

(2010) 12 SHI CK 0426
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6114 of 2008

Shri Ram Nath Soni and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0426

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The dispute herein relates to the grant of uniform pay scale of Rs. 300-600 w.e.f. 1.11.1966 to the then Assistant Librarians working in the Colleges/Schools/Public Libraries/Community Centre Libraries forming a common cadre in the Education Department.

2. The background facts giving rise to the present dispute are that the aforesaid pay scale of Rs. 300-600 was granted to some of the Assistant Librarians only on the basis of seniority and others were left out. Being aggrieved and dis-satisfied with, the left out Assistant Librarians took the matter to this Court by way of writ petitions filed during the years 1979, 1981 and 1982. However, in the meantime on establishment of the erstwhile H.P. State Administrative Tribunal (since abolished), the writ petitions were transferred to the said Tribunal and the same ultimately came to be decided vide a common judgment dated 26.7.1993, Annexure A-2, rendered by the said Tribunal, operative part whereof is extracted below:

"Following the ratio of the above judgments, we direct the Respondents to revise the pay scale of the applicants and other similarly situate Assistant Librarians in Schools/College/Public Libraries and Community Centre Libraries under the Himachal Pradesh Education Department to Rs. 300-600 in consonance with the Office Order dated July 7, 1981 Annexure PB, within a period of two months and

they be allowed all further consequential benefits to which they are found entitled subsequently consequent upon this revised pay scale. We further direct that the arrears found due and payable as a result of such revision be paid to them within a period of three months after such revision."

3. The above decision of the Tribunal was implemented by the Respondents vide notification dated 16.6.1994, Annexure A-3 restricting the same only qua "all the incumbents of the posts of Assistant Librarians" "as a measure personal to the existing incumbents". However, later on a clarification was issued vide memo dated 14.9.1999, Annexure A-13, which is to the following effect:

It is clarified that the judgment of the Hon"ble Tribunal, H.P. dated 16.7.93 read with Govt. Notification dated 16.6.94 delivered in the case titled TA No. 543 of 1986 D.R. Chauhan and Ors. v. State of H.P. clearly indicate that all the incumbents of the posts of Asstt. Librarians in the Education Deptt. shall get the pay scale of Rs. 300-600 w.e.f. 1.11.66 and subsequent revised pay scale at par with the pay scale allowed to the Sr. Asstt. Librarians of this Deptt.

as a measure personal to the existing incumbents. It means that the benefit goes to only those Asstt. Librarians who were actually in service as such on 31.12.65 and not to these who entered Govt. service after 31.12.65. Such Asstt. Librarians were to be allowed the pay scale of Rs. 125-300 w.e.f. 1.11.66, 450-800 w.e.f. 1.1.78, 1200-2100 w.e.f. 1.1.86 and 4020-6200 w.e.f. 1.1.96.

It has been observed that some of the D.D. Os" in r/o the Estt. of Asstt. Librarians have not gone through the contents of the Notification aforesaid properly and allowed such pay scale benefits on revisions or otherwise as have been granted to the incumbents of the posts of Asstt. Librarians who were in service as such on 31.12.65 resulting wrong award of pay scale(s) and over payments on that account.

It is requested that the matter may please be looked into and such cases examined in its right perspective.

In case any deviation is found, revised fixation of pay with retrospective effect be made and the amount of over payments be worked out and recoveries made with immediate effect. Action taken in the matter may be intimated at the earliest. All the D.D. Os. in r/o the Estt. of Asstt. Librarians/Sr. Asstt. Librarians etc. are required to intimate status position of each individual in this regard.

4. Consequent upon issuance of the aforesaid classification, vide memo dated 14.9.1999, Annexure A-13, the Petitioners being affected persons have filed the present petition on the following prayers:

7 (A). The impugned order Annexure A/13 dated 14th of September, 1999 may kindly be quashed and set aside.

