

(2000) 09 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 45 of 1999 and Civil Writ Petition No. 512 of 2000

Suraj Bhan and others

APPELLANT

Vs

State of Haryana and another
 Gurmail Singh and
others Vs State of Haryana and another

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Haryana Civil Services (Revised Pay) Rules, 1998 — Rule 5

Citation : (2000) 09 P&H CK 0194

Hon'ble Judges : V.S. Aggarwal, J; Amar Bir Singh Gill, J

Bench : Division Bench

Advocate : Mr. R.K. Malik, for the Appellant; Mr. R.S. Tacoria, Additional A.G., for the Respondent

Judgement

V.S. Aggarwal, J.—By this judgment, we propose to dispose of Civil Writ Petition Nos. 45 of 1999 and 512 of 2000 as identical question of law and fact is involved in both these writ petitions and can conveniently be disposed of together. The facts are being taken from Civil Writ Petition No. 45 of 1999.

2. Suraj Bhan and others, hereinafter described as "the petitioners", were appointed as Class IV employees. Thereafter, they were promoted as Clerks which are Group "C" posts. They are working as Clerks in Group "C" and the details are as under :

Sr. No.

Name

Date of appointment as Group D.

Date of promotion as clerks, Group C

1.

Suraj Bhan

7.12.1972

1.2.1984

2.

Kartar Singh

10.2. 1972

10.2.1984

3.

Dhanpat Rai

17.8.1972

19.12.1980

4.

Chhaju Ram

18.1.1973

9.2.1984"

It is asserted that the Government of Haryana has issued a policy decision that all the Group "C" and Group "D" employees will be granted 1st higher standard pay scale and 2nd higher standard pay scale on completion of 10 years and 20 years service respectively. A clarification was issued subsequently that where the employees were initially appointed on Class IV post and were subsequently promoted on Class III posts, the service rendered in a particular Group "D" or "C" is to be kept in view for grant of higher standard pay scale. The promotion from Group "D" to Group "C" will not be considered as a bar for grant of higher standard pay scale.

3. The petitioners had completed more than 10 years service in Group "C" and were granted the 1st higher standard pay scale Rs. 1200-2440 w.e.f. 1.1.1984. The Government of Haryana has revised the pay scales of the employees w.e.f. 1.1.1986. Prior to 1.1.1986, the post of Clerks was in the pay scale of Rs. 950-1500. The Government of Haryana has framed the Haryana Civil Services (Assured Career Progression) Rules, 1998 (for short "the Rules"). The 1st Assured Career Progression pay scale in the case of Government servants in the pay scale of Rs. 950-1500 was drawn at Rs. 4000-6000. On revision of the pay scales w.e.f. 1.1.1986, the pay of the petitioners was fixed in the pay scale of Rs. 4000-6000. Respondent No. 3, Accounts Officer, Agricultural Training Institute, Jind, issued a letter to the effect that the pay of the Clerks who have been promoted from Peons be fixed in the pay scale of Rs. 3050-4590 and they are

not entitled to the 1st higher standard pay scale. The pay of the petitioners, thus was reduced.

4. The grievance of the petitioners is that some Clerks who were appointed by direct recruitment after the date of the promotion of the petitioners and were, admittedly, junior had been granted the 1st higher standard pay scale of Rs. 4000-6000 w.e.f. 1.1.1996. According to the petitioners, this is discrimination because the petitioners have rendered more service in Group "C" and are senior to direct recruits. Hence, the present writ petition.

5. In the written statement filed jointly by respondents No. 1 to 4, the petition has been contested. It has been pointed out that, according to Rule 5 of the Haryana Civil Services (Revised Pay) Rules, 1998, a Govt. servant can elect to draw in the existing scale until the date on which he earns his next increment. If the revision of pay scale is not to the benefit of the petitioner, he could opt to continue in the pre-revised scale. Prior to 1.1.1986, the functional pay scale of the post of Clerk was Rs. 950-1500 which has now been revised to Rs. 3050-4590. The petitioners were initially recruited as Peons whose functional pay scale on 31.12.1995 was Rs. 750-940. As per Haryana Civil Services (Assured Career Progression) Rules, 1998, the petitioners are entitled to 1st Assured Career Progression Scale of Rs. 2650- 4000 and 2nd Assured Career Progression Scale of Rs. 3050-4350 since they were promotees. The relevant extract of the Schedule I, Part II of the said Rules is reproduced hereunder :-

"Sr. No.

Functional pay scale to the post 31. 12.1995 on which the Govt.

Career Progression pay scale

Second Assured Career Progression higher pay scale

1.

750-12-870-E.B-14-940

2650-65-3300-EB-70-4000

3050-75-3950-EB-80-4350

2.

755-12-955-EB-1025

2650-6S-3300-EB-70-1000

3050-75-3950-EB-80-4350

3.

800-15-I010-EB-20-1150

3050-75-3950-EB-80-4350

4000-100-4800-EB-100-6000

4.

950-20-1150-EB-25-1400

4000-100-4800-EB- 100-6000

5000- EB7100-EB-150-7850

5.

950-20-1150-EB-25-1500

4000-100-4800-EB- 100-6000

5000-150-7100-EB-150-7850

Thus, it is denied that the petitioners were entitled to the pay scales claimed by them.

