

(2012) 03 SHI CK 0183
In the High Court Of Himachal Pradesh
Case No : CWP No. 9047 of 2011

Sh. Baldev Chand and Sh. Jagtar Singh	APPELLANT
Vs	
The State of H.P.	RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2012) 03 SHI CK 0183

Hon'ble Judges : Kurian Joseph, J; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Archana Dutt, Ramakant Sharma, Lovneesh Kanwar, Adarsh K. Vashista, Yogesh K. Chandel, Surender Thakur, R.L. Chaudhary, Daleep Singh Kaith, Surender Sharma, Neel Kamal Sood and K.R. Kashyap, for the Appellant; R.K. Bawa, A.G. with Mr. Ankush Dass Sood, Addl. A.G. and Mr. J.K. Verma, Dy.A.G., for the Respondent

Judgement

Justice Kurian Joseph, C.J.—The petitioners, in these cases, have approached this Court seeking implementation of pay-scale in the Punjab pattern w.e.f. 1.1.1986. The petitioners are teachers belonging to the C&V Whether reporters of local papers may be allowed to see the judgment? category. It was their case that revision of pay scale of Rs. 1640-2925 to C&V teachers has been implemented in Punjab as per order dated 12.5.2011. The same was implemented initially only in the case of Shastris and Gianis, but the order dated 12.5.2011 was passed pursuant to the directions issued by the Court. In the State of Himachal Pradesh also, the 3rd Pay Commission Report was implemented in the case of Shastris and Language Teachers, who were appointed prior to 1989. We are informed that pursuant to the direction issued by this Court in Subash Chand v. State of H.P., the Shastris, who have been appointed after 1989 also, have been granted the same benefit. The only category of teachers, who has been left out in the matter of implementation of 3rd Pay Commission Report of Punjab, is C&V teachers. The State of Himachal Pradesh does not have a Pay Commission of its own. It has come out from the information furnished by the Deputy Secretary (Finance) to

the Government of Himachal Pradesh dated 16.9.2011, which is otherwise Annexure in some of the writ petitions that, "..... it is reiterated that the pay scales of employees of State of Himachal Pradesh are being revised on Punjab pattern of pay scales since 1.2.1968".

2. Be that as it may. Since there has been a dispute as to whether the Punjab pattern is normally/automatically followed or not, this Court had issued a direction to the Administrative Department, the Finance Department and also the Chief Secretary to file separate affidavits as to the Policy of the State of Himachal Pradesh in that regard. In the affidavit of the Chief Secretary to the Government of Himachal Pradesh filed on 29th February 2012, it is stated in para 3 as follows:-

"...it is respectfully submitted that this State Government by and large follows Punjab Government pay scales, for its employees. This is done after careful examination and the Government of Himachal Pradesh may or may not implement a particular pay scale keeping in view the fact that Himachal Pradesh Government has its own staffing pattern and also prescribes service conditions including pay scales etc. of a particular post/service on its own by framing/ notifying R&P Rules and pay Rules in exercise of the powers conferred by proviso to Article 309 of the Constitution of India."

3. The Principal Secretary (Finance) has filed an affidavit, dated 17th December, 2011, stating that revision of pay scales is not available to the employees of the Government of Himachal Pradesh. The Administrative Department has filed its reply, dated 20th March, 2012, wherein it is stated that pay scales are revised after considering all facts on record by the Pay Commission, which is an expert body. It would be profitable also to refer to paragraphs 8, 9 and 10 of the reply, which read as follows:-

"8. That the contents of this para are admitted in view of Annexure P-4. However, it is submitted that in this particular case, Govt. of Punjab has not finally accepted the judgment as mention in Annexure P-4 and have also filed appeal.

9. That in reply to the contents of this para it is submitted that the Punjab Govt. has issued notification dated 12.5.2011 with the condition that grant of scales is subject to the outcome of the LPA filed by the State against the decision of the Hon"ble Single Bench of the Hon"ble High Court.

10. That in reply to the contents of this para it is submitted that the State of Himachal Pradesh has not its own Pay Commission and by and large follows Punjab Government pay scales, for its employees. This is done after careful examination and the Government of Himachal Pradesh may or may not implement a particular pay scale keeping in view the fact that Himachal Pradesh Government has its own staffing pattern and also prescribes service conditions including pay scales etc. of a particular post/service on its own by framing/ notifying R&P Rules and pay Rules in exercise of the powers conferred by proviso

to Article 309 of the Constitution of India."

4. It is not in dispute that as far as the 1st and 2nd Pay Commission Reports are concerned, the same had been implemented in the State of Himachal Pradesh as such. The dispute started only after the 3rd Pay Commission Report and the dispute is only in respect of C&V Teachers. All other categories have been paid the pay scale as per the Report and as per Punjab pattern. The dispute was the subject matter of litigation in the State of Punjab itself leading to judgment dated 9th November, 2011 in CWP No. 14264 of 1991, titled Harbhajan Singh Dhindsa & ors. vs. The State of Punjab & anr., which is otherwise Annexure is some of the writ petitions. The said judgment has been implemented, though according to affidavits and replies of the respondents, the implementation is subject to the LPA filed by the State of Punjab.

5. Learned counsel for the petitioners, in these cases, after obtaining the information under the Right to Information Act, state that the LPA No. 1044 of 2010 itself has been finally disposed of by judgment dated 23.9.2010 and thereafter by order dated 12.5.2011, the pay scales, as recommended by the 3rd Pay Commission, have been implemented w.e.f. 1.1.1986.

6. The State of Himachal Pradesh has not taken any decision with regard to the implementation of the pay scales as far as C&V teachers are concerned. It appears from the replies and affidavits of the respondents that there is no concrete and definite stand as to whether the Punjab pattern is to be followed or not. One way or the other, the State Government has to take a final decision in the light of the policy so far followed, unless there are compelling reasons not to do so. The stand once taken before this Court was that the pay scales have not been implemented in the State of Punjab itself in view of the pendency of the LPA. That situation is no more there, since the LPA has been disposed of and since in the State of Punjab it has been implemented. Whether the same has to be implemented in the State of Himachal Pradesh, in view of the policy so far followed and in view of the stand that the State of Himachal Pradesh does not want an independent Pay Commission as of now and would be generally following the Pay Commission Report of Punjab as Policy, is the decision to be taken.

7. Therefore, all these writ petitions are disposed of directing the State Government to take a final decision with regard to the implementation of the pay scales as per the 3rd Pay Commission Report of State of Punjab in the matter of revision of pay scales of C&V Teachers w.e.f. 1.1.1986. In the process, the order dated 12.5.2011 passed by the State of Punjab, shall be taken note of, since it is the policy of the State Government to generally follow the Punjab pattern and that there is no other independent Pay Commission. It is made clear that the decision shall not be delayed and the eligible benefits shall not further be delayed on the ground that the appeals are pending in the High Court of Punjab and Haryana since the appeals have also been disposed of and the judgment has been implemented in the State of Punjab. In the process, a reference shall also be made to the notification issued by the State Government on 23rd March 1989

fixing the pay scales of the C&V teachers (at Sr. No. 21 in the Notification) at Rs. 1640-2925. It shall also be kept in mind that Shastris and Language Teachers also form part of C&V Teachers" category and in their case, the revision has already been implemented. The decision as above shall be taken within a period of three months from today and the appropriate orders shall also be passed with regard to the disbursement of the eligible benefits, if any found entitled in the process. With the aforesaid observations, all these writ petitions stand disposed of, so also the pending application(s), if any.

Authenticated copy.