

(2015) 04 SHI CK 0041

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition Nos. 4615, 4616, 4619 and 4620 of 2012-B, C.W.P. No. 4399 of 2012-J and C.W.P. Nos. 4621 and 4624 of 2012-C

Satish Chand and Others

APPELLANT

Vs

Y.S. Parmar

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39(d)

Citation : (2015) 04 SHI CK 0041

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : B.S. Chauhan, for the Appellant; Balwant Singh Thakur, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Tarlok Singh Chauhan, J.—Since common questions of law and facts arise for determination in these petitions, therefore, they are taken up together for disposal.

2. CWP No. 4615 of 2012 is taken as lead case, wherein the petitioner has prayed for the following substantive relief(s):--

"(a) The writ of mandamus be issued against respondent, directing them to remove the anomaly in the pay scale of petitioner and respondent may further be directed to release the pay scale of Rs. 3120-5160 w.e.f. 1996 and subsequently revised to Rs. 5910-20200 w.e.f. January, 2006 to the petitioner being Hostel Attendant as his counter part in the departments of State Govt. and H.P. University are being paid the pay scale of Rs. 5910-20200 w.e.f. January, 2006 onwards alongwith consequential benefits.

(b) The respondents deserves to be directed to upgrade the post of Hostel Attendant to Hostel Assistant from class IV to III as has been upgraded by the State Govt., CSKHPKV Palampur and H.P. University.

(b-a) The respondent may be directed to follow the principles of equal pay for equal work, further direct them to pay the scales of Hostel Assistant to the applicant because the applicant is performing the duties of Hostel Assistant.

(c) The respondents may be directed to release the arrears of pay to the petitioner w.e.f. Oct. 1999 till date alongwith 18% interest P.A."

However, during the course of hearing, the petitioner has confined his claim only to relief (b-a).

3. The petitioner after joining the service of respondent No. 1 was regularized as a Hostel Attendant vide office order dated 13.3.2000. He claims that though he had been regularized as a Hostel attendant, but ever since his regularization he has been discharging and performing the duties of the higher post of Hostel Assistant. It is further averred that there are 11 hostels, whereas there are only 4 regular posts of Hostel Assistants and therefore in absence of any regular Hostel Assistant, it is the petitioner(s), who are discharging and performing the duties of the Hostel Assistants. It is on the aforesaid basis that petitioners have now claimed "equal pay for equal work".

4. In reply to the writ petition, it is claimed that the Hostel Attendants is the feeder category for promotion to the post of Hostel Assistant. It is further averred that the case of the Hostel Attendants for up-gradation to the post of Hostel Assistant in the revised pay scale of Rs. 5910-20200+1900GP was sent to the Comptroller for placing the same before the Finance Committee. However, the Comptroller returned the case with the observation that the case may be re-examined in light of the approved core cadre strength and existing working strength. It is further claimed that Management vide Item No. 8 of the proceedings of meeting held on 30.3.2011 had approved the core strength of different categories of post vide notification dated 8.4.2011 and the surplus posts of different category were abolished vide office order dated 25.4.2011, but the core strength was not approved by the State Government and a fresh core cadre strength proposal was sent to the State Government vide letter dated 30.1.2014, but the approval of the same was stated to be awaited.

5. In rejoinder, the petitioner has annexed a certificate issued by the Warden of the Hostel certifying that petitioner was though appointed as Hostel Attendant was performing the duties of Hostel Assistant.

I have heard the learned counsel for the parties and have gone through the records of the case.

6. The duties of the Hostel Assistants are reflected in Annexure R- 3 and are enumerated hereinunder:--

"1. To attend the incoming calls and to maintain the Register of outgoing calls of relevant Hostels.

2. Distribution of Mess Bills for collection of money.

3. Collection of Telephone charges from students.
4. To make the reports to the concerned warden regarding complaints of water/ electricity etc.
5. Any other duties assigned by the SWO/Warden."
7. Now in case the certificate Annexure PA is seen, it would clearly show that petitioner though designated as Hostel Attendant is in fact working as Hostel Assistant. Annexure PA reads thus:--

"To whom it may concern

Date: 30/6/2014

This is to certify that Mr. Satish Chand Sharma who is presently working as Hostel Attendant in this Hostel also looks after other works like maintaining stock/ store items, giving complaints of the hostel regarding electricity, maintenance etc. which are to be carried out by Hostel Assistant. He also collects mess bills from the students."

8. Though the learned counsel for the respondent would argue that this certificate has not been issued by the competent authority but no material whatsoever has been annexed by the respondent disputing the fact that the petitioner is not working as Hostel Assistant. Even otherwise it is legitimate to assume that petitioner is working as Hostel Assistant because admittedly there are only four posts of Hostel Assistants, whereas there are 11 hostels. After all in the remaining 7 hostels also someone must looking after the work of Hostel Assistant, which is in the present case is none other than the petitioner(s).

9. Here it deserves to be noted that it was the university itself, which had proposed the up-gradation of seven posts of Hostel Attendants to that of Hostel Assistants in the revised pay scale, though it is a different matter that the same did not find favour at the level of the government, but the fact nonetheless remains that the university itself has acknowledged the fact that seven Hostel Attendants including the petitioner were working as Hostel Assistants. If that be so, there is no reason why the petitioner should not be paid the same pay scale as is being paid to the Hostel Assistant.

10. The doctrine of "equal pay for equal work" was originally propounded as part of the Directive Principles of the State policy in Article 39(d) of the Constitution. In *Randhir Singh Vs. Union of India (UOI) and Others*, AIR 1982 SC 879 : (1982) 44 FLR 299 : (1982) LabIC 806 : (1982) 1 LLJ 344 : (1982) 1 SCALE 110 : (1982) 1 SCC 618 : (1982) 3 SCR 298 : (1982) 1 SLJ 490 : (1982) 14 UJ 193 a Bench of three Hon"ble Judges of the Hon"ble Supreme Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and further held that this principal had to be read under Articles 14 and 16 of the Constitution. This decision was affirmed by the Constitution Bench of the Hon"ble

Supreme Court in the celebrated case titled D.S. Nakara and Others Vs. Union of India (UOI), AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 .

11. Thus having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, it can safely be concluded that the doctrine of "equal pay for equal work" has assumed status of a Fundamental Right. It cannot therefore, be said that the determination and granting of pay scale is the sole prerogative of the executive and that the court has no jurisdiction to examine any pay structure or that the aggrieved employee has no remedy, if he is unjustly treated by arbitrary State action or inaction. Such employee undoubtedly, has every right to knock at the doors for redressal of his grievances.

12. It is not in dispute that qualifications, duties and responsibilities of the petitioner(s) as also the work being performed by them is the same as is being performed by the Hostel Assistants. This fact has been acknowledged by the respondent(s) themselves when they sought to upgrade 7 posts of Hostel Attendants to Hostel Assistants. Once this is the admitted position, the respondents cannot deny the legitimate claim of the petitioner and their action in denying the pay scales of Hostel Assistants is therefore, ex-facie irrational, arbitrary and unjust calling for intervention by this court.

13. In view of the aforesaid discussion, all the writ petitions are partly allowed and the respondents are directed to pay the petitioner(s) the pay scale of Hostel Assistant(s) from the time he was//they were designated as Hostel Attendant(s). Needful be done within 90 days, failing which the respondent(s) shall be further liable to pay interest at the rate of 9% per annum till the date of payment.

14. With the aforesaid observations, all the writ petitions are disposed of, so also the pending application(s), if any, leaving the parties to bear their own costs.

The Registry is directed to place a copy of this judgment on the files of connected matters.