

(2015) 12 SHI CK 0086

In the High Court Of Himachal Pradesh

Case No : LPA Nos. 146 of 2009, 170, 172 of 2013, 157 of 2014, CWP Nos. 6680 of 2010, 10045 of 2013 and 2870 of 2014

State of H.P. and Others

APPELLANT

Vs

V.D. Saraswati and Others

RESPONDENT

Date of Decision : 23-12-2015

Acts Referred:

Citation : (2015) 12 SHI CK 0086

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Shrawan Dogra, Advocate General, V.S. Chauhan, Addl. A.G., J.K. Verma and Vikram Thakur, Dy. A.Gs., for the Appellant; K.D. ShreedharAdvocateAdvocate, Shreya Chauhan, Dushyant Dadwal, M.L. Sharma, Vidushi Sharma and Vikas Rajput, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.

1. By the medium of LPA No. 146 of 2009, the appellants-State, (respondents before the writ Court), have challenged the judgment and order, dated 18th May, 2009, passed by a learned Single Judge of this Court in CWP(T) No. 4436 of 2008, titled V.D. Saraswati and others v. State of H.P. and another, whereby the writ petition filed by the petitioners (respondents herein) came to be allowed and the writ respondents were directed to pay to the petitioners the pay scales in terms of Annexure A-12, appended with the writ petition.

2. LPAs No. 170 of 2013 and 157 of 2014 are the outcome of common judgment and order, dated 30th May, 2012, passed by a learned Single Judge of this Court in CWP No. 5118 of 2010, titled Piare Lal and others v. State of H.P. and another, and CWP No. 5262 of 2010, titled Ram Nath Sharma and others v. State of H.P. and another, respectively, while LPA No. 172 of 2013, lays the challenge to the judgment and order, dated 19th June, 2012, passed in CWP No. 5762 of 2010,

titled Kirpa Ram and others v. State of H.P. and another. Vide the judgments, impugned in the aforesaid Letters Patent Appeals, the learned Single Judge has allowed the writ petitions and passed the similar directions as were given in CWP(T) No. 4436 of 2008, titled V.D. Saraswati and others v. State of H.P. and another, (subject matter of LPA No. 146 of 2009).

3. The writ petitioners, by the medium of CWP Nos. 6680 of 2010, 10045 of 2013 and 2870 of 2014, have also prayed for the similar relief as has been granted in favour of the writ petitioners vide judgments impugned in the above Letters Patent Appeals.

4. This is how all the appeals and the writ petitions came to be clubbed together and are being disposed of together by this common judgment.

5. At the very outset, it may be placed on record that the dispute rotates around the grant of one pay scale to the entire cadre of Assistant Librarians serving in the Education Department of the State.

6. The genesis of the whole dispute appears to be the letter dated 7th July, 1981, issued by the State, whereby higher scale of pay of Rs. 300-600 was granted to some senior-most Assistant Librarians. Feeling aggrieved, the remaining Assistant Librarians challenged the said action of the State by the medium of writ petitions before this Court on the ground of discrimination since the petitioners and the senior-most Assistant Librarians who were given the higher pay scale, formed one class and were discharging same and similar duties.

7. The said writ petitions, on the founding of the State Administrative Tribunal, (hereinafter referred to as the Tribunal), came to be transferred to the Tribunal. The Tribunal, vide order dated 26th July, 1993, allowed the said writ petitions and directed the State to revise the pay scale of the writ petitioners and the similarly placed Assistant Librarians working in the Himachal Pradesh Education Department. It is apt to reproduce the operative portion of the said order as under:

"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/Colleges/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."

8. Indisputably, the said decision of the Tribunal was never challenged by the State and as such has attained finality. It is also a fact that the said decision of the Tribunal was never implemented by the respondent-Department in its letter and spirit. Rather, the respondent-Department issued a letter, dated 16th June,

1994, whereby the respondent-Department granted the higher pay scale only to the Senior Assistant Librarians.

9. Faced with such discrimination, the Assistant Librarians approached the Tribunal by filing the Original Applications and on abolition of the Tribunal, the said Original Applications were transferred to this Court and one such Original Application was diarized as writ petition, being CWP(T) No. 6018 of 2008, titled Madan Lal Tomar and others v. State of H.P. and others.

10. The said writ petition was allowed by the learned Single Judge vide judgment dated 22nd March, 2010, against which the State filed the Letters Patent Appeal, being LPA No. 237 of 2010, titled State of H.P. and another v. Madan Lal Tomar and others.

