

(2024) 09 SHI CK 0045

In the High Court Of Himachal Pradesh

Case No : CWPOA No. 6257, 6264, 6268, 6271 Of 202

Sanjeev Kumar

APPELLANT

Vs

State of H.P. & Ors

RESPONDENT

Date of Decision : 06-09-2024

Acts Referred:

Citation : (2024) 09 SHI CK 0045

Hon'ble Judges : M. S. Ramachandra Rao, CJ; Satyen Vaidya, J

Bench : Division Bench

Advocate : Archana Dutt, Anup Rattan, Rakesh Dhaulta, Sushant Kaprate, Pranay Pratap Singh, Arsh Rattan, Sidharth Jalta, Priyanka Chauhan, Manish Sharma, Lovneesh Kanwar, Tek Chand, Shivom Vashista, Varun Rana

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. All these petitions have been heard and are being decided together as common questions of facts and law are involved.
2. The petitioners in all the petitions are working as Community Organizers in their respective Municipal Committees/Corporations. Petitioner in CWPOA No. 6268 of 2020 is working with Municipal Committee, Rampur, District Shimla, petitioner in CWPOA No. 6257 of 2020 is working with Municipal Committee, Sarkaghat, District Mandi, petitioner in CWPOA No. 6264 of 2020 is working with Municipal Committee, Chamba and petitioner in CWPOA No. 6271 of 2020 is working with Municipal Corporation, Solan.
3. The initial appointments of petitioners as Community Organizer, was on contract basis. Their services were regularized under the regularization policy after eight years in the pay scale of Rs.5910 – 20200 + 1950 Grade Pay.
4. The State Government of Himachal Pradesh vide notification dated 27.09.2012, revised the pay scales of its employees. The employees of local

bodies viz. Municipal Committees and Municipal Corporations were also benefitted by the aforesaid revision. However, no revision was allowed in the case of Community Organizers.

5. The petitioners submitted representations to their respective employers, which were forwarded with recommendation favouring petitioners to the State Government. The Government did not allow the benefit of revision of pay scale to the category of Community Organizer, forcing the petitioners to file the instant petitions.

6. The petitioners have challenged the rejection of their proposals to revise the pay scales by the State Government, they have also sought direction to grant revision in pay scales to the category of Community Organizer at par with the category of Clerks.

7. It is contended on behalf of the petitioners that prior to issuance of notification dated 27.09.2012, the category of Community Organizer and Clerks were placed in the same pay scale. It is further the case of the petitioners that the nature of job of both the categories is identical. Whereas, the category of Clerks has been granted the benefit of pay revision, the petitioners have been discriminated.

8. Discrimination has also been alleged by the petitioners on the ground that the same category of post in Municipal Committee, Sarkaghat has been allowed the benefit of revision of pay scale at par with the category of Clerks. As per the petitioners, the State Government has discriminated the petitioners viz-a-viz the incumbents holding the same category in Municipal Committee, Sarkaghat without any lawful justification.

9. As far as the respondents-Municipal Committees/ Corporations are concerned, they have not opposed the claim of the petitioners. According to said respondents, they had recommended the case of petitioners to the State Government, but the State Government had rejected the same.

10. The State Government has opposed the claim of the petitioners by alleging that it is the prerogative of the State Government to grant pay scale to a particular category of employees keeping in view specific job profile and nature of duties. It has also been stated that there cannot be any comparison with the category of Community Organizer and Clerks. As per the reply of the State Government, the revision of pay allowed vide notification dated 27.09.2012, was for limited categories and the category of petitioners were to be considered for revision of pay during general revision w.e.f. 01.01.2016.

11. We have heard learned counsel for the parties and have also gone through the records of the case carefully.

12. It is reflected from the responses submitted by the respondents-Municipal Committees/Corporations that the post of Community Organizer exists in the Municipal cadre, however, the Recruitment and Promotion Rules for such category have not been framed.

13. The fact that petitioners were regularized on the posts of Community Organizer in their respective Municipal Committees, also evidences the existence of the post of (Community Organizer) in Municipal cadre. Absence of R & P Rules for above category, appears to have created anomalous situation. The obligation to frame R & P Rules rests with the State Government, the petitioners cannot possibly be put in disadvantageous position only for non-framing of Rules.

14. The entire thrust of respondent-State Government has been on its power and discretion to choose any category of employees for revision of pay on the premise that equivalence of categories is its sole domain. No doubt, the discretion in the matters of equivalence between different categories of employees for the purposes of pay scales lies with the State Government (Employer), however, such an administrative action cannot be said to be immune from judicial review though on limited grounds. The judicial review can be exercised if the administrative decision is unreasonable, unjust and prejudicial to a section of the employees.

