
(2013) 03 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 573 of 2012 (O and M)

Rohtash and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 3 SCT 540

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Rajesh Bansal, for the Appellant; B.S. Rana, A.A.G., Haryana for Respondent No. 1 and Mr. Vivek Singla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, C.J.—Three appellants herein had filed writ petitions seeking regular pay scales to them which were earlier given in compliance of the orders passed in the writ petitions filed by them in the first round of litigation but were immediately withdrawn. As per the appellants, there could not have been withdrawal of these regular pay scales to them as it would be against directions of this Court given in the earlier cases. Notwithstanding this contention, the learned Single Judge has dismissed the writ petitions giving two reasons. First, though the action by the respondents was taken way back in the year 1995, the appellants approached the Court by way of writ petition 15 years thereafter i.e. only in the year 2010 and therefore, they were guilty of laches. Second reason on the merits of the case, which prevailed with the learned Single Judge, is that the matter is covered by the Primary Cooperative Credit & Services Societies Staff Service Rules, 1992 (hereinafter referred to as "the Rules of 1992") which provides only for a consolidated salary for Salesman and Chowkidars at the time when the Rules were introduced and interpreting these very Rules the Division Bench in the subsequent judgment passed in Civil Writ Petition No. 14244 of 1999 has denied the benefit of grant of regular pay scales to other similarly situated persons. The learned Single Judge has chosen to follow this later

judgment which has taken into consideration the statutory rules of 1992 and the same were not dealt with in the first round of litigation between the appellants and the respondents.

2. Some facts which are necessary to understand the controversy may be recapitulated at this stage.

3. The appellants are the Salesmen in the Cooperative Society. Two of these appellants had filed Civil Writ Petition No. 9973 of 1995. In that writ petition, the directions were given by the Division Bench directing the payment of regular pay scales as being given to the similarly situated employees w.e.f. the date their services were regularized i.e. 4.2.1994. Third appellant had filed Civil Writ Petition No. 9971 of 1995. In that writ petition, the orders dated 14.07.1995 were passed directing the respondents to take a decision within three months. The respondents accorded benefit of regular pay scales to the two petitioners as directed in Civil Writ Petition No. 9973 of 1995 and also decided to extend the same benefit to the third petitioner. However, within one month of passing the orders of grant of regular pay scales, it was withdrawn and even when the arrears were calculated in February, 2003, the same were not released. The appellants, therefore, continued to get the consolidated salary and were not given the benefit of pay scales.

4. As mentioned above, in the year 2010, the writ petition was filed by all the three appellants seeking compliance of the directions given in the writ petitions filed by them on the earlier occasion. The respondents took the plea that as per the Rules of 1992, the only consolidated salary was to be given to the Salesman and the Chowkidars and it was not increased from time to time and apart from the said consolidated pay these appellants were not entitled to any regular pay scales as per the provisions contained in the aforesaid Rules of 1992. It was also argued that the respondents had omitted to bring to the notice of the Court in the earlier round of litigation the aforesaid Rules.

5. The learned Single Judge though recorded that if a contention which ought to have been taken and a party omits to take the same, the judicial adjudication/order would construe resjudicata between the parties but in the present case the appellants did not rake up the issue for 15 years when they were denied the benefit. Further more, in the meantime the judgment in Civil Writ Petition No. 14244 of 1999 had been delivered by the Division Bench holding that in terms of the Rules of 1982, such persons were not entitled to the grant of regular pay scales and chose to follow this judgment.

6. Learned counsel for the appellants questioned the validity of the aforesaid approach by arguing that in so far as the judgment of the Division Bench of this Court in the first round of litigation which is inter-se parties had become final and therefore it would operate as resjudicata. It was also argued that the said judgment was even implemented, albeit for a short period, and thereafter the respondents denied the benefit again by stopping to give regular pay scales

