
(2021) 06 SHI CK 0174
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 97 Of 2019

Suresh Katoch

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 30-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2021) 06 SHI CK 0174

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Ranjana Parmar, Karan Singh Parmar, Somesh Raj, Dinesh Thakur, Sanjeev Sood, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. This petition was initially filed as an Original Application before the erstwhile learned Himachal Pradesh Administrative Tribunal and after the

abolition of the learned Tribunal, the same stood transferred to this Court and was registered as a Writ Petition.

2. By way of this writ petition, the petitioner has prayed for the following reliefs:

â??(i) That order dated 10.04.2018 (Annexure A-10) and order dated 24.04.2018 (Annexure A-11) may be quashed and set aside and the applicant

may be granted pay scale of Rs.15600-39100+Rs.5400/- as GP with all consequential benefits.

(ii) That the respondents may be burdened with costs.

(iii) That entire record may be summoned.

(iv) Any other suitable relief as may be deemed just and fit in the facts and

circumstances of the case may kindly be granted in favour of the applicants.â??

3. The case of the petitioner is that he joined the services of respondent No. 2-Himachal Pradesh State Consumer Disputes Redressal Commission as a Clerk in the year 1995. Thereafter, he was promoted to the post of Senior Assistant in the year 2001 and in the year 2012, he was promoted against the post of Superintendent Grade-II.

4. A post of Reader was sanctioned in the pay scale of Rs.570-1080/- vide Notification dated 6th November, 1989 (Annexure A-2) in the respondent-Commission. Thereafter, vide Notification dated 01.03.1995 (Annexure A-3), 31 additional posts were created, which included the post of Superintendent Grade-I in the pay scale of Rs.2200- 4000/-.

5. As the Recruitment and Promotion Rules for the post of Reader in the respondent No. 2-Commission had still not been finalized, employees holding the post of Superintendent Grade-II were being given an option to opt for promotion either to the post of Superintendent Grade-I, which post by virtue of revision in pay scale, was enjoying the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay or the post of Reader, which was also in the same pay

structure. The petitioner, who in his capacity as Superintendent Grade-II was having the option to opt for either of the two posts, opted for promotion

to the post of Reader, taking into consideration the same pay structure of both the posts and accordingly, vide Notification dated 12.05.2017

(Annexure A-8), on the recommendations of the Departmental Promotion Committee, the petitioner was promoted to the post of Reader on ad hoc

basis till finalization of the Recruitment and Promotion Rules for the post of Reader in the respondent No. 2-Commission, against the vacant post in the

pay structure of Rs. Rs.15600-39100+Rs.5400/- Grade Pay.

6. As per the petitioner, one incumbent who was earlier posted against the post of Reader in the respondent No. 2-Commission on ad hoc basis, made

a request for up-gradation of the pay scale of the post of Reader to that of Superintendent Grade-I and vide Communication dated 7th June, 1995

(Annexure A-4), Under Secretary (F & S), Government of Himachal Pradesh sent a communication to the Registrar of respondent No. 3 on the

subject of representation regarding the grant of scale of Rs.2200-4000

+Rs.300/- Special Pay to the post of Reader of the State Commission that the Governor of Himachal Pradesh was pleased to up-grade the post of Reader in the Commission in the pay scale of Rs.2200-4000/-+Rs.300/- Special

Pay w.e.f. 22.11.1991. It was also mentioned in this communication that this was with the prior concurrence of the Finance Department. The pay

scale of Rs.2200-4000/- + Rs.300/- as Special Pay was revised to Rs.7720-11600/-. This pay scale was further revised to Rs.10300-34800/- with

Grade Pay of Rs.5000/- and thereafter, re-revised to Rs.15600-39100/-+Rs.5400/- as Grade Pay w.e.f. 01.10.2012.

7. Vide Communication dated 14.03.2017 (Annexure A-9), the Draft Rules were forwarded by respondent No. 2 to the State for recruitment to the

post of Reader, in terms whereof, the pay scale mentioned therein was Rs.15600-39100+Rs.5400/- Grade Pay.

8. All incumbents, who stood promoted as Readers before the petitioner on adhoc basis etc. enjoyed the said pay scale till their superannuation.

Petitioner stands regularized against the post in question w.e.f. 06.06.2019.

