

(2022) 08 DEL CK 0126

In the Delhi High Court

Case No : Civil Writ Petition No. 8257 Of 2015

Sanjay Gupta

APPELLANT

Vs

High Court Of Delhi Through Its Registrar General

RESPONDENT

Date of Decision : 22-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 39
Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972
— Rule 11

Citation : (2022) 08 DEL CK 0126

Hon'ble Judges : Vibhu Bakhru, J; Amit Mahajan, J

Bench : Division Bench

Advocate : Saahila Lamba, Priyam Mehta, Bhupendra Kumar Singh

Final Decision : Allowed

Judgement

Amit Mahajan, J

1. The issue raised in the present writ petition is whether the petitioner, who joined Delhi High Court as Junior Judicial Assistant, prior to Smt. Usha Rawat and was, thereafter, appointed as Reader also prior to Smt. Usha Rawat is entitled to stepping up of pay equal to that of Smt. Usha Rawat, who from the date of her joining as a Reader is getting a higher pay than that of Petitioner.

2. The petitioner, prior to filing the present writ petition had given representations to the Delhi High Court on 18.03.2014 and 20.02.2015. The rejection of those representations by the Delhi High Court has led to filing of the present writ petition.

Facts

3. The relevant facts as admitted by the Delhi High Court are that the petitioner joined as Junior Judicial Assistant (hereinafter referred to as "JJA") on 27.02.2001 and Smt. Usha Rawat joined as JJA on 01.06.2001. Both the petitioner and Smt. Usha Rawat gave Limited Departmental Competitive

Examination (hereinafter referred to as "LDCE") in the year 2007, in which the petitioner was successful and was appointed as a Reader, with effect from 09.10.2007. Smt. Usha Rawat was promoted as Judicial Assistant on 12.11.2007 by seniority and, thereafter, qualified in LDCE in the year 2008 and was appointed as Reader with effect from 20.12.2008. The pay drawn by both the petitioner and Smt. Usha Rawat in the year 2001 was same when they joined as JJA. The petitioner, however, was senior having joined prior to Smt. Usha Rawat. In the year 2007, the petitioner was drawing a pay of Rs. 13,950/- (Band pay) plus Rs. 4,800/- (Grade Pay), as a Reader whereas Smt. Usha Rawat was drawing a lesser pay being a JJA. However, as on 20.12.2008, when Smt. Usha Rawat was appointed as a Reader, the petitioner was drawing a lesser salary than Smt. Usha Rawat. The chart depicting date of appointment/ promotion as well as the pay drawn by the petitioner and Smt. Usha Rawat is reproduced below for ease of reference:

S.

No.

Name

Date of

appointment as Junior Judicial Assistant

Pay scale pre revised

Date of

promotion as Judicial Assistant

Date of Qualifying LDCE

Date of Promotion as Reader

Pay drawn as in 2007 (Rs.)

Pay as on 20.12.2008 (Rs.)

1.

Shri Sanjay Gupta

27.02.2001

4500-

125-

7000

Jumped the post

2007

09.10.2007

13,950+

4800

(Reader)

14,520 +

4800

2.

Smt. UshaRawat

01.06.2001

4500-

125-

7000

12.11.2007

2008

20.12.2008

13,860+

4600

14,990 +

4800

4. It is argued by learned counsel for the petitioner that the petitioner even though, being not only appointed prior to Smt. Usha Rawat, but also promoted, being more meritorious, as a Reader prior to Smt. Usha Rawat is still getting a lesser pay than her, which is arbitrary and discriminatory.

5. Learned Counsel for the petitioner relies upon the judgment passed by the High Court of Punjab and Haryana in the case of Adarsh Kumar Sharma v. Punjab & Haryana High Court, Chandigarh through its Registrar General in CWP No. 4992 of 2012, Union of India v. Central Administrative Tribunal & Ors. in CWP No. 1684-CAT of 2007, Tejbir Singh Dagar v. Union of India, in W.P. (C) No. 7840/2012, 2014 SCC OnLine Del 45, T.S. Dagar v. UOI, in W.P.(C) No. 5867/2003 [2009 SCC OnLine Del 398], to contend that the schemes are formulated from time to time by various departments for the benefit of the employees and cannot be applied to the prejudice of the meritorious and hardworking employees who had qualified in the LDCE and climbed the ladder of success. It is further argued that such employees cannot be penalised for their

efficiency in securing a promotion to the next rank instead of stagnating in the same rank. It is further argued that it is a cardinal principle of law that no junior in the same post can be granted more salary than his seniors.