6. Before proceeding further, some of the facts which have not been controverted can conveniently be mentioned. The State of Haryana with a view to remove stagnation of the employees of Group "C" and "D" categories wanted to provide some relief from 1.1.1984. It was provided vide the letter issued by the Finance Department, copy of which is Annexure P-1. The relevant extract of the same is reproduced hereunder :-

"With effect from First January, 1984 or thereafter, as the case may be, the grant of higher standard scale will be regulated as under :

(i) every employee of Group "C" and "D" category who has not got any promotional scale/higher time scale/selection grade in his service career and has completed twenty years or more of regular satisfactory service before 1.1.1994 will be allowed with effect from 1.1.1994 in place of his present pay scale the second higher standard pay scale specified in column 4 of the enclosed Annexure with respect to the pay scale of the post applicable from 1.1.1994 and has not got any promotion or promotional scale/higher time scale/selection grade in his service career will be allowed the aforesaid second higher standard scale from first day of the month following the month in which he completes such service.

(ii) every employee of group "C" and "D" category who has not got any promotion or promotional scale/higher time scale/selection grade in his service career and has completed ten years or more but less than twenty years regular satisfactory service before 1.1.1994 will be allowed with effect from 1.1.1994 in place of his present pay scale the first higher standard scale specified in column 3 of the enclosed Annexure with respect to the pay scale of the post applicable from 1.1.1986. An employee who completes such regular satisfactory service of ten years after 1.1.1994 and has got any promotion or promotional scale/higher time scale/selection grade in his service career will be allowed the aforesaid first higher standard scale from first day of the month following the month in which

he completes such service.

(iii) every employee of group "C" and "D" category who has completed twenty years or more of regular satisfactory service before 1.1.1994 but has got only one promotion or promotional scale/higher time scale/selection grade in his service career will be allowed with effect from 1.1.1994 in place of his present pay scale the first higher standard scale specified in column 3 of the enclosed Annexure with respect to the pay scale of the post applicable from First January, 1986. An employee who completes such regular satisfactory service of twenty years after 1.1.1994 but has got only one promotion or promotional scale/higher time scale/selection grade/higher standard" scale in his service career will be allowed the aforesaid first higher standard scale with effect from first day of the month following the month in which he completes such service."

Subsequently, a clarification had been given on 29.12.1995 vide Annexure P-2 because of some defects that were pointed out and pertaining to the persons who have been promoted from Group "D" and "C". It was mentioned as under :-

"Similar situation has arisen in such cases where senior employee is promoted to the post held by him whereas his junior colleague in the cadre is a direct recruit to that post. There are cases where promotional post carries lower pay scale than the higher standard pay scale granted to the Government employee in his lower post and causes real hardship to such employees on promotion to the higher post. In such situations para 12 of the letter dated 8.2.1994 has created hurdle for stepping up of the pay scale/pay of the senior to the level of his junior of fixation of pay in promotional posts. Cases of hardship have also arisen where a Government employee getting increments under open-ended scales on per instructions contained in FD letter dated 14.5.1991 are promoted to higher posts and their pay in the higher post cannot be refixed with reference to the pay which they would have drawn but for their promotion to the higher posts. These matters have been considered further and on reconsideration, the following decision have been taken.

(i) Para 12 of the FD letter No. 1/34/93-4PR (FD) dated 8.2.1994 is deleted."

Further clarification had been given which reads as under :-

"Points Raised

Clarification

6. There are employees who were initially appointed as Peon or Dafiri, Some were already matriculates and few others passed matriculation examination during the service. On the basis of provisions contained in the service rules, they were promoted as Clerks i.e. from Group "D" to Group "C" posts. Such employees have completed more 10 or 20 years of regular satisfactory service on or after 1.1.1994. Whether promotion of such employees from Group "D" to Group "C" posts is to be considered as a bar for the grant of higher standard pay scale ?

6. Promotion in such like cases from Group "D" to Group "C" is to be considered as non-existent while granting higher Standard pay scales in Group "C" post. Total service in a particular Group is to be kept in view. Employees who have completed 10 years or more and 20 years or more of regular satisfactory service in Group "C" are to be granted 1st or 2nd higher standard pay scales, as the case may be. subject to fulfillment of other conditions."

From the above it is clear that if a person is promoted from Group "D" to Group "C", his total service in a particular Group is to be kept in view. The employees who have completed 10 years of regular service in Group "C" were to be granted 1st higher standard pay scale. Admittedly, the petitioners had worked for more than 10 years in Group "C".

7. To say that because they were promoters and, therefore, they were given a lower scale, indeed, would not be correct. If it was a case of fixation of pay and some differences had arisen in fixation of the pay of the junior, the things would be different. But the question herein is that merely because the petitioners were promotees, they cannot be given lesser pay scale. Supreme Court in the case of Kamlakar and others v. Union of India and others 1999(3) R S J 419 : 1999(3) SCT 731 (SC), was concerned with a similar situation where some relief was given to the direct recruits and not to the promotees. The Supreme Court held that birth marks have no relevance and promotees were entitled to all the benefits that were granted to similarly situated other persons. Keeping in view the aforesaid, we have no hesitation in concluding that the petitioners could not be discriminated in the matter of pay scale merely because they were promotees. Since it was not a case of fixation of pay, thus, they were entitled to the same pay scale as the direct recruits.

8. Accordingly, we allow both the writ petitions and set aside the impugned action of the respondents. The pay of the petitioners in this regard, thus, cannot be termed to have been validly reduced. They were entitled to the same pay scale as were the direct recruits.

9. Petitions allowed.