9. The grievance of the petitioner is that despite the fact that vide communication dated 7th June, 1995 (Annexure A-4), the Governor, Himachal

Pradesh had up-graded the post of Reader in the pay scale of Rs.2200-4000/-+Rs.300/- Special Pay, followed by pay scale of Rs.15600-

39100+Rs.5400/- Grade Pay, being granted to the incumbents holding the post and further despite the fact that in the Draft Recruitment and

Promotion Rules for the post of Reader, the said pay scale was mentioned, yet vide impugned communication dated 10th April, 2018 (Annexure A-

10), pay scale of the post of Reader Class-I Gazetted in the respondent No. 2-Commission has been reduced to Rs.10300-34800+Rs.5000/- as Grade

Pay, with the concurrence of the Finance Department, which pay scale has been accepted by respondent No. 2 vide impugned order dated 24.04.2018

(Annexure A-11) without any due application of mind. It is in this background that the petition has been filed with the prayer that the impugned

communications be set aside and the petitioner be held entitled to the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay with all consequential

benefits.

10. Learned Senior Counsel for the petitioner has argued that the act of the respondents of reducing the pay scale of the post of Reader vide

impugned Annexures is completely arbitrary for the reason that there is no cogent justification with the respondents to carry out the reduction. She has submitted that vide Annexure A-4, dated 7th June, 1995, the Government of Himachal Pradesh was pleased to up-grade the post of Reader in the pay scale of Rs.2200-4000/- + Rs.300/- Special Pay w.e.f. 22.11.1991, that too, with the prior concurrence of the Finance Department, followed by grant of pay scale of Rs.15600- 39100+Rs.5400/- Grade Pay on revision of the pay scale to the then holder of the post and hence there was no occasion for the respondents to have had reduced the said pay scale to Rs.10300-34800+Rs.5000/-Grade Pay. She has also submitted that even in the Draft Recruitment and Promotion Rules for the post of Reader, the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay was mentioned, which also clearly demonstrates that the intention for all intents and purposes was to grant higher pay scale to the Readers, which has been arbitrarily reduced by the respondents. She has further submitted that the discrimination meted out by the respondents can be assessed from the fact that all incumbents, who held the post of Reader of respondent No. 2-Commission on adhoc basis before the petitioner, enjoyed the higher pay scale. They superannuated from the said post at the higher pay scale and are enjoying their retiral benefits on the basis of the said higher pay scale. Not only this, the officers serving on the rolls of the High Court of Himachal Pradesh and erstwhile Himachal Pradesh Administrative Tribunal against the post of Reader were also enjoying the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay. On these bases, she has submitted that the petition be allowed by setting aside the impugned Notifications and by holding the petitioner to be entitled to the higher pay scale.

11. Respondents No. 1 & 3 have filed a joint reply, whereas respondent No. 2 has filed a separate reply to the petition. The stand of respondents No.

1 and 3 is that respondent No. 1 had moved the proposal with regard to framing of Recruitment and Promotion Rules for the post of Reader (Class-I)

Gazetted in the respondent No. 2-Commission to the Finance Department for its approval. The Department approved the proposal subject to the pay

scale of Rs.10300-34800+Rs.5000/- as Grade Pay. It was on these basis that Annexure A-10 was issued by respondent No. 1 followed by issuance of

Annexure A-11, issued by respondent No. 2. As per the said respondents, the

State Government has exclusive jurisdiction to legislate or issue executive instructions on State Public Services and it is only the State Government which can decide the pay scales etc., which is also one of the service conditions prescribed in the Recruitment and Promotion Rules. It is further the stand of the respondents that while ordering the promotion of the petitioner earlier there was a patent error in the same by allowing incorrect pay structure of Rs.15600-39100+Rs.5400/- Grade Pay instead of Rs.10300-34800+Rs.5000/- as Grade Pay and further as ad hoc promotion was only a stop gap arrangement, the same conferred no right upon the petitioner to get the higher pay scale. It is also mentioned in the reply that the post of Reader in the respondent No. 2-Commission was never allowed the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay by the Finance Department and the post of Reader in fact exists in the pre-revised pay scale of Rs.7220-11660/-, which was further revised by way of general conversion table to the pay structure of Rs.10300-34800/-+Rs.5000/- Grade Pay w.e.f. 01.01.1996.

12. The stand of respondent No. 2-Commission in the reply is that as per Annual Administrative Report published by the Government of Himachal Pradesh from time to time, the Pay Scale and Grade Pay of the posts of Superintendent Grade-1, Private Secretary and Reader are equivalent in nature, i.e., Rs.15600-39100+Rs.5400/- Grade Pay and when initially the post of Reader was created, the salary of the post of Reader was fixed accordingly. One Shri Ashok Raina, who was serving as Reader, filed a representation to the State Government to remove the anomaly in his pay as a Reader, which was duly done by the State and the pay of the Reader in respondent No. 2-Commission was fixed at Rs.2200-4000/-+Rs.300/- Special Pay w.e.f. 22.11.1991. Said respondent has also not disputed that Readers, who served it before the petitioner, including Shri Ashok Raina, were drawing the pay scale of Rs. Rs.15600-39100+Rs.5400/- Grade Pay till the date of their superannuation and their post superannuation benefits have been assessed on the said pay.