6. It is contended by learned counsel for the Respondent that rule governing stepping up of pay of a Senior to be equal to his Junior is governed by FR-22 in relation to Central Government employees. Rule 11 of the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972, prescribes that in respect of all such matters for which no provision or insufficient provision has been made in these rules, the rules and orders from time to time being enforced and applicable to Central Government servants shall regulate the conditions of service of the Court servants subject to such modifications, variations or exceptions, if any, in the said rules as the Chief Justice may, from time to time, specify. Since the Delhi High Court Establishment Rules have no provision with regard to correcting such anomalies as in the present case, it is argued by the learned Counsel for the respondent that the anomaly would be corrected/ if at all in terms of FR-22.

7. It is contended that this stepping up of pay of a Senior qua his junior can be done in terms of Instruction No.18 under FR-22 which stipulates fulfilment of three conditions, which reads as under:

"a) Both the junior and senior officers should belong to the same cadre and the post in which they have been promoted or appointed should be identical and in the same cadre;

b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

c) The anomaly should be directly as a result of the application of FR 22 C. For example, if either in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be involved to step up the pay of the senior officer (Emphasis Supplied)"

8. It is contended that, in the present case, the conditions 'b' and 'c' are not fulfilled because Smt. Usha Rawat got promotion to an intermediary post before being promoted to the post of Reader, whereas the petitioner got promoted to the post of Reader directly from the post of JJA.

9. It is, therefore, contended that the scales of pay in lower and higher post, in the present case, are not identical and, therefore, the petitioner would not be entitled to stepping up of pay.

10. Learned Counsel for the respondent relies upon Union of India & Anr v. R. Swaminathan & Anr (1997) 7 SCC 690, State of Andhra Pradesh v. G. Sreenivasa Rao & Anr (1989) 2 SCC 290 and Union of India & Ors v. Sushil Kumar Paul & Ors. (1998) 5 SCC 268: 1998 SCC (L&S) 1336, to contend that the Apex Court has allowed fixation of lesser pay to a senior employee and the same can be done on

justifiable grounds when the classification is based on intelligible criteria, and when two persons working in the same post come from two different Feeder, such situations can occur and the same has been held to be permissible.

11. It is thus contended that wherever the pay of a junior is fixed as per the rules and where there are justifiable reasons for fixing the pay of such junior, the same cannot be flawed. Therefore, it is contended that the doctrine of equal pay for equal work cannot be put in a strait jacket.

12. We have heard the arguments advanced by both the parties.

13. Issue in the present case is not that pay of junior has been wrongly fixed. The issue is entitlement of a senior to step up of the pay at par with the junior. Therefore, the anomaly is not that Smt. Usha Rawat is getting a salary that she is not entitled to, but the anomaly is that the petitioner despite being senior is getting a lesser salary than Smt. Usha Rawat.

14. Various judgments relied upon by learned Counsel for the respondent to canvass the point that a junior employee can be entitled for a higher pay than his senior, in our opinion, are not applicable to the facts and issue involved in the present case.

15. In the case of G. Sreenivasa Rao & others, *supra*, the petitioners had sought stepping up of pay on the ground of equal pay for equal work. In the said case, the issue related to the Cadre of Assistant Section Officers working in the High Court which had two Feeder Cadres, i.e., Copyists and Assistants.

16. The Copyists, in the said case, even prior to their promotion as Assistant Section Officers, were drawing higher salaries on account of additional emoluments. The Assistants who were promoted to the post of Assistant Section Officers prior to Copyists asked for stepping up of pay claiming seniority and principle of equal pay for equal work. The Hon'ble Apex Court in the facts of that case held that the principle of equal pay for equal work does not mean that all members of a Cadre must receive the same pay package irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. It was held that if there are justifiable grounds for a higher salary to the junior, the seniors cannot invoke the equality doctrine.