15. In *Union of India and another vs. S. Thakur* (2008) 13 SCC 463, it has been held by the Hon'ble Supreme Court in para-8 of the judgment as under:

"8. The plea that as restructuring of cadre and redistribution of posts was involved in so far as the Assistant Directors were concerned and therefore the policy decision taken by the State Government to give benefit of upgraded scale to an Assistant Director (Executive) with effect from October 01, 1997 should not have been interfered with by the Tribunal and by the High Court is devoid of merits. There is no dispute nor there can be any, to the principle that fixation of pay and date from which the benefit of revised pay scale would be admissible is the function of the Executive and the scope of judicial review of such an administrative decision is very limited. However, it is equally well-settled that the Courts would interfere with the administrative decisions pertaining to pay fixation and pay parity as well as the date from which the revised pay scales would be made applicable if it is found that such a decision is unreasonable, unjust and prejudicial to a section of employees."

16. Obviously, one of the factors for revising pay scales is the rise in price index. Such an assumption cannot be said to be unfounded and unreasonable. It being so, it is not understandable as to how the category of petitioners could be left out from revision of pay scales, whereas, it was allowed to the others. No material has been placed on record by the respondent-State Government, to justify carving out an exception in the cases of petitioners.

17. In the facts of the case in hand, the administrative action of denying the revision of pay scale to the petitioners is clearly arbitrary and discriminatory for another reason. The respondent-State has neither denied the factum with respect to revision of pay scale in the case of Community Organizer in Municipal Committee, Sarkaghat nor has any explanation been rendered to justify such a discriminatory administrative action. It being so, the petitioners also being

similarly placed to their counter - parts working with Municipal Committee, Sarkaghat cannot be treated differently.

18. It has also been shown on record that the Community Organizer working with Municipal Committee, Sarkaghat has been granted the pay scale equivalent to that of Clerk, which also strengthens the plea of petitioners that they are entitled for the same pay scale as granted to the Clerks. Such claim of the petitioners otherwise also cannot be said to be unjustified for the reasons, firstly, that the State Government has not been able to place any quantifiable data to show any substantial disparity in the job profile of Community Organizers and Clerks, secondly, the Community Organizer in the Municipal Committee, Sarkaghat has been paid the pay scale of the Clerks and lastly, the pay scale of Community Organizer and Clerks prior to issuance of notification dated 27.09.2012, was also identical. Reference can gainfully be made to the judgment passed by Hon'ble Supreme Court in State of Punjab and others vs. Senior Vocational Staff Masters Association and others, reported in (2017) 9 SCC 379. In para-

27 of the above judgment, it has been observed as under:

"27. We are conscious of the fact that a differential scale on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of employees are treated as equal initially, they should continue to be so treated unless a different treatment is justified by some cogent reasons. In a case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continued to be identical as they were initially laid down, then the Court shall be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed. Thus, the decisions relied upon by the learned Senior Counsel are clearly distinguishable and are not applicable to the facts of the present case."

19. Noticeably, the State Government has rejected the case of the petitioners, though recommended by the Municipal Committees, without detailing any reasons therefor. It is well settled that the administrative decision, more particularly, when it deals with substantive rights of citizens need to be expressed with reason. Since, in the instant cases the decisions are without any reasons, the impugned action of the respondents cannot be sustained for such reason also.

20. In State of Punjab vs. Bandheep Singh and others (2016) 1 SCC 724, the Hon'ble Supreme Court has observed as under:

"4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to

arrive at his conclusion. It is beyond cavil that any Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled *Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi* [1978] 1 SCC 405, of which the following paragraph deserves extraction: (SCC p. 417, para 8)

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Commissioner of Police vs. Gordhandas Bhanji* [AIR 1952 SC 16]: (AIR p.18, para 9)

'9.public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

Orders are not like old wine becoming better as they grow older".

21. Another objection raised by the State Government to the claim of the petitioners is that vide notification dated 27.09.2012, only some of the categories of employees were granted the benefit of pay revision. As regards the petitioners, it was submitted in the reply of respondent-State that they would be considered for pay revision during the general revision w.e.f. 01.01.2016. The petitioner in CWPOA No. 6268 of 2020 has filed rejoinder in the year 2024 and has denied having received any pay revision even w.e.f. 01.01.2016. In such circumstances, we have no hesitation to hold that not only the impugned action of respondent-State is arbitrary and discriminatory it undoubtedly is harsh also.

22. In result, the petitions are allowed; the respondents are directed to grant revision of pay scale to the petitioners at par with the revision allowed to the category of Clerks in terms of notification dated 27.09.2012 and also the next revision, if any, allowed to the Clerks w.e.f. 01.01.2016. The arrears shall be paid to the petitioners by the respondents within three months from the date of passing of this judgment with interest at the rate of 6% per annum, failing which, the respondents shall be liable to pay interest @ 9% per annum.

23. Petitions are accordingly disposed of in the aforesaid terms, so also the pending application(s), if any.