

(2010) 11 SHI CK 0339
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 9754 of 2008

Sh. Rajesh Sohal and Others	Vs	APPELLANT
State of Himachal Pradesh and Another		RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0339

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—Mr. Dilip Sharma, learned Counsel for the petitioners has referred to and relied upon the decision rendered by this Court in Shri Bansi Lal v. The State of Himachal Pradesh and Anr. Latest HLJ 2009 (HP) 750.

2. There is no dispute that petitioners were appointed on various dates as given in Annexure A-1. It is evident from Annexure A-2 that in the Department of Health, post of Laboratory Technicians was redesignated as Senior Lab. Technicians. This was also communicated to the Director of Health, Services vide letter dated 24.1.1981 (Annexure A-3).

3. Vide letter dated 2.8.1982 Bansi Lal petitioner in Bansi Lal (supra) was appointed as a Laboratory Technician.

4. It cannot be disputed that in the year 1984 Department of Health as it originally stood was bifurcated into two departments i.e. Department of Health and Family Welfare and Department of Ayurveda. Post bifurcation Rules governing the said posts stand unamended. Same rules are being followed in both the departments.

5. Vide order dated 23.9.1996 (Annexure A-7) certain posts were advertised. In this letter a distinction is created between Senior Laboratory Technicians and Laboratory Technicians. This was so done apparently for the reason that in the

department of Ayurveda post was not redesignated inspite of notification (Annexure A-2) and letter (Annexure A-3) issued by appropriate authorities.

6. In the meanwhile Government decided to revise pay scales of Senior Laboratory Technicians. Sh. Bansi Lal was not accorded benefit of such revision for the simple reason that it was not made applicable to the Laboratory Technicians working in the department of Ayurveda. Consequently Sh. Bansi Lal took recourse to legal remedy and in terms of Bansi Lal (supra) benefits of the revised pay scale stand accorded to him. The relevant portion of the judgment is reproduced as under:

3. The petitioner was appointed as Laboratory Technician. He has undergone training in the year 1981 to 82. A bare perusal of Annexure A-12 dated 27.6.1980 shows that nomenclature of the post of Laboratory Technician was changed to the Senior Laboratory Technician in the pay scale of Rs. 510-940. The petitioner was appointed in the Health & Family Welfare Department. He was granted pay scale of Rs. 510-940 with effect from 2.8.1982. He was allocated to the Directorate of Ayurveda. In the Health & Family Welfare Department as per notification dated 23.4.1991, the pay scale of Senior Laboratory Technician was revised from existing of Rs. 510-940 to Rs. 1410-2460. However, in the Department of Ayurveda, the pay scale of Rs. 510- 940 was revised to Rs. 1350-2400. It is in these circumstances that the petitioner was affected. His representation has been rejected by the Commissioner-cum-Secretary (Health) vide Annexure A-11 on 2.2.1995. The pay scale of the petitioner could not be reduced on the basis of Annexure R-2 dated 23.7.1990. The plea of the learned Senior Additional Advocate General that this has been done on the basis of Punjab pattern cannot be accepted. In the present case, the nomenclature of the post of Laboratory Technician was changed to Senior Laboratory Technician in the year 1980. The petitioner was also holding the post of Senior Laboratory Technician on the basis of Annexure A-12 dated 27.6.1980. He was granted, as noticed above, pay scale of Rs. 510-940 by the Director (Ayurveda) himself on 11.3.1983. The Department of Ayurveda and Health & Family Welfare Department are working under the same employer. The petitioner could not be discriminated against by the respondents for the purpose of pay scale to his detriment after his allocation from Health & Family Welfare Department to Ayurveda Department. In the Department of Health & Family Welfare, the pay scale was revised from 510-940 to Rs. 1410-2460. The pay scale of the petitioner was required to be revised from Rs. 510-940 to Rs. 1410-2460. In fact, the case of the petitioner is also covered under the principle of "equal pay for equal work." The petitioner had obtained the same training which has been undergone by the similarly situate persons working as Senior Laboratory Technicians in the Department of Health & Family Welfare. He is discharging the same duties which are being discharged by his counter-parts in the Department of Health & Family Welfare.

4. The Commissioner-cum-Secretary (Health) has not correctly decided the

representation on 2.2.1995. In fact, the respondents have over-looked Annexure A-12 dated 27.6.1980 whereby the nomenclature of the post of Laboratory Technician was changed to Senior Laboratory Technician. The petitioner was also working as Senior Laboratory Technician on the basis of this notification. In fact, in the notification dated 23.7.1990, the post at serial number 10 should have been designated as Senior Laboratory Technician instead of Laboratory Technician. The petitioner had come to the Department of Ayurveda as Senior Laboratory Technician and there was no requirement as averred in the reply to change the designation at the time of bifurcation in the month of February, 1985. The respondents could not unilaterally change the terms and conditions of the petitioner's employment while he was working in the Department of Health and Family Welfare to his detriment in February, 1985. He was entitled to get all the benefits including the pay scale and to continue to draw the same even when he was transferred/allocated to the Department of Ayurveda.

5. Accordingly, the writ petition is allowed. The action of the respondents of granting the petitioner pay scale of Rs. 1350-2400 instead of Rs. 1410-2460 vide Annexure R-2 dated 23.7.1990 is declared Arbitrary. Annexure A-11 dated 2.2.1995 is quashed and set aside. The respondents are directed to release the petitioner pay scale of Rs. 1410-2460 with effect from 23.7.1990 with all consequential benefits with interest @ 9% per annum. The needful be done within a period of eight weeks. No costs.

7. It cannot be disputed, as is evident from the pleadings of the parties, that petitioners are performing same work and discharging same and identical duty as is being done by not only Bansilal but also Senior Laboratory Technicians appointed in the department of Health and Family Welfare. This Court on the principle of "equal pay for equal work" has already accorded benefits of higher pay scale to Bansilal. I see no reason to differ with the same.

8. Consequently present petition is allowed and directions issued in Bansilal (supra) shall *mutatis mutandis* apply to the facts of the instant case also. Petitioners shall get benefit of revised pay scale from the dates of their entitlement. Consequential action be positively taken within a period of three months from the date of the receipt of the certified copy of the order. Arrears be positively paid within the aforesaid period, failing which, thereafter petitioners shall be entitled to interest @ 9 % per annum.

9. With the aforesaid observations the present petition stands disposed of.