which were in violation of the principles of natural justice as no prior notice was issued. Learned counsel also argued that the writ petition could not be dismissed on the ground of delay and laches as non-payment of salary was a recurring cause of action. For this he has relied upon a Full Bench judgment of this Court in Saroj Kumari, Teacher Govt. Girls Sr. Sec. School, Ferozepur and Others Vs. State of Punjab and Others, which followed the judgment of the Apex Court in M.R. Gupta Vs. Union of India and others, He also submitted that once the direction was given by this Court to the respondents to pay regular pay scales which could not be stopped on the basis of any Rules or instructions as held by the Apex Court in State of Haryana and others Vs. The Karnal Co-op. Farmers' Society Limited, etc. etc. and others, He further submitted that reliance on the subsequent Division Bench judgment passed in Civil Writ Petition No. 14244 of 1999 by the learned Single Judge was totally misplaced as the subsequent judgment of the Court taking a contrary view could not adversely affect the case in which the orders had attained finality. For this he relied upon the judgment of the Apex court in Union of India (UOI) Vs. Madras Telephone SC and ST Social Welfare Association,

7. Learned counsel for the respondents, on the other hand, submitted that the first judgment was per-curiam inasmuch as the relevant Rules were not brought to the notice of the Court or considered at all. These Rules were challenged in Civil Writ Petition No. 14244 of 1999 but challenge was repelled by the Division Bench vide judgment dated 24.01.2000 and therefore, the learned Single Judge in the instant case rightly followed the relevant Rules and the judgment in Civil Writ Petition No. 14244 of 1999. He further submitted that the appellants now could not take the advantage of the first judgment when the benefit under the said judgment was withdrawn and the appellants did not challenge this action for a long period and therefore the second writ petition was rightly dismissed on the ground of delay and laches. It was also submitted that the appellants were, at that time, employees of another Co-operative Society which Cooperative Society had been merged with the respondent-society on 30.09.2006. In so far as the respondent society is concerned, it was not party in the writ proceedings filed by the appellants in the year 1995 and therefore on this ground also the first judgment was not applicable.

8. The facts noted above raise a very peculiar situation. No doubt, in the first round of litigation, the Division Bench judgment of this Court went in favour of the appellants. That was even implemented but thereafter the benefits were withdrawn. When the said judgment had attained finality, normally, the benefit thereof has to accrue in favour of the appellants and the subsequent judgment would be of no avail. The appellants are also correct that if the Rules were not shown in the first instance, in the second round of litigation, the respondents would be debarred from showing these Rules as the first judgment would operate as resjudicata. Having said so, we find that certain other developments which have taken place in this case would rob the appellants of the benefit of the first judgment. In so far as the direction given in the first round of litigation is

concerned, the same was complied with but it was immediately withdrawn. Withdrawal thereof gave cause of action to the appellants but the appellants failed to raise that grievance immediately. For number of years, these appellants kept on taking salary on consolidated basis accepting that position by their conduct. They did not challenge the action of the respondents or for that matter the Cooperative Society with which they were working at the material time. It is in this background when they filed the second petition after much delay, we are of the opinion that the learned Single Judge rightly took the view that the case should now be decided on-merits rather than following the first judgment wherein the position of relevant Rules was ignored.

9. When we look into the matter on-merits, we find that the Rules of 1982 are the governing Rules. Relevant portion of these Rules is as under:-

(i) Rules

Primary Cooperative Credit & Services Societies Staff Services Rules, 1982. Rule 9:- Scales of Pay and Emoluments:-

The classification of the Societies on business turnover basis and the staff strength approved for each category has been shown in Annexure-1. The salary and consolidated emoluments of various categories of employees shall be as under:-

10. It is not in dispute that the service conditions of these appellants are governed by the aforesaid Rules. Significantly even the veracity of these Rules was attacked by as many as 90 persons who were also the employees of different Cooperative Societies and similarly situated as the appellants herein. This happened in Civil Writ Petition No. 14244 of 1999. However, Division Bench repelled the challenges by upholding the validity vide judgment dated 24.01.2000. The effect is that no counter parts of the appellants have been given the benefit of regular pay scales. Learned counsel for the appellants could not even point out as to how the appellants are otherwise entitled to any such benefit and he kept on hammering on the directions given in the first round of litigation. Thus we find that in law the appellants are not entitled to any relief. We see no reason to interfere with the judgment of the learned Single Judge. The appeal is accordingly dismissed.