

(2018) 09 UK CK 0109

In the Uttarakhand High Court

Case No : Writ Petition No. 410 (S/B) of 2014

Satyendra Kumar Sharma & another

APPELLANT

Vs

Principal Secretary, Deptt. of Finance and others

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

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

Citation : (2018) 09 UK CK 0109

Hon'ble Judges : Rajiv Sharma, ACJ; Lok Pal Singh, J

Bench : Division Bench

Advocate : Piyush Garg, Pradeep Joshi, Shobhit Saharia

Final Decision : Allowed

Judgement

Lok Pal Singh, J.

1. By means of present writ petition, the petitioners seek following reliefs:

i) Issue a writ, order or direction in the nature of certiorari for quashing the decision taken by the Pay Anomaly Committee, State of Uttarakhand

dated 17.01.2014.

ii) Issue a writ, order or direction in the nature of mandamus directing the respondent authorities to fix the basic pay of the petitioners at par with

direct recruits or with identically placed other employees from the date of their respective promotions on the post of Private Secretary, i.e., Rs.18750/-

in the Grade Pay of Rs.6600/-, and consequentially grant the arrears of salary from the said date.

iii) Issue any suitable writ, order or direction which the Honâ??ble Court may deem fit and proper in the circumstances of the case.

iv) Award the cost of the writ petition to the petitioners.

2) Factual matrix of the case, as narrated in the writ petition, are that the petitioners were initially appointed as Personal Assistant in the establishment of High Court of Uttarakhand in the pay scale of Rs. 6500-10500. Petitioner no. 1 and petitioner no. 2 were promoted on the post of Private Secretary

in the pay scale of Rs. 10000 - 15200 on 24.12.2008 and 06.08.2009 respectively. In the meantime, State of Uttarakhand vide Government Order dated 17.10.2008, was pleased to revise the pay scales, as per recommendations of the Sixth Pay Commission. In the said Government Order, Pay

Scales are segregated in different Pay Bands with different Grade pays. The pay scale of Rs. 10000 - 15200 was placed in Pay Band 3 with Grade

Pay Rs. 6600. On promotion, the respondent no. 3 relying upon para 12 of the Government Order dated 17.10.2008 fixed the pay of the petitioners,

less than minimum entry pay as applicable to the direct recruits.

3) Feeling aggrieved, petitioners moved a representation before the High Court, who, in turn, referred the matter to the State Government. The

State Pay Anomaly Committee rejected the representation of the petitioners vide order dated 17.01.2014 and refused to grant minimum entry

pay to the petitioners, as applicable to the direct recruits. Feeling further aggrieved, petitioners have approached this Court by way of filing present

writ petition.

4) Learned counsel for the petitioners would submit that being a welfare state, the Government cannot create two entry pays in one pay scale, i.e.,

one for promotees and another for direct recruits, which is apparent violation of Article 14 and 39 (d) of the Constitution of India. The action of State

Government is de hors the principle of "equal pay for equal work". Placing reliance on the Government Orders dated 13.02.2009 and

11.09.2013. Learned counsel would further submit that vide order dated 13.02.2009 minimum entry pay is prescribed for direct recruits and vide

Government Order dated 11.09.2013 Government was pleased to grant the minimum entry pay meant for direct recruit to those employees whose pay

scales have been upgraded to that stage. Learned counsel would also submit that identically placed persons promoted prior to 17.10.2008 were getting

pay of Rs. 25,200/- as minimum entry pay from the date of their respective promotions whereof in the pre-revised pay scale their basic pays were

same as that of petitioners.

5) Learned counsel for the petitioners drew our attention towards the judgments of Honâ??ble Delhi High Court dealing with the same controversy.

A Division Bench of Honâ??ble Delhi High Court in the WP (C) No. 7379 of 2017 (Union of India Vs. Shashi Kant and others) decided on

26.09.2017, relying on judgments of Honâ??ble Apex Court was pleased to direct the respondents to fix pay of promotees at the level of minimum

entry pay as applicable for direct recruits. He would further submit that after dismissal of appeal, Government of India, Ministry of Finance vide order

dated 13.2.2018 (Annexure No. 4 to the Misc. Application) was pleased to grant minimum entry pay to promotees, as applicable to the direct recruits

along with arrears. The Division Bench of Honâ??ble Delhi High Court in WP (C) No.2634 of 2017, Government of NCT of Delhi & Anr. Vs.

Somvir Rana & Ors., decided on 23.03.2017 was pleased to grant minimum entry pay to the promotees meant for the direct recruits. The Special

Leave Petition preferred by the Government of NCT of Delhi in the said case, vide SLP / Diary No.23663 of 2017, was dismissed in limine vide order

dated 01.09.2017. The Honâ??ble Apex Court has observed as under:

â??Once the question, in principle, has been settled, it is only appropriate on the part of the Government of India to issue a Circular so that it will save

the time of the Court and the Administrative Departments apart from avoiding unnecessary and avoidable expenditure.â??

6) Learned Standing Counsel for the State of Uttarakhand would submit that there is no provision for granting entry level pay in Government Order

dated 17.10.2008 to those who are already in service as on 01.01.2006 i.e. promotees and, therefore, has reiterated the correctness of the stand taken

by the respondents. He would further submit that no direct recruit actually joined the post in the present matter, inasmuch as the post of Private

Secretary is purely a promotional post, therefore, there is no discrimination.

7) Learned counsel for respondent no. 3 would submit that respondent no. 3 has simply followed the government orders issued from time to time. The

respondent nos. 1 and 2 are bound by government orders and it was upto the State Government to correct the pay fixation of the petitioners and issue

orders accordingly.

8) We have heard learned counsel for the parties and perused the entire material

available on record.

