

(2013) 07 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1930 of 2005 (O and M)

Sh. O.P. Verma and Another APPELLANT
Vs
State of Punjab and Others RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2014) 1 SCT 56

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : H.K. Aurora, for the Appellant; Pankaj Mulwani, DAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—Both the petitioners, who had served on the post of Secretary, Punjab Vidhan Sabha Secretariat and have since retired, have filed the instant writ petition praying for the issuance of a writ of mandamus directing the official respondents to grant to them pay scale of Rs. 18600 - 22100 w.e.f. the date, the same is due along with arrears. Still further prayer has been raised for quashing of the order dated 24.9.2004, Annexure P-5, whereby, such claim stands rejected. Brief facts of the case are that petitioner No. 1 was promoted as Secretary, Punjab Vidhan Sabha Secretariat on 1.1.1998 and petitioner No. 2 was identically promoted on the same post w.e.f. 1.6.1995. Petitioners No. 1 and 2 retired on 31.10.2000 and 31.12.1997 respectively upon attaining the age of superannuation. While serving on the post of Secretary, the petitioners were getting pay scale of Rs. 4500-6100 under the un-revised pay scale with effect from the date of their respective promotions. The State Government issued notification dated 19.5.1998, whereby the pay scales were revised w.e.f. 1.1.1996. Vide such notification the pay scale of the post of Secretary, Punjab Vidhan Sabha Secretariat was revised from Rs. 4500-6100 to Rs. 14300 - 18600. On the other hand with regard to certain other posts who were also enjoying same pay scale of Rs. 4500-6100 such as Director, Animal Husbandry, Chief

Conservator of Soils, DPI(Colleges) etc were revised to Rs. 18600-22100. It has also been pleaded that even the pay scales of certain employees who were lower in the hierarchy as compare to Secretary, Punjab Vidhan Sabha Secretariat, such as Additional Legal Remembrancer-cum-Additional Secretary, the Additional Director Prosecution and Litigation and Joint Secretary, Forensic Science Laboratory, Senior Town Planner etc were granted the revised pay scale of Rs. 14300-18600. As per petitioners such revision of pay scales in terms of Government Notification dated 19.5.1998 created an anomalous situation.

2. Respondent No. 5, who had been promoted as Secretary, Punjab Vidhan Sabha Secretariat on 18.9.2003 had also represented against such anomaly in the grant of revised pay scales and his prayer was accepted by the State Government and he was granted the pay scales of Rs. 18600-22100 w.e.f. 18.9.2003 as a measure personal to him. It has further been pleaded that even at such stage the petitioners submitted representation against such discrimination and arbitrary action on the part of the State Government. However, in the light of memo dated 24.9.2004 (Annexure P/5) the claim of the petitioners has been rejected by furnishing a reasoning that a scale of Rs. 18600-22100 has been given to Sh. Nachhattar Singh Mavi, Secretary Punjab Vidhan Sabha (respondent No. 5) only as a personal measure, as per the decision taken by the Mantri Parishad in the meeting held on 11.9.2003. It is against such factual back-drop that the instant writ petition has been filed.

3. During the course of hearing of the instant writ petition, an affidavit dated 3.12.2012 of petitioner No. 1 was taken on record. In the light of such affidavit, the instances of Nachhattar Singh Mavi, Madan Mohan and Ved Parkash, had been furnished who were stated to be identically situated as the petitioner i.e. having served on the post of Secretary, Punjab Vidhan Sabha and who had been granted the pay scale of Rs. 18600-22100 as is being sought by the present writ petitioners in the instant writ petition. Accordingly, on 3.7.2013, the State had been directed to respond to the affidavit dated 3.12.2012 in terms of filing a specific reply thereto.

4. Mr. Pankaj Mulwani, learned DAG Punjab, has placed on record today an affidavit dated 16.7.2013 of Ved Parkash, Secretary, Punjab Vidhan Sabha and the same has been taken on record. Copy stands furnished to learned counsel for the petitioner.