17. Similarly, in the case of R. Swaminathan *supra*, the juniors were drawing higher salary on account of local ad hoc promotions while the senior in the said case did not get such opportunities. The juniors, thus, even prior to their promotions to the higher post, were drawing a higher salary than their seniors on account of ad hoc promotions earlier while working in the junior position.

18. In the case of Sushil Kumar Paul & Ors. *supra*, the juniors were drawing higher pay than the senior on account of earlier ad hoc promotion prior to their promotion to the higher post. Thus, even though the senior in the said case, was promoted earlier, was still drawing a lesser salary. In all these cases, the junior employees who were drawing higher pay on promotion than their seniors had

officiated in the promotional post for different periods on account of local ad hoc promotions granted to them. The said anomaly, was held to be on justifiable grounds and not covered under FR-22. The seniors were held to be not entitled for the stepping up of their pay to the level of their juniors since the higher pay received by junior was on account of the factors mentioned in the said cases.

19. FR-22 provides that the stepping up should be done in case the conditions specified therein are fulfilled, i.e., both junior and senior officers should belong to the same Cadre and the posts in which they have been promoted or appointed should be identical and in the same Cadre, the scale of pay of the lower and higher post in which they are entitled to draw the pay should be identical and that the anomaly should be directly as a result of the application of FR-22(c). Since in all these cases, the scale of pay for the lower post in the case of the junior employee was higher, senior employee was not entitled for stepping up of the pay. Conditions mentioned in FR-22 is meant for removing anomaly which occurs without any justifiable grounds.

20. In our opinion, the facts of the present case are not identical. In the present case, the petitioner was appointed as Reader prior to Smt. Usha Rawat and was not drawing lesser salary than her while officiating as JJA. The Hon'ble Apex Court, in the case of State of Madhya Pradesh v. Ramesh Chandra Vajpayee 2009 (13) SCC 635, held that the doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced in every way. Mere similarity of designation or similarity of quantum of work was not determinative of the quality in the matter of pay scales, the Court has to consider all the relevant factors such as the mode of recruitment, qualifications for the post, the nature of work, the value of work, responsibilities involved and various other factors. It is settled law that the fixation of scales of pay is a matter of policy with which the Court cannot interfere except in exceptional cases where the discrimination between the two set of employees, appointed by the same authority is apparent, especially when the eligibility criteria is the same and the duties are identical in every aspect.

21. The circumstances where the junior employee on account of drawing higher pay scale, even at the junior level gets entitled for the higher pay than his senior who, despite being appointed to the senior post, prior to the said employee are discussed by the Hon'ble Apex Court in the case of Union of India v. O.P. Saxena, 1997(6) SCC Page 360.

22. The Hon'ble Apex Court held that an employee who is senior for the reason of being appointed in the senior position prior in time cannot claim pay parity with an employee who is getting higher salary because of the additional emoluments being attached to the nature of work and the duties being discharged at the junior position. It was held that an employee who accepts supervisory position prior in time foregoes his right to claim the higher salary which the junior employee is entitled to for the reason of nature of work and duties being discharged for a longer period in junior position.

23. The facts, in the present case, however, are not such which can be said to be covered by any of the instances being referred by the Hon'ble Apex Court in the above mentioned judgments. The facts in the present case, present an anomaly similar to that as noticed by the Department of Revenue, which was corrected by a circular dated 13.05.1992. The said circular reads as under:

F. No. B-12014/5/92-Ad.IX

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 13th May, 1992.

To

All Chief Commissioners of Income Tax/

All Directors General of Income Tax/

Commissioner of Income Tax, Nagpur,

Bhubaneswar and Sillong

SUBJECT:

Anomaly in Fixation of Pay resulting in Juniors drawing higher pay than their Seniors on promotion to the Grade of Inspector - Removal of - regarding.

