

(1969) 06 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 75 of 1968

Ramesh Chandra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-06-1969

Acts Referred:

Citation : AIR 1970 Delhi 129

Hon'ble Judges : Jagjit Singh, J; H.R. Khanna, J

Bench : Division Bench

Advocate : M.G. Chitkara, for the Appellant; S. Malhotra, for the Respondent

Judgement

H.R. Khanna, J.—Ramesh Chander petitioner by means of this petition under Art. 226 of the Constitution of India has prayed for the issuance of a writ of Mandamus to revise the pay scale of the petitioner and bring it at par with the pay scale of teachers of the corresponding category in the Punjab. Prayer was also made in the petition for quashing the order contained in letter dated April 22, 1968, but the petition has been pressed in that respect. The respondents named in the petition are, the Union of India, Ministry of Home Affairs, respondent NO. 1, Himachal Pradesh Administration, respondent No. 2 and Secretary to the Government of Himachal Pradesh, Education Department, respondent No. 3.

2. The petitioner is serving as a Junior Basic Teacher at the Government High School Nagrota Surian, District Kangra. Till October 31, 1966 Kangra was a part of the Punjab and as such till that date the petitioner was serving under the Punjab Government. On the reorganization of the Punjab, Kangra became a part of the Himachal Pradesh with effect from November 1, 1966. As the petitioner continued to serve in the above school, the petitioner's services were provisionally allocated to Himachal Pradesh by the Central Government.

3. In 1964 the Central Government appointed a Commission to study the various aspects of the education in the country including service conditions of the

teachers. The Commission was headed by Dr. D.S. Kothari and is popularly known as Kothari Commission. The Commission submitted various recommendations in early part of 1966 including those relating to the revision of pay scales of teachers. Those recommendations were under the active consideration of Central and Punjab Governments before the reorganization of the State of Punjab. After the reorganization of the State of Punjab, the Punjab Government in pursuance of the recommendations of the Kothari Commission revised the scales of the Government teachers with effect from November 1, 1966. Letter dated July 29, 1967 was addressed by the Punjab Government in this connection. The scale of Junior Basic Teachers was fixed at Rs. 125-5-250/10-300. The petitioner, who claims to be the District President for Kangra District of the Primary Teachers Federation, asserts that as the pay scales of the teachers have been revised in the Punjab in accordance with the recommendations of the Kothari Commission, they should be similarly revised in Himachal Pradesh so that the pay scales may be at par with those prevailing in the Punjab. It is also alleged that similar revision of pay scales of teachers has taken place in Haryana. Reference has also been made to assurances held out by the Education Minister of Himachal Pradesh, when the teachers threatened strike and dharna, that efforts would be made by the Pradesh Government to secure for teachers grades recommended by the Kothari Commission.

4. The petition has been resisted on behalf of the respondents and the affidavit of Miss K. Pasricha, Director of Education, Himachal Pradesh, has been filed in opposition to the petition. It is averred that the Himachal Pradesh Administration was not bound to accept and implement the recommendations of the Kothari Commission. Reference has also been made on behalf of the respondents to a message received from the Ministry of Home Affairs that the Himachal Government should not make any announcement or make any commitment to give effect to the recommendations of Kothari Commission unless and until the availability of funds is confirmed by the Government of India.

5. It may be stated that during the pendency of the writ petition the Lieutenant Governor of Himachal Pradesh with the prior approval of the Government of India, Ministry of Home Affairs, sanctioned the same scales of pay to the teachers working under the Himachal Pradesh Government as were applicable to the teachers working under the Delhi Administration. The revised scale of pay came into force with effect from December 21, 1967. As a result of this revision, the pay scale of Junior Trained Teachers other than those who have passed Higher Secondary Examination has been fixed at Rs. 118-4-150-5-160-8-200-EB-8-240-10-270.

6. We have heard Mr. Chitkara on behalf of the petitioner and Mr. Malhotra on behalf of the respondents, and are of the view that on case has been made for the issuance of a writ to the respondents for revision of pay scale of the petitioner. So far as the recommendations, contained in the Report of the Kothari Commission are concerned, it is not disputed that the Government of Himachal

Pradesh is not legally bound to accept and implement them. It is, however, urged on behalf of the petitioner that as the Punjab Govt. Has revised the pay scales of Junior Basic Teachers in accordance with the recommendations of the Kothari Commission, the Himachal Pradesh Government is likewise bound to revise the pay scales of Junior Basic Teacher so as to make them at par with those prevailing in the Punjab. Reference in this connection is made to Rule 2 of the Conditions of Service of Union Territories Employees Rules, 1959 which were issued by the President in pursuance of the powers conferred by Article 309 of the Constitution of India. Rule 2 reads as under:-

"Conditions of Service of persons appointed to the Central Civil Service and posts under the administrative control of certain administrators.

The conditions of service of persons appointed to the Central Civil Services and posts Class I, Class II, Class III and Class IV under the administrative control of the Administrators of the Union Territories of Delhi., Himachal Pradesh, Manipur and Tripura, shall, subject to any other provision made by the President, be the same as the Conditions of Services appointed to other corresponding Central Civil Services and Posts, and be governed by the same rules and orders as re for the time being applicable to the latter category of persons.

Provided that the scales of pay and dearness and other allowances granted to such employees shall, until any other provision is made in this behalf, continue to be governed by the orders in force immediately before the commencement of these rules.