5. In the affidavit dated 16.7.2013, the factual position has been admitted that Nachhattar Singh Mavi, respondent No. 5 was promoted as Secretary, Punjab Vidhan Sabha on 9.11.2000 in the pay scale of Rs. 14300-18600, which was further revised to Rs. 18600-22100 w.e.f. 18.9.2013 as a measure personal to him. It is further admitted that Sh. Madan Mohan upon being promoted as Secretary, Vidhan Sabha was also granted the pay scale of Rs. 18600-22100 and it was subsequently revised to Rs. 37400-67000 w.e.f. 1.1.2006 in the light of notification dated 27.5.2009. Likewise, even Sh. Ved Parkash upon being promoted as Secretary, Punjab Vidhan Sabha w.e.f. 19.10.2011 was granted the

pay scale of Rs. 37400-67000 (unrevised pay scale 18600-22100).

6. The pleadings on record clearly make out a case of discrimination at the hands of the State against the petitioners. Admittedly, the other officials, who held the post of Secretary Punjab Vidhan Sabha i.e. Sh. Madan Mohan and Sh. Ved Parkash have enjoyed the pay scale of Rs. 18600-22100 and further revised to Rs. 37400-67000. That can be no justifiable reason to deny to the petitioners the same pay scale that had been granted to their counter-parts.

7. Even the justification being put forth as regards the grant of higher pay scale of Rs. 18600-22100 to respondent No. 5 terming the same to be a measure personal is wholly misconceived.

8. It is by now well settled that employees holding the same post and borne on a joint cadre and are doing the same duties and having the same service conditions are to granted identical pay and emoluments. It would not be open for the employer to discriminate between such employees and adopt a course of action so as to single out one particular employee to grant a higher pay scale terming the same to be a personal measure.

9. In similar circumstances, Gallery Assistants who were working in the Department of Cultural Affairs, Archaeology and Museums had approached this Court claiming the same pay scale as had been granted to one of their counter-parts as a personal measure. The Division Bench of this Court in Jaswinder Singh Vs. State of Punjab 1997 (4) RSJ 769 while allowing the petition and the claim of the petitioners therein for identical pay scale had held in the following terms:-

2. After hearing the learned counsel for the parties, we are of the view that this writ petition deserves to succeed. No reason is forthcoming as to why the higher pay scale was given to the other four Gallery Assistants as a personal measure. Petitioner belongs to the same cadre to which the other four Gallery Assistants belong, to whom pay scale of Rs. 1800-3200 has been given. The petitioner is having the same service conditions the other four Gallery Assistants and is doing the same duties and shouldering the same responsibilities. The respondents cannot discriminate persons similarly situated, within the same cadre unless they can justify that the petitioner is of a different class as compared to the four other persons who have been given the higher pay scale. No basis, as observed above has been given as to why the petitioner is being treated differently in so far as the pay scale is concerned, as compared to the other four Gallery Assistants.

3. For the foregoing reasons, we allow the writ petition and direct the respondents to pay to the petitioner the same pay scale i.e. Rs. 1800-3200, revised from time to time from the date of his joining. However, the arrears, so calculated, shall be confined to three years and two months prior to the date of filing of the writ petition, which was filed on March 31, 1997. Let these directions be carried out within a period of three months of the receipt of a copy of this order either from this Court or a certified copy thereof from the petitioner, whichever is earlier.

10. For the reasons recorded above, the present writ petition is allowed. The impugned order dated 24.9.2004 (Annexure P/5) is quashed. Petitioner No. 1 is held entitled to the scale of Rs. 18600-22100 w.e.f. 1.1.1998 i.e. the date he was promoted as a Secretary, Punjab Vidhan Sabha Secretariat. Likewise, petitioner No. 2 is also held entitled to the scale of Rs. 18600-22100 w.e.f. 1.1.1996 i.e. date such revised scale come into operation as he already stood promoted to the post of Secretary from an earlier date.

11. The requisite arrears be calculated and be released to the petitioners within a period of three months from the date of receipt of certified copy of this order. Petitioners are also held entitled to the consequential pensionary benefits on the basis of grant of such revised pay scale of Rs. 18600-22100. Petition is allowed in the aforesaid terms.