
(2010) 08 P&H CK 0292
In the Punjab And Haryana At Chandigarh

State of Punjab and Others	Vs	APPELLANT
Sutinder Prashar and Others		RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Citation : (2010) 08 P&H CK 0292

Hon'ble Judges : M.M. Kumar, J;A.N. Jindal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant appeal filed under Clause X of the Letters Patent is directed against the judgment dated 15.10.2009 passed by the learned Single Judge by issuing direction to the appellant-State of Punjab to grant to the writ petitioners- respondents the pay scale of Rs. 1800-3200 with effect from the date it has been granted to those who were the petitioners in CWP No. 13330 of 1994 decided on 15.5.2009 titled as Darshan Singh and Ors. v. State of Punjab and Ors. It is undisputed that the writ petitioners-respondents have been working on the post of surveyors in the Irrigation Department, Punjab and they have claimed the pay scale equivalent to the surveyors who have been working in the Soil Conservation Department of Punjab. It is further appropriate to notice that some surveyors working in the Irrigation Department earlier approached this Court and filed CWP No. 13330 of 1994 which was allowed on 15.5.2009 - Darshan Singh's case (supra). Their writ petition was allowed by the learned Single Judge and even the L.P.A. No. 380 of 2010 against the aforesaid order of the learned Single Judge was dismissed on 18.3.2010. Accordingly, the learned Single Judge while placing reliance on the view taken in Darshan Singh's case (supra) has allowed the writ petition filed by the writ petitioners-respondents in the same terms.

2. Mr. Sehgal, learned Additional Advocate General, Punjab has highlighted that in Darshan Singh's case (supra), the State of Punjab-appellant could not file written statement and the averments made in the petition were taken as correct

and accordingly the relief was granted whereas in the instant case a categorical stand has been taken by the appellant- State of Punjab asserting that there is no similarity between the two posts of surveyors. However, we pointed out to Mr. Sehgal that in the order passed by the learned Single Judge, which is the subject matter of challenge in the instant petition, the State Counsel has conceded that the matter was covered by the judgment rendered in Darshan Singh's case (supra).

3. To answer the aforesaid query, Mr. Sehgal has argued that a wrong concession given can always be withdrawn and has placed reliance on the observations made in the concluding part of para No. 23 of the judgment delivered by Hon"ble the Supreme Court in the case of Uptron India Limited Vs. Shammi Bhan and Another, .

4. Mr. Sehgal, has also drawn our attention to para No. 1 of the preliminary objection of the written statement filed in the writ petition from which the instant appeal has emerged to point out that at no stage there was parity of pay scales between the two classes surveyors of two departments. In order to butteress his stand, Learned State Counsel has pointed out that the surveyors in the Irrigation Department has always been drawing lesser pay scale than the surveyors working in the Soil Conservation Department.

5. Another submission made by Mr. Sehgal is that the comparison of two posts which carry same nomenclature, is the job of experts and the Courts should always refrain from comparing them because the Court is not armed with any expertise. In support of his submissions, Learned State Counsel has placed reliance on two recent judgments of Hon"ble the Supreme Court rendered in the cases of S.C. Chandra and Others Vs. State of Jharkhand and Others, and Union of India (UOI) and Others Vs. Hiranmoy Sen and Others, .

6. Mr. D.S. Patwalia, Advocate for the Caveator-respondents has argued that once the concession has been made before the learned Single Judge particularly when the Letters Patent Appeal has been dismissed, it may not be appropriate to take a view different than the one already taken by the Letters Patent Bench of this Court. According to the learned Counsel, if a different view is taken then the class of surveyors working in the Irrigation Department would be divided in two. One who have succeeded before the writ court as well as the Letters Patent Bench and the other one who have failed, if the submissions of the Learned State Counsel are accepted. Such a different treatment would result into serious anomaly and resentment amongst the employees of the same class. Mr. Patwalia has submitted that consistency may be maintained and the appeal may be dismissed.

7. Even otherwise, on merits Mr. Patwalia has drawn our attention to the recommendations made by the Chief Engineer, Irrigation Department on 28.1.1994 (Annexure "P5") to the effect that the duties of surveyors in both the departments are quite similar and, therefore, the pay scale of surveyors should

be equal and they should also be given the Local Traveling Allowance equally. The aforesaid recommendations were reiterated on 24.3.1994 (Annexure "P6"). However, the Finance Department of the State of Punjab had shelved the proposal in the wake of the announcement of 4th Punjab Pay Commission and the matter has never been considered by the Punjab Pay Commission. On the aforesaid basis, even on merits, Mr. Patwalia has argued that once the department has accepted that the duties of both the posts are similar then the court is not involved to compare their duties and it has to be taken that the expert working in the department have compared the duties and have concluded in favour of the writ petitioner- respondent.

8. After hearing learned Counsel for the parties and perusing the record with their able assistance, we are of the considered view that a peculiar situation has developed in the present case. In facts and circumstances of this case, therefore, we are of the opinion that the surveyors in the Irrigation Department like Darshan Singh and Ors. have succeeded before the learned Single Judge and the Letters Patent Appeal filed by the State of Punjab has been dismissed, then there is no escape from the conclusion that same pay scale which is equivalent to the pay scale of those surveyors who had earlier succeeded in this Court working in the Irrigation Department cannot be denied to the writ petitioners- respondent. Moreover, it was conceded by the Learned State Counsel before the learned Single Judge, in the writ petition from which the instant appeal has emerged, that the controversy is squarely covered by the judgment rendered in Darshan Singh's case (supra) what has been conceded is that the view taken by the learned Single Judge in Darshan Singh's case (supra) covered the controversy which have come up before the learned Single Judge when the writ petition was argued. There is no wrong concession made with regard to the correctness of the law or otherwise. The concession made is only confined to the effect that the controversy was covered by the judgment rendered in the Darshan Singh's case (supra) which statement was not incorrect.

9. The other submission made by the learned Additional Advocate General, Punjab that there cannot be any parity of pay scale merely because the nomenclature of both the posts is same and that it is the job of the experts, would not need to be gone into because once the matter has been decided by a co-equal Bench then we do not feel persuaded to deviate from this view.

10. In the peculiar facts and circumstances of the case and the view already taken by the Letters Patent Bench, suffice it to say that the aforesaid view is binding on the co-equal Bench. Accordingly, the appeal fails and the same is dismissed.