties involved in both the posts and stated that the Food Inspectors performed their functions under the Prevention of Food Adulteration Act and such other duties that may be assigned to them from time to time, whereas, the duties which are performed by the Sanitary Inspector read as thus:

- i) to carry out supervisory house visiting in the area of health worker (male);
- ii) to conduct immunization of all school going children with the help of the Health Worker (Male);
- iii) to be alert to the sudden break out of epidemic like cholera, small pox, plague, malaria and take all remedial measures;
- iv) to give medical treatment to all cases whose blood smears are positive for malaria;
- v) to supervise spray of insecticides during focal spray, pits maurepits and sanitary; latrine etc.
- vi) to help the community in construction of soakage pits, maurepits and sanitary latrine etc., and
- vii) to supervise the chlorination of wells.

16. We may also point out, at this stage, that the stand set out by the department, as referred to above, was not controverted by the appellants by filing a counter-affidavit or replication.

17. In fact, there is no nexus between two posts i.e. Food Inspector and Sanitary Inspector. Hence, it is wholly misconceived to claim that the post of Food Inspector was a higher post than the Sanitary Inspector. Concededly, there are no rules, regulations or instructions to show that the post of Sanitary Inspector/MPHS(M) is the feeder cadre post to the post of Food Inspector. In fact, the post of Sanitary Inspector is a promotional post which is filled by promotion from the post of Multipurpose Health Workers (Male) [for short, "MPHW (M)"]. On the contrary, concededly, the post of Food Inspector can only be filled by way of direct recruitment. The higher pay scale, which was made admissible to the Sanitary Inspectors, was on multiple administrative grounds being a promotional post. Further, the services of the Government Food Inspectors are governed by the Haryana Health Department, Government Food Inspectors (Group C) Rules, 1998. Whereas, the services of the Sanitary Inspectors/MPHS(M) and MPHW(M) are governed under the Haryana Health Department Multipurpose Health Supervisors and Multipurpose Health Workers (Group C) Service Rules, 1984. Since the post of Sanitary Inspector/MPHS(M) has never been the feeder cadre post to the post of Food Inspector, either before or after the framing of the aforesaid rules, the comparison being drawn by the appellants, for the purpose of claiming equivalent/higher scale, is misconceived.

18. The above being the position, we find that the appeal is wholly misconceived and devoid of merit and, thus, the same is, accordingly, dismissed.