Provided that in the case of persons appointed to services and posts under the administrative control of the Administrator. Himachal Pradesh, if any are drawing pay at the rates admissible to the corresponding categories of employees of the Punjab Government, it shall be competent for the Administrator to revise their scales from time to time so as to bring them at par with the scales of pay which may be sanctioned by the Punjab Government from time to time for the corresponding categories of employees."

According to the learned counsel for the petitioner, the second proviso of the above rule makes it incumbent upon the Administrator of Himachal Pradesh to revise the scales of teachers in Himachal Pradesh so as to make those scales to be at par with the scales of pay sanctioned by the Punjab Government from time to time.

7. There is, in our opinion, no merit in the above contention advanced on behalf of the petitioner. The second proviso merely contains an enabling provision with a view to authorize the Administrator Himachal Pradesh to revise the pay scales of persons, appointed to services and posts under his administrative control, so as to bring them at par with the scales of pay which may be sanctioned by the Punjab Government from time to time for the corresponding categories of employees. There is nothing in the above proviso which makes it imperative or obligatory on the part of Administrator Himachal Pradesh to revise the pay scales

of any particular category of employees so as to bring them at par with the scales of pay for such employees of the Punjab Government. The word used is "competent" which means legally qualified or authorized; it cannot be equated with or treated as substitute for the words "imperative", "incumbent" or "obligatory". If the interpretation sought to be placed upon the proviso on behalf of the petitioner were to be accepted, we shall have to read the words "imperative", "incumbent" or "obligatory" instead of the words "competent" in the above rule. The proviso merely vests in the Administrator, the power to revise the pay grades; it does not compel him to exercise that power. The exercise of the power conferred by the proviso involves financial implications and it is manifest that before the exercise of such a power the overall budgetary position would have to be taken into account. In view of the plain language of the rule, it is, in our opinion difficult to hold that the Administrator of Himachal Pradesh is bound to revise the pay scales of the employees under his administrative control, whenever there is a revision of the scales of corresponding categories of employees in the Punjab Government.

8. It has been argued on behalf of the petitioner that on a number of occasions in the past the Administrator of Himachal Pradesh revised scales of pay of certain categories of employees whenever their pay scales were revised in the Punjab. Reference in this context has been made to Annexures B-1 to B-8 to the petition. These annexures relate to the revision of pay scales of overseers of Community Development Projects, kanungos, Photographers, Ayurvedic Staff and Editors. In this respect we find that the affidavit filed on behalf of the respondents shows that before and after scales were revised, the budgetary position directed that the additional expenditure was to be met from within the sanctioned budget. So far as the revision of scales of teachers is concerned, the expenditure involved was on the high side and could not be met from within the sanctioned budget. As Himachal Pradesh was a Union Territory, prior concurrence of the Government of India for provisions of the funds for this purpose was sought by the Administrator. Reference was, accordingly, made to the Government of India in accordance with R. 56 of the Business of the Government of Himachal Pradesh Rules 1963. The Government of India thereupon sent a message that no commitment should be given by the Himachal Pradesh Administration to give effect to the recommendations of the Kothari Commission unless and until the availability of funds were confirmed by the Government of India. In view of the above, the petitioner, in our opinion, cannot derive any assistance from the fact that earlier the Administrator had issued orders for bringing the pay scales of certain categories of Himachal Pradesh employees at par with those prevailing in the Punjab.

Reference on behalf of the petitioner has been made to the following observations in the case of S.G. Jaisinghani Vs. Union of India (UOI) and Others, :-

"in this context it is important to emphasize that the absence of arbitrary power

is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of Law from this point of view means that decisions should be made by the application of known principles and rules and, in general such decisions should be predictable and the citizen should know where he is. If a decision taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

The above observations were made by their Lordships in the context of certain promotions made in breach of the prescribed quota. The said quota had been fixed in exercise of the powers given by Rule 4 of Income Tax Officers (Class I, Grade II) Service Recruitment Rules. The above observations can be of no avail to the petitioner in the present case because the material on the record does not show that the respondents had acted arbitrarily. On the contrary the material indicates that it was the financial limitations which stood in the way of the respondents bringing the pay scales of the Junior Basic Teachers at par with those prevailing in the Punjab.

9. Reference has also been made on behalf of the petitioner to the following observations in the case of Durga Charan Das Vs. The State of Orissa, :-

"It is true that this Court is not bound either by the opinion given by the Public Service Commission or that given by the Governor of Orissa as regards the construction of a statutory rule. But where an established practice appears to have grown up on the basis of interpretations given by higher authorities, that practice will be a useful guide in construing statutory provisions dealing with conditions of service of public servants."

The above observations were made while dealing with R. 6 of Rules issued for the protection of officers of the old Bihar and Orissa Service who were permanently transferred to Orissa. The learned Judges in that case found that the interpretation of R. 6 presented some difficulty. It was in that context that the observation reproduced above, was made. In the present case there is no difficulty so far as the interpretation of the second proviso to Rule 2 of the 1959 Rules is concerned because the language of that proviso is plain and unambiguous. There is also nothing to show that the second proviso to Rule 2 of 1959 Rules was the subject-matter of interpretation in the past and that the interpretation now sought to be placed on that proviso on behalf of the petitioner was taken to be the accepted interpretation. As such, the petitioner, in our opinion, cannot derive any material help from the above Orissa authority.

10. The petitioner consequently fails and is dismissed, but, in the circumstances, we leave the parties to bear their own costs

11. Petition dismissed.