
(2015) 05 P&H CK 0252
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 25900 of 2012 (O&M)

Suresh Kumar Sharma

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 24, 24(6), 24(9), 25

Citation : (2015) 05 P&H CK 0252

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Jair Vir Yadav, for the Appellant; Keshav Gupta, AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.—The petitioner has challenged the order dated 3/16.08.2012 (Annexure P-1), passed by the Additional Chief Secretary to Government, Haryana, Administration of Justice Department, whereby, the representation dated 19.03.2012 of the petitioner, claiming fixation of pay in regular and higher pay scale of Public Prosecutor (called as Deputy District Attorney in Haryana) on his promotion and Appointment as Public Prosecutor vide notification dated 30.01.2002 (Annexure P-2), as per the provisions of Sub-section 6 of Section 24 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C"), has been rejected.

2. Mr. Jaivir Yadav, learned counsel appearing on behalf of the petitioner in support of his contention submitted that on 30.07.1992, the petitioner was selected and appointed as Assistant District Attorney with the respondent-State and vide notification dated 19.05.1993 was appointed as Assistant Public Prosecutor under Section 25 of Cr.P.C. and keeping in view the experience as envisaged in Section 24(9) of Cr.P.C. Copies of the notifications dated 30.01.2002 and 19.05.1993 have been attached as Annexures P-2 and P-3 respectively.

3. It has been stated that services of the petitioner were governed by Haryana State Prosecution Legal (Group-B) Service Rules, 1979 which were repealed by Rule 20 of the Haryana State Prosecution Legal (Group B) Service Rules, 2001 (hereinafter referred to as "Rules 2001"), and provisions of rule 13(1) of aforementioned Rules, 2001 are relevant. The same is extracted herein below:--

"Rule 13(1) In respect of pay, leave, pension and all other matters, not expressly provided for in these rules, the members of the Service shall be governed by such rules and regulations as may have been, or may hereafter be adopted or made by the competent authority under the Constitution of India or under any law for the time being in force made by state legislature."

4. By relying upon the notification dated 19.05.1993 Annexure P-3, Mr. Jaivir Yadav, further submitted that the petitioner has been appointed as Assistant Public Prosecutor for the whole of the Haryana State, therefore, the petitioner is entitled to fixation of pay in regular and higher pay scale i.e. Deputy District Attorney in Haryana and not that of Assistant District Attorney as he was working in the office of District Attorney.

5. In support of his aforementioned contention, he relied upon the Full Bench judgment of this Court decided on 20.12.2011 rendered in CWP No. 21358 of 2008 titled as Subhash Chander v. State of Haryana and others, whereby, by posing the following question:--

"Whether an employee who is given independent charge and responsibility of a higher post alone is entitled to regular pay scale without being substantively appointed to such post?"

Hon"ble Full Bench answered the same in affirmative by holding that if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade.

6. Mr. Keshav Gupta, learned Assistant Advocate General, Haryana, in support of his contention, relied upon the Full Bench judgment of this Court in A.K. Ahlawat and Others Vs. State of Haryana and Others, (2010) 2 ILR (P&H) 932 : (2010) 159 PLR 703 whereby, five Judges of this Court were posed the question, whereby, against the post of Public Prosecutor whether on interpretation on Section 24(6) and (9) of the Cr.P.C. and Rule 9 of the Haryana State Prosecution Legal (Group A and Group-B) Service Rules, 1979, were liable to be struck down being in direct conflict with the mandate contained in the Central legislation (the Code).

7. In support of his contention, he relied upon paragraphs 26 and 27 of the aforementioned judgment to contend that whereby, there already exists a regular cadre of Prosecuting Officers in a State upto the top level, the State Government can appoint a Public Prosecutor or Additional Public Prosecutor amongst the empanelled Advocates under sub-sections (3) and (4) of Section 24

of the Cr.P.C. and prayed for dismissal of the writ petition.

8. I have heard learned counsel for the parties and appraised the paper book.

9. The impugned order, Annexure P-1, has been passed on the premise that services of the petitioner are governed by amended 2000 Rules and the petitioner was appointed as Assistant District Attorney and the next cadre post of Assistant District Attorney as per the Rules is Deputy District Attorney. There is no post of Assistant Public Prosecutor or Public Prosecutor in the time scale. Public Prosecutor and Assistant Public Prosecutor are appointed under Sections 24 and 25 of Cr.P.C. Therefore, the appointment of Assistant District Attorney as Public Prosecutor does not involve appointment to the new post as no such post of Public Prosecutor exists in the Service Rules governing the service of the petitioner.

10. I am afraid of the aforementioned order has not been passed keeping in view the Rule 13(1) extracted above. The language of aforementioned Rule is simple and clear and provides that pay, leave, pension and all other matters, not expressly provided in these rules, the members of the service shall be governed by such rules and regulations as may have been, or may thereafter be adopted by the competent authority. Since there are no rules with regard to pay and pension. Therefore, Rule 4.4 mandate by Note 1, 7, 11 of Rule 4.13 of Punjab Civil Service Rules Vol. 1 Part (as applicable to State of Haryana) shall be applicable. Rule 4.4 and Note 1, 7, and 11 are reproduced herein below:--

"Rule 4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:--

a) if he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended -

(i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 4.13) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference; and in either case will continue to draw that pay until such time as he would have received as increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay;

(iii) when appointment to the new post is made on his own request under rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial

pay."

Note 1, 7 and 11

Note 1: The words "duties" and responsibilities" used in this rule are to be interpreted in a wide sense as including besides the works to be performed the general responsibilities and liabilities incidental to being member of a particular service.

Note 7: The pay of a Government employee officiating in a post the pay of which is subject to increase upon the passing of an examination or on completion of a certain period of service is a pay which he would, from time to time, receive if he held the post substantively.

Note 11: A declaration by Government that a particular post involves more important duties of a different character justifies the grant of officiating pay to a Government employee appointed to the post from another post in the same cadre."

11. Sub-section 6 of Section 24 of Cr.P.C. is a non-obstante clause which enables the State to appoint Public Prosecutors or Additional Public Prosecutors only from amongst the persons suit such cadre, if no suitable person is available, the