Sir,

I am directed to refer to the Board's letter F.No. 110/32/71-Ad. dated 12.06.1975 and F.No. A-26017/173/79 -Ad. IX dated 27.11.1981 on the above subject and to state that the question of removal of anomaly in the fixation of pay where a junior person on his promotion as Income Tax Inspector gets higher pay than a senior person, because of the application of FR- 22(C) on his promotion at each intermediate level, has been considered in consultation with the Department of Personnel and Training. In supersession of all the previous instructions issued on the subject, it has been decided that such anomaly in fixation of pay may be removed by stepping up the pay of a senior person equal to the level of junior person provided - (a) the compared junior should have been qualified fully for the post of Inspector at the time when the senior is promoted directly as Inspector and (b) the junior should have been promoted in the intermediate grades in the intervening period.

2. You are requested to remove the anomaly in the fixation of pay in the type of cases referred to above accordingly.

3. This issues with the concurrence of Department of Personnel & Training vide

their U.O. Note No. 719/92 - Pay,I dated 22.04.1992.

Yours faithfully,

Sd/-

(D.M.L. MALHOTRA)

Deputy Secretary to the Govt. of India

24. In the present case, the High Court Establishment has not given any reason why petitioner was drawing a lesser salary than Smt. Usha Rawat except for saying that she got two increments and the petitioner only got one. It is also not a case where it has been argued or pleaded that extra pay was being given to Smt. Usha Rawat because of certain emoluments, which were attached with the post she was officiating and because of the nature of work she was discharging. It is also not alleged or pleaded that a person who secures a promotion to a higher post on being successful in a competitive examination disentitles himself to seek a pay at least equal to that of his junior. The very nature of competitive exam being conducted by the Department itself suggests that a person, who is successful, is more meritorious.

25. Law cannot permit discrimination of equals. As can be seen in the facts of the present case, a person who has been promoted to a higher post due to his merits is drawing lesser salary than a person who failed to qualify at the material time but did so subsequently. Here a person is being discriminated for being meritorious. Allowing this treatment would amount to dis-incentivizing competitive exams such as LDCE.

26. The petitioner, in the present case, is senior not only on the length of service with Delhi High Court being appointed as JJA prior to Smt. Usha Rawat but also as a reader having been appointed earlier on the post.

27. The petitioner who was appointed to the post of Reader after successfully clearing the Limited Departmental Competitive Examination held in the year 2007, therefore, would definitely be entitled for a pay at least equal to a person who is admittedly junior not only because of total length of service with the High Court but also as a reader. The anomaly, therefore, cannot be called to be based on intelligible differentia and ought not to be permitted to allow the petitioner to be treated unequally in the matter of pay.

28. Various judgments relied upon, therefore, in our opinion do not cover such situation as the present case and are, therefore, distinguishable on facts.

29. The law laid down by the Hon'ble Supreme Court in State of Madhya Pradesh v. Ramesh Chandra Vajpayee (supra) and Union of India v. O.P. Saxena (supra), in our opinion, is not contrary to the case set up by the petitioner but, in fact, supports it. An employee carrying increments by a longer length of service or due to the emoluments being attached to the service would continue to carry such benefits at the higher post and would be entitled for a higher salary. Such

criterion, as is apparent, is missing in the facts of the present case.

30. The petitioner, in the present case, is not claiming a negative right of equality but is claiming an affirmative relief of equality under Article 14 of the Constitution. As noted earlier such anomaly was, in fact, also noticed by the Ministry of Finance and was removed by taking out a corrective notification dated 13.05.1992. Thus, the principle of parity at workplace in the same cadre, as enshrined in the principles governed by Article 14, 16 and 39 of the Constitution would entitle the petitioner for stepping up of his pay to atleast that of his junior.

31. It is true that no one has any inherent right of pay dehors the rules governing the appointments and the salaries, however, a person definitely has a constitutional right to be treated equally.

32. In view of the above, the petitioner, who is senior to Smt. Usha Rawat in the cadre of Delhi High Court, and has been drawing higher salary since the day of joining till such time Smt. Usha Rawat was appointed as a reader on 20.12.2008, is entitled for stepping up of pay to the level of Smt. Usha Rawat w.e.f. 20.12.2008.

33. The present petition is, ther allowed and, the respondent is directed to step up the pay of the petitioner equal to the pay level of Ms. Usha Rawat w.e.f. 20.12.2008.

34. No order as to costs.