
(2003) 01 P&H CK 0274

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10601 of 1999

Smt. Avinash Rani

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 133 PLR 759

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : P.S. Patwalia, for the Appellant; Ashok Aggarwal, Addl. A.G., for the Respondent

Judgement

Hemant Gupta, J.—Petitioner has sought a writ of mandamus directing the respondents to grant pay scale of Rs. 825-1580 (revised to Rs. 2100-4000) from the date of her appointment as Librarian with effect from 15.7.1988.

2. Petitioner was appointed as Clerk in the Punjab Civil Secretariat on 20.12.1973.. She was graduate at that time. During service, she passed diploma in Library Science. On 6.9.1979, she was posted on the post of Junior Librarian in the Punjab Civil Secretariat Library in her own pay scale till 3.11.1981. On 31.10.1979, one Krishna Kapoor who was working as Assistant Librarian (single cadre post) in the Punjab Civil Secretariat was transferred to Punjab State Planning Board. On transfer of Smt. Krishna Kapobr, she performed duties of the post of Assistant Librarian upto 14.7.1986. In 1978, the designation of the post of Assistant Librarian was changed to that of Librarian. The petitioner was appointed as Librarian on regular basis through Departmental Selection Committee and she joined the said post on 15,7.1988 in the pay scale of Rs. 570-15-600-20-700/25-850/30-100-40-1080. It was the same pay scale which was given to her predecessor Smt. Krishna Kapoor. Subsequently, the petitioner was promoted as Chief Librarian on 27.1.1999.

3. Petitioner has claimed pay-scale on Rs. 825-1580 from the date of her

appointment as Librarian on 15.7.1988 on the premise that Smt. Krishna Kapoor had claimed such pay scale by way of civil suit which was decreed by the learned First Appellate Court. The regular second appeal was dismissed by this court on 22.8.1997 and SLP was dismissed on 9.1.1998. Smt. Krishna Kapoor has sought such pay-scale on the ground that her counterpart in the Education Department and Public Libraries are getting the said pay scale and therefore, she is also entitled to the said pay scale. In civil suit, it has been held that the Librarians are entitled to the higher pay scale and the same cannot be denied to the plaintiff-Krishna Kapoor.

4. It is contended by the counsel for the petitioner that as Smt. Krishna Kapoor has been found entitled to pay scale of Rs. 825-1580 for the period she was working as Assistant Librarian (subsequently designated as Librarian) then the petitioner is also entitled to said pay scale. The said pay scale cannot be denied to the petitioner as the same is the pay scale of post of Librarian found by the Civil Court.

5. In reply, it has been mentioned that the petitioner has approached the Court in 1999 for an alleged cause of auction which arose to her on 15.7.1988 and thus, writ petition suffers from delay and laches. It is further mentioned in the reply that the petitioner while working as permanent Assistant in the Punjab Civil Secretariat in the pay scale of Rs. 600-1120 had applied for the post of Assistant Librarian in the pay scale of Rs. 570-1080 and as she applied for the said post in the lower pay scale on her volition, therefore, she cannot claim the higher pay scale of Librarian.

6. After hearing the learned counsel for the parties and going through the record of the case, we find that the petitioner cannot be denied pay scale of Rs. 825-1580. It has been found by the Civil Court in Suit filed by Smt. Krishna Kapoor that the post of Librarian in Punjab Civil Secretariat is entitled to same pay scale as that of Librarian in Education Department/Public Libraries. Once finding has been given by Civil Court in respect of the pay scale applicable to post, the said pay scale cannot be denied to the petitioner.

7. However, the fact remains that the petitioner has filed the writ petition on 2.8.1999. It has been held by the Full Bench in *Saroj Kumari, Teacher Govt. Girls Sr. Sec. School, Ferozepur and Others Vs. State of Punjab and Others*, that in such circumstances where claim involved is of fixation of pay in accordance with rules and instructions, it is a recurring cause of action for an employee and the writ petition cannot be dismissed on the ground of delay and laches. However, the court can restrict the arrears upto 38 months from the filing of the petition and disallow the arrears from which the suit has become time barred.

8. Thus, we allow the present writ petition and direct the respondent to grant pay scale of Rs. 825-1580 with effect from 15.11.1988 with all consequential benefits. However, the payment of arrears shall be restricted to the period of 38 months immediately preceding the date of filing of the petition.

Writ petition stands disposed of in the above terms.

Sd/- S.S. Nijjar, J.