

(1973) 06 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 152 of 1970

Shri P.N. Dhawan

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 28-06-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (1973) 2 ILR HP 817

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; C.L. Kapila, for the Respondent

Final Decision : Allowed

Judgement

D.B. Lal, J.—P.N. Dhawan who has since retired, has filed this writ petition under Articles 226 and 227 of the Constitution of India, wherein he has asked for a direction to Respondents 1 to 4 who are the State of Himachal Pradesh and its officers, to fix his pay as Superintendent of the Medical College, Simla, in the scale of Rs. 350-20-450 with effect from 1st May, 1965, and thereafter determine his pension and gratuity treating his pay in the said scale. The facts which gave rise to the petition are, that P.N. Dhawan got appointment on 1st June, 1958 as Head Assistant in the grade of Rs. 250-350 in the Himachal Pradesh Administration. After serving as Head Assistant upto 10th January, 1965, he was promoted as Assistant Incharge, Medical Directorate on 11th January, 1965, in the grade of Rs. 300-20-400. Thereafter on 1st May, 1965, he was promoted as Superintendent in the Medical College and continued there as such upto the date of his retirement on 22nd August, 1969. The Petitioner contends that on 26th June, 1962, (Annexure B) the President of India had created a post of Office Superintendent for the Medical College and the scale of pay admissible to the incumbent was the corresponding scale of pay of the Superintendent under the Himachal Pradesh Administration. The lieutenant Governor, Himachal Pradesh, vide annexure "C" made rules on 24th June, 1965, for he posts in the

Himachal Pradesh Medical and Public Health Department of the Himachal Pradesh Administration. In these rules, the scale of pay for the post of Office Superintendent or Superintendent was fixed at Rs. 350-20-450. Since the Petitioner was working as Office Superintendent in the Medical College and was holding an equivalent post, by virtue of the order of the President dated 26th June, 1962, (ibid), he was entitled to get this scale of pay. Still the Petitioner was continued in the scale of pay of Rs. 300-20-400, and that is the grievance of the Petitioner. According to the Petitioner, he made several representations, but no relief was given to him. After the retirement of the Petitioner, the new incumbent one Shri Rattan Lal Sharma who succeeded him was given the higher scale of pay, namely, Rs. 350-20-450, which was denied to the Petitioner. As such there was discrimination and Articles 14 and 16 apply. The pension and gratuity of the Petitioner was also not determined. He suffered almost a financial crisis. Therefore, the Petitioner filed the present writ petition seeking a mandamus against the State Government and its officers to fix up the proper pay scale of the Petitioner and also to determine his pension and gratuity accordingly.

2. The Respondents contested on the allegations, that the rules of 26th June, 1962 (Annexure B) were followed by another order of the Lieutenant Governor dated 11th March, 1964 (Annexure R-11) and in that order the post of Office Superintendent was created and the scale of pay was fixed at Rs. 300-20-400 which scale was drawn by the Petitioner. It is further stated by the Respondents that the Petitioner was given the lower scale of pay because he was formerly Assistant Incharge, Medical Directorate and continued as such, even though he was designated as Office Superintendent. The nature of duties, which the Petitioner performed, was the same as that of Assistant Incharge, Medical Directorate. In respect of the person who succeeded the Petitioner, a separate order was made by the Lieutenant Governor dated 24th September, 1969 (Annexure R-III) and the post of Office Superintendent of the Medical College was upgraded and the scale of Rs. 350-20-450 was fixed for it. That is why Rattan Lal who succeeded the Petitioner was able to get that grade to which the Petitioner was not entitled. However, the Respondents contended that the Petitioner was given the benefit of a still higher grade of Rs. 400-650 with effect from 1st February, 1968, which they preferred to call "Punjab Scale pattern". In this manner, according to the Respondents, no relief can be given to the Petitioner.