11. The Division Bench of this Court heard the said Letters Patent Appeal (LPA No. 237 of 2010) alongwith LPA No. 98 of 2011, titled State of H.P. and another v. Mrs. Ashwani Kumari and CWP No. 6680 of 2010, titled D.R. Chauhan and others v. State of H.P. and another. The Letters Patent Appeals were dismissed while the writ petition was allowed by the Division Bench of this Court, vide judgment, dated 22nd November, 2011. It is apt to reproduce paragraphs 6, 7 and 8 of the said judgment hereunder:

"6. On the constitution of the H.P. State Administrative Tribunal, the aforesaid writ petitions were transferred to the said Tribunal. All the writ petitions were heard and decided together vide order dated 26th July, 1993. The Tribunal by its order decided the following question:

"Whether the State is 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 in Schools/Colleges/Public Libraries, maintained by the Education Department and all the Assistant Librarians are performing the same and similar functions and duties?"

The Tribunal, after detailed discussion, held as follows:

"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/Colleges/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."

7. A bare perusal of the operative portion of the order of the Tribunal clearly shows that the Tribunal directed the State to revise the pay-scales of the petitioners and other similarly situated Assistant Librarians to Rs. 300-600. It is not disputed before us that this order of the Tribunal attained finality and was

never challenged by the State before any higher forum.

8. Unfortunately, the State did not comply with the aforesaid directions, insofar as other similarly situated persons are concerned. It issued a letter on 16th June, 1994 and in this letter it directed that the pay scale of Rs. 300-600 would be granted only to the senior Assistant Librarians as a measure personal to the existing incumbents. To say the least, this letter was in total violation of the directions issued by the Tribunal. The stand of the State that the higher pay-scale of Rs. 300-600 was payable only to the senior Assistant Librarians is totally contrary to the orders passed by the Tribunal. At this stage, we are not going into the validity of the orders passed by the Tribunal since they had attained finality. If the State was aggrieved by the orders of the Tribunal, it had the right to challenge the said orders in the appropriate forum. It chose not to challenge the orders and, therefore, was bound to comply with the same. The order, the operative portion of which has been quoted hereinabove, in no uncertain terms states that all Assistant Librarians, i.e. the petitioners as well as other similarly situated were to be granted the pay-scale of Rs. 300-600. The judgment was a judgment "in rem and not in personam". The State could not have set at naught the judicial pronouncement of the Tribunal."

12. During the course of hearing, it was informed that the aforesaid judgment passed by this Court in Madan Lal Tomar's case was assailed by the State before the Apex Court by filing Special Leave Petition and the said Special Leave Petition was dismissed by the Apex Court.

13. It is pertinent to note that the aforesaid judgment in Madan Lal Tomar's case supra was recalled so far as it related to CWP No. 6680 of 2010, vide order dated 29th March, 2012, passed in Civil Review No. 183 of 2011. In this backdrop, the said writ petition has been taken up with the instant cases for final disposal.

14. Thereafter, subsequent development had taken place and the cadre of Assistant Librarians was granted U.G.C. Scale. However, the Government issued a letter dated 31st March, 1995, in the same manner as had been issued earlier (subject matter of aforesaid writ petitions, Letters Patent Appeals and Special Leave Petition), whereby U.G.C. Grade and revised pay scale was granted to only 20 senior Assistant Librarians, who were working in District/Public and Central State Library, Solan, which action was assailed by the petitioners by filing CWP(T) No. 4436 of 2008, titled V.D. Saraswati and others v. State of H.P. and another. The said writ petition was allowed by the learned Single Judge, vide judgment dated 18th May, 2009 (subject matter of LPA No. 146 of 2009), and the benefit of the letter dated 31st March, 1995 was ordered to be extended to all the petitioners, which judgment was followed by the learned Single Judge in other writ petitions (subject matter of LPA Nos. 170 of 2013, 172 of 2013 and 157 of 2014).

15. The question is - Whether, in the given circumstances, the State can now question the judgments made by the learned Single Judge by the medium of

Letters Patent Appeals in hand? The answer is in the negative for the simple reason that, admittedly, the principle has been discussed and the findings stand returned by the State Administrative Tribunal, the Writ Court and the Appellate Court that all the Assistant Librarians constituted one homogeneous class, which findings stand upheld by the Apex Court. Virtually, the State, by the medium of instant appeals, has questioned the foundation of the reasoning, on the basis of which the earlier judgments, referred to above, were made, which is not permissible.

16. Having said so, the judgments, impugned in the Letters Patent Appeals, require no interference and the same are upheld. Consequently, the appeals in hand are dismissed.

CWP Nos. 6680 of 2010, 10045 of 2013 and 2870 of 2014:

17. In view of the above discussion, all the writ petitions are allowed in terms of the judgment passed in LPA No. 237 of 2010 and connected matters. However, the benefit of arrears shall be restricted to three years prior to filing of the respective writ petitions.

18. All the appeals and the writ petitions stand disposed of accordingly, alongwith pending CMPs, if any.