(B). Directions may also kindly be issued to the Respondents not to act upon the impugned order Annexure A/13 with further directions to allow the applicants to

continuing drawing their pay in the revised pay scale as per order of Respondent No. 1 passed on 16th of June, 1994 in compliance of the judgment of this Hon'ble Tribunal Annexure A/2 dated July 26, 1993.

(C). That in the event of recovery, if any, having been effected the same may kindly be ordered to be re-paid to the applicants with 18% interest throughout. However, for restraining the Respondents not to implement the impugned order Annexure A/13 the applicants are also making prayer under paragraph 8 below so that the applicants may not be put to any financial loss for the omissions and commissions committed by the Respondent No. 2 without the approval of the competent authority and that too in disobedience of the judgment rendered by this Hon'ble Tribunal dated July 26, 1993.

5. The Respondents have taken the following stand, vide paras 6 (iv), (v) to (vii) and (viii) to (ix) of the reply:

6 (iv). That in reply to the averments made to this para it is submitted that the Petitioner is wrongly basing his claim on the judgment in TA No. 543/86. The TA No. 324/86 and 320/86 were disposed of by the common judgment in TA No. 543/86. The import of such judgment has no nexus with the case of the Petitioner as the same are distinct and on different footing. The Petitioner has joined the Respondent-department after 26.7.1993 which is the cut off date, hence has no plausible and valid cause of action to seek parity with those incumbents who were in service as on 31.10.1966. In the matter of pay scale of Rs. 300-600 was denied to one section of similar situate Assistant Librarians/Librarians at that specific point of time. It is further submitted that no doubt the judgment rendered in T.A. No. 543/86 was implemented in letter and spirit by the State but the applicability of same was not open for those Assistant Librarians who came into service after 1.11.1966. It is pertinent to mention here that the present Petitioner is not party to any of these petitions filed in the Hon'ble High Court. The pay scale of Rs. 300-600 was in fact granted as a measure personal to those Assistant Librarians who were in existence as on 31.10.1966. Under these circumstances higher pay scale wrongly granted to the Petitioner do not create any valid or legitimate grounds to enjoy the same as long as they wish. It is within the domain of the State to rectify the mistake even at the belated stage as and when the same comes into notice, hence the present petition is bad in law and the same is liable to be dismissed.

(v) to (vii). That in reply to the comments of these paras it is submitted that since the Petitioners have been appointed after 26.7.1993 in the pay scale of Rs. 125-300 and was revised to Rs. 450-800 w.e.f. 1.1.1978 and Rs. 1200-2100 w.e.f. 1.1.1986 and Rs. 4020-6200 w.e.f. 1.1.1996 hence the Petitioners are entitled to the pay scale in terms of his appointment orders. It is submitted that the Petitioner have wrongly been given the pay scale of Rs. 300-600, 700-1200 & 1640-2925 w.e.f. 1.11.1966, 1.1.1978 & 1.1.1986 respectively by the concerned Drawing and Disbursing Officer after the issuance of notification dated 16.6.1994 owing to misinterpretation of its contents. This mistake has been

rectified by the Respondents, hence the present Petitioners have no right to challenge the same.

(viii) & (ix). That in reply to the contents of these paras it is submitted that the orders issued vide Annexure A/13 passed by the replying Respondent is just, fair and in the bonafide exercise of power, hence the same are sustainable in the eyes of law. It is pertinent to mention here that the controversy has cropped up due to misinterpretation of the contents of notification dated 16.6.1994 by the Drawing and Disbursing Officer concerned. When this matter came into the knowledge of the Respondent, order dated 14.9.1999 were issued in order to clarify the notification dated 16.6.1994. The notification dated 16.6.1994 was absolutely in conformity with the decision of Hon'ble Himachal Pradesh Administrative Tribunal delivered in TA 543/1986. It is relevant to submit here that the pay scale of 20 Senior-most Assistant Librarians designated as Senior Assistant Librarian who were awarded the pay scale of Rs. 300-600 was further revised to Rs. 700-1200 w.e.f. 1.1.1978 and remaining Assistant Librarians in the pre-revised pay scale of Rs. 450-850. Hence, the Petitioners are entitled to the pay scale of Rs. 450-800 w.e.f. 1.1.1978 and Rs. 1200-2100 w.e.f. 1.1.1986.