3. There can be no denial that the Petitioner was holding the post of Superintendent with effect from 1st May, 1965, and continued to hold that post upto 22nd August, 1969. To this very post, the order of the President dated 26th June, 1962, (Annexure B) related and it was specifically laid down that the scale of pay admissible to the incumbent was the corresponding scale of Superintendent under the Himachal Pradesh Administration. The post was created upto the end of February, 1964. Thereafter the duration of the post was extended and the Lieutenant Governor made his order dated 11th March, 1964, (Annexure R-II) extending the post upto 28th February, 1965, and fixed up the

scale at Rs. 300-20-400 The Petitioner was not working against this post at that time. He was promoted on 1st May, 1965. The rules regarding the post of Superintendent in Medical and Public Health Department were promulgated on 24th June, 1965, (Annexure C) and manifestly the scale of pay fixed for Office Superintendent was Rs. 350-20-450. In view of the condition laid down in the order of the President dated 26th June, 1962, (Annexure B), the scale of pay for the post was necessarily required to be fixed up at Rs. 350-20-450, no sooner this scale was given to the post of Office Superintendent by the Secretariat rules dated 24th June, 1965 (Annexure C). It is immaterial that on 11th March, 1964, (Annexure R-II) the Lieutenant Governor had chosen to fix up the scale of Rs. 300-20-400 for the post of Superintendent in the Medical College. It is not known what was the scale of pay of the post of Superintendent in the Medical and Public Health Department before 24th June, 1965. Therefore, it cannot be necessarily stated that the scale of pay at that time was not more than Rs. 300-20-400. Apart from that, the order of the President dated 26th June, 1962, (Annexure B) fixing the scale with reference to Secretariat scale was not set aside by a competent authority who could only be the President. This being the position, the effect of the order of the President dated 26th June, 1962, (Annexure B) was not dissolved and it is totally immaterial that (he Petitioner happened to occupy that post on 1st May, 1965 or that the Secretariat rules came into force on 24th June, 1965 (Annexure C). At any rate, on 24th June, 1965, the Secretariat scale of pay was declared and the Petitioner having held the same post was definitely entitled to that scale with effect from that date.

4. The officer who succeeded the Petitioner, namely, Rattan Lal, was given the higher scale of pay and the plea that in respect of Rattan Lal another order was made by the Lieutenant Governor on 24th September, 1969, (Annexure R-III) would be of no avail. The Respondents seem to have continued the same post at the lower scale to suit their convenience. This they could not do to the detriment of the Petitioner. It is abundantly clear that the Petitioner and Rattan Lal were placed in the same situation. Both were occupying the same post having similar duties and responsibilities. The one could not be discriminated against the other. In this manner, Article 14 was clearly violated. Besides that, Article 16 would also come into operation and equal opportunity was to be given to the Petitioner in the matter of his employment. He could not be denied the higher scale of pay which was fixed for the post as far back as on 26th June, 1962.

5. In *R.N. Rajanna v. The State of Mysore* 1970 S.L.R. 107 a Division Bench of Mysore High Court was considering the case of a Government officer who was occupant of a Class II post but was given scale of pay of Class III post. It was held that the officer no sooner stated holding Class II post the attributes of the holder of Class III post could not continue to fasten upon him and he became entitled to the scale of pay of a Class II post. I do not think that such a phenomenon is at all possible under the service rules. It is, of course, a different matter that definite rules are provided to meet such a situation or service contract itself creates a bar so that despite the officer holding a higher post, he is

made to draw the scale of pay of a lower post. Such is not a situation in the present case. The Petitioner cannot be held not to be entitled to higher emoluments despite his holding of the very same post which definitely carried such emoluments. It was wrong on the part of the Respondents to have given him the lower scale, at any rate from 24th June, 1965 when the higher scale was prescribed for the post.

6. A Government officer draws his pay at a particular scale according to the statutory rules or according to his service contract. If he holds a post for which a definite scale of pay is prescribed, he cannot be awarded a lower scale, for the simple reason that the duties and responsibilities of the post he is holding entitle him to receive the scale assigned to such post. It would be incongruous to award him lesser emoluments for the duties and responsibilities he is performing for the post for which higher emoluments are prescribed. When similar posts carrying same duties and responsibilities are held by offices, no discrimination can be made in the matter of emoluments paid to them.

7. The Petitioner is, therefore, entitled to a direction to the Respondents so that the pay for the Petitioner is fixed in the scale of Rs. 350-20-450 with effect from 24th. June, 1965, with all resultant benefits to him. His pension and gratuity case would also be re-opened and determined accordingly.

8. The writ petition is allowed and reliefs (a) and (b) are granted to the Petitioner with this modification that the benefit of higher scale shall be given to him with effect from 24th June, 1965.

9. In the special circumstances of the case, no order is made as to costs.