13. On the strength of the said replies, it has been submitted by the learned Additional Advocate General that there is no infirmity in the act of the respondent-State, which stands impugned by way of this writ petition and the petitioner is entitled only to the pay scale of Rs.10300-34800/-

+Rs.5000/- Grade Pay. He has accordingly prayed for dismissal of the writ petition.

14. I have heard learned counsel for the parties and have also gone through the pleadings.

15. In the course of hearing of this petition on 02.03.2021, the State was directed to produce the original record, vide which the Draft Rules to the post of Reader were dealt with by the Secretary (Finance), to the Government of Himachal Pradesh. The relevant record has been produced by the learned Additional Advocate General, which has also been perused by the Court.

16. It is not in dispute that the post of Reader in the respondent No. 2-Commission is a promotional post from the post of Superintendent Grade-II. It is also not in dispute that an incumbent holding the post of Superintendent Grade-II has an option either to be promoted against the post of

Superintendent Grade-I or the post of Reader. It is further not in dispute that after the creation of the post of Reader in the respondent-Commission,

incumbents from the post of Superintendent Grade-II were promoted to the post of Reader pending finalization of the Recruitment and Promotion

Rules. It is further not in dispute that on a representation so made by the then holder of the post of Reader, vide communication dated 7th June, 1995

(Annexure A-4), the respondent-Commission was informed that the Governor of Himachal Pradesh is pleased to up-grade the post of Reader with the

respondent-Commission in the pay scale of Rs.2200-4000/-+Rs.300/- Special Pay w.e.f. 22.11.1991 with the prior concurrence of the Finance

Department. It is also not in dispute that Readers who stood appointed against the post in issue before the petitioner and who superannuated as such,

were drawing the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay till their superannuation.

17. The petitioner was promoted on ad hoc basis against the post of Reader vide Notification dated 12.05.2017 (Annexure A-8). His promotion was

on the recommendations of the Departmental Promotion Committee in the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay. At this stage, it is

relevant to mention that in terms of Annexure A-3, dated 01.03.1995, the post of Superintendent Grade-I was created in the respondent No. 2-

Commission in the pay scale of Rs.2200-4000/-. Further, Notification dated 27th September, 2012 (Annexure A-7), issued by the Government of

Himachal Pradesh, Finance (Pay Revision) Department demonstrated that the pay scale of the post of Superintendent Grade-I has been fixed at

Rs.15600-39100+Rs.5400/- as Grade Pay.

18. During the course of arguments, it could not be disputed that incumbents, including Shri Ashok Raina, who held the office as reader in the

respondent No. 2-Commission prior to the petitioner, enjoyed the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay and further whosoever

superannuated from this post on the said pay scale are enjoying the post retiral benefits on the basis of the same pay scale.

19. There cannot be any two views on the issue that the fixation of pay scale is the domain of the State Government, but this domain, of course, is

subject to the power of judicial review of the Court. The record which has been produced by the learned Additional Advocate General demonstrates

that while dealing with the proposal of the Draft Recruitment and Promotion Rules for the post of Reader, the Finance Department reduced the

proposed pay scale from Rs.15600-39100+Rs.5400/- Grade Pay to Rs.10300-34800/- +Rs.5000/- Grade Pay by assigning the reason that the pay

scale of Rs.15600- 39100+Rs.5400/- Grade Pay has been allowed to the posts alike Administrative Officer, Establishment Officer and Registrar or

Assistant Registrar or other such like posts, of which, inter alia, the post of Superintendent Grade-I is the feeder category post. It is further mentioned

therein that the category of Reader in the High Court of Himachal Pradesh and Himachal Pradesh Administrative Tribunal has been allowed the pay

structure of Rs.15600-39100+Rs.5400/- Grade Pay specifically, but same has not been granted to the Reader of respondent No. 2-Commission.

20. What is mentioned in the record does not finds merit with the Court for the reason that when the post of Superintendent Grade-I itself commands

the pay scale of Rs.15600- 39100+Rs.5400/-Grade Pay, it cannot be accepted that this post will be the feeder category post to the posts, which

command the same pay scale. Besides this, there is no dispute that both the posts, i.e., Superintendent Grade-I and the post of Reader are promotional

posts from the post of Superintendent Grade-II as far as respondent No. 2-Commission is concerned and that being so, it defies logic as to how two

promotional posts from the same feeder category can be having different pay scales. The stand taken by the respondents No. 1 and 3 in their reply

that the higher pay scale was erroneously granted to the petitioner earlier while he was promoted on ad hoc basis, as the post of Reader has never been allowed the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay by the Finance Department, can also not be accepted, because communication dated 7th June, 1995 (Annexure A-4) is self speaking that the post of Reader was up-graded by the order of the Governor of Himachal Pradesh in the pay scale of Rs.2200-4000/-+Rs.300/- Special Pay w.e.f. 22.11.1991 and that too with the concurrence of the Finance Department, which was the pay scale of Superintendent Grade-I at the relevant time and thereafter, after revision of the pay scale, the Readers in respondent No. 2-Commission, may be serving on ad hoc basis, were granted the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay. Not only this, the Readers on the rolls of the High Court of Himachal Pradesh as well as erstwhile Himachal Pradesh Administrative Tribunal, till the date it was existing, were also enjoying the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay.

21. Even if this is left aside, then also it is not understood as to why the post of Reader in the respondent-Commission has been discriminated by the State with regard to the pay scale, when the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay is being granted to Readers in the High Court of Himachal Pradesh as well as the erstwhile Himachal Pradesh Administrative Tribunal. Even if it was to be assumed for the sake of argument that respondent No. 2-Commission cannot be kept at the same pedestal as the High Court, then also, the status of respondent No. 2, which is the statutory Tribunal, is at the same pedestal as the Administrative Tribunals, as both are manned by the retired Honâ??ble Judges of the High Court and are statutory. This also demanded that there had to be parity in the pay scales of Readers in these establishments. Further more, as incumbents earlier to the petitioner were allowed the pay scale of Rs.15600-39100+Rs.5400/- Grade Pay by the Government and they superannuated on the said pay scale and their retiral benefits are also being assessed on the said pay scale, therefore also, the petitioner cannot be discriminated against.

22. The concurrence of the Finance Department is not an act, which can be performed by the said Department in a whimsical manner. Simply because the proposed pay scale in Draft Recruitment and Promotion Rules has to

be concurred by the Finance Department, this does not mean that there exists any arbitrary unfettered power with the said Department to either increase or decrease the proposed pay scale without any cogent reasons. In this case also, the reasons, as are borne out from the record produced by the State, are neither sustainable in law nor the same pass the touch stone of Article 14 of the Constitution of India, for the simple reason that when the Finance Department had concurred that the post of Superintendent Grade-I in respondent No. 2-Commission was to have the pay scale of Rs.15600-39100+Rs.5400/-Grade Pay, so also the posts of Reader in the High Court of Himachal Pradesh as well as erstwhile Himachal Pradesh Administrative Tribunal, it is not understood as to why the post of Reader in respondent No. 2-Commission was discriminated against.

23. In K.T. Veerappa and others Vs. State of Karnataka and others (2006) 9 SCC 406, the Honâ??ble Supreme Court has been pleased to hold as under:

â??He next contended that fixation of pay and parity in duties is the function of the Executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance in the case of State of Haryana and Anr. v. Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72 and Union of India and Anr. v. S.B. Vohra and Ors. (2004) 2 SCC 150. There is no dispute nor can there be any to the principle as settled in the case of State of Haryana & Anr. v. Haryana Civil Secretariat Personal Staff Association (supra) that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well-settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.â??

24. Accordingly, in view of the above discussions, this writ petition is allowed by holding that the act of respondents No. 1 and 3 of reducing the pay scale of the post of Reader in respondent No. 2- Commission from Rs.15600-39100+Rs.5400/- Grade Pay to Rs.10300- 34800/- +Rs.5000/- Grade

Pay is arbitrary, discriminatory and not sustainable in law. Impugned communications dated 10.04.2018 (Annexure A-10) and 24.04.2018 (Annexure A-11) are accordingly quashed and set aside and respondents are directed to grant to the petitioner the pay scale of Rs.15600-39100+Rs.5400/- Grade

Pay from the date the same was reduced and post superannuation, the retiral benefits of the petitioner be also calculated on the basis of pay scale of

Rs.15600-39100+Rs.5400/- Grade Pay. Miscellaneous applications, if any, also stand disposed of. No order as to costs.