9) The present case involves very short controversy as to whether there can be two minimum basic pays for one pay scale?

10) A conjoint reading of Government Order dated 17.10.2008 and 11.09.2013, would reveal that the minimum revised basic pay of a person working

in the pay scale of Rs. 10000 â?" 15200 (pre revised) before 01.01.2006 was Rs. 25,350/- (Rs. 18750 +Rs. 6600). As per Government order dated

13.02.2009, minimum entry pay for direct recruits, recruited on or after 01.01.2006, in the Pay band 3 with Grade Pay Rs. 6600 (pre revised Rs. 10000

â?" 15200) is also Rs. 25,350/- (Rs. 18750 + Rs. 6600). In other words, as per Sixth Pay Commission, the minimum entry pay for direct recruits in Pay

Band 3 with Grade of Rs. 6600/- is Rs. 25,350/-.

11) The Government Order dated 17.10.2008 deals with the fixation of pay on promotion. As per para 12, there are two ways for fixation of pay on

promotion viz. (i) from one grade pay to another and (ii) from one pay band to another. In first situation, the fixation will be done as follows:

(i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple

of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition

to this pay in the pay band.

(ii) In second situation, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the

minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum pay.

12) Having examined the Government Order dated 17.10.2008, we find that said G.O. itself caters to situation where pay of the promotee after using

the methodology prescribed in the Government Order is found to be lesser than the minimum of the higher pay band of the promotional post, the same

needs to be stepped up to the minimum of the pay scale of the promotional post. The said Government Order, in our view, itself provides for stepping

up of pay of the promotees of the minimum of the higher pay band to which post promotion has taken place.

13) From the perusal of the Government Order dated 17.10.2008, it can be said that promotee is also entitled for step up to the minimum of pay in pay

band with grade pay. It is a settled position that a direct recruit gets minimum of the pay scale and Government Order dated 13.02.2009 prescribes the

minimum entry pay for direct recruit. In this way, it can safely be construed that if basic pay of promotee remains less than that of direct recruit, then

in such eventuality, it should be stepped up upto the level of direct recruit. In other word, a promotee is also entitled to get the minimum entry pay

meant for direct recruit, if he is drawing pay less than that of pay meant for direct recruit. Our conclusion gets fortification from the judgments of

Honâ??ble Supreme Court and Honâ??ble Delhi High Court in the case of Somvir Rana and Shashikant (supra). After judgment of Honâ??ble

Supreme Court, Government of India has already issued Circular granting the minimum entry pay, meant for direct recruit, to the promotees.

14) State cannot create class amongst the class. Our State is a welfare State. It cannot create two minimum entry pay in one pay scale, one for direct

recruit and another for promotee that too without any cogent reason, rationale or justification. Even though no direct recruit joins in the present case

but by way of Sixth Pay Commission, State Government decided to give revised pay scales to all government employees. It is settled position that by

implementing new pay commission, old pay scales are replaced by new ones. It is also settled that every pay scale has one minimum entry pay

therefore, Government cannot create two different minimum entry pay for one pay scale and if a person joins on particular pay scale, then he is

entitled to get the minimum entry pay of that pay scale irrespective of the fact how he joins the cadre. Therefore, we find no force in the argument of

learned Standing Counsel for the State that no direct recruitment took place in the present matter. In our view, different fixation of pay for promotees

and direct recruits would lead to invidious discrimination and violates Article 14 of the Constitution of India. The same pay scale cannot have two

different entry pay, one for the promotees and other for direct recruits. The provision for two different entry pay one for promotees and another for

direct recruits is clearly violative of the principle of â??equal pay for equal workâ?? enshrined in Article 39A of the Constitution of India.

15) Respondents in para 37 of the counter affidavit stated that the claim of the petitioner is rejected because the policy of Government of Uttarakhand

is similar to the policy of Union of India. If Government of Uttarakhand, makes different policy, it will create hardship and administration

inconvenience. The Government of India has already issued a Circular granting minimum entry pay, now, the State of Uttarakhand cannot deviate

from its stand taken in the counter affidavit, therefore, in our view, petitioners are also entitled to get minimum entry pay, applicable to direct recruits,

as there can be no justification for granting two different pays in same pay scale.

16) The Government of Uttarakhand had issued the aforesaid Government Orders. The Government Orders issued by the State Government are

binding upon the State of Uttarakhand. There cannot be a departure by the State itself from its own stand. But the State Government, who itself has

issued the aforesaid Government Orders, departed from the spirit of the Government Orders. The similar situation came for adjudication before the

Delhi High Court. The Delhi High Court decided the matter in favour of the similarly situated persons as that of the present petitioners. An appeal

with special leave to appeal filed by the Union of India was dismissed by Honâ??ble Apex Court vide order dated 01.09.2017. The judgment of

Honâ??ble Supreme Court is binding throughout the territory of India, much less on all the courts as well as the State Governments. Though the

controversy has already been decided by the final verdict of Honâ??ble Apex Court dated 01.09.2017, nothing remains for the Court to decide in the

present lis. Besides, this Court has elaborately discussed the facts and law applicable to the present case.

17) In view of the above, the writ petition deserves to be allowed. The same is allowed. Impugned order passed by the Pay Anomaly Committee is

quashed. Respondents are directed to grant the minimum entry pay to the petitioners meant for the direct recruits and re-fix the pay of petitioners, at

the level of minimum entry pay, applicable for direct recruits in Pay Band 3 with Grade Pay Rs. 6600/-, as per Government Order dated 13.02.2009

from the date of their respective promotions. Respondents are further directed to pay the arrears arising out of pay fixation pursuant to the order

passed by this Court. The above benefits shall be granted to the petitioners within a period of three months from today.

18) No order as to costs.