6. In order to ascertain as to what was the ambit of the aforesaid judgment dated 26.7.1993, Annexure A-2 rendered by the Tribunal, it shall be appropriate to look into the background facts of the case and the controversy involved therein as noticed by the said Tribunal vide paras 2 to 4 of the judgment, which are as under:

2. The case of the applicants, briefly enumerated is that the applicant No. 4 is MA, applicants No. 5, 6, 8, 10 and 11 are Graduates, applicants No. 1 to 3 and 9 are Matric/Higher Secondary and have passed Certificate Course in Library Science. They were employed as Assistant Librarians in the Department of Education, Himachal Pradesh and are governed by the Rules known as "The Himachal Pradesh Education Department Class-III (Technical) Service (Recruitment, Promotion and Certain Conditions of Service) Rules, 1971". It has specifically been averred that there is only one cadre of Assistant Librarians both in the Schools, Colleges as also in the Public Libraries which are being maintained by the Education Department. The Respondent No. 2, the Director of Education vide Office Order dated July 7, 1981 ordered that the senior-most Assistant Librarians will get the pay scale of Rs. 300-600 from the date shown against each official. In most of the cases the revised pay scale is granted with effect from November 1, 1966 and in other cases the pay scale has been granted subsequently as mentioned in the said order. The further case of the applicants in nutshell is that they were also doing the same job and were qualified to hold the aforesaid posts and the higher grade has been given only to a few persons after relaxing the Rules and that non-grant of the revised pay scale of Rs. 300-600 to the applicants is illegal and void.

The Respondents in their reply-affidavit dated April 20, 1982 admitted that the Assistant Librarians of the Colleges/Schools/Public Libraries and Community

Centre Libraries comprise a single category and that the cadre of all the Assistant Librarians is common and there is no superiority of one over the other by virtue of one's being posted in College or School and that the pay scale of Rs. 300-600 has been allowed strictly on the basis of seniority.

The question that arises for determination is as to whether the Respondents are justified in granting the revised pay scale of Rs. 300-600 to only a few Assistant Librarians on the basis of seniority when there is only one cadre of Assistant Librarians both in Schools/Colleges and also in the Public Libraries which are being maintained by the Education Department and to others who are similarly situated and perform same and similar functions and duties and are eligible and qualified not only to the post of Assistant Librarians but also for next higher post of Librarian.

7. It is manifest from the above that the controversy raised before the Tribunal was with regard to "equal pay for equal work" and as such the relief granted by the Tribunal cannot at all by any stretch of imagination stated to be restricted to "the incumbents of the posts of Assistant Librarians" "as a measure personal to the existing incumbents", merely on the basis of seniority. In this regard, it shall be pertinent to observe that in a pay scale such as the present one (Rs. 300-600) on appointment an incumbent would be fixed at the initial of the pay scale i.e. Rs. 300 and after earning yearly increments, he would reach the highest of the pay scale i.e. Rs. 600. In such situation, no discrimination can be made between seniors and juniors in the same pay scale for grant of higher pay scale only on the basis of seniority. However, since it has been done on the basis of memo dated 14.9.1999, Annexure A-13, the same is liable to be quashed.

8. In view of the above, the petition is allowed and memo dated 14.9.1999, Annexure A-13 is quashed with a direction to the Respondents to refund the amount of recoveries, if any, already made along with interest at the rate of 6% per annum within six months from today, failing which higher interest at the rate of 9% per annum shall be payable.

9. The petition stands disposed of in the above terms, so also the pending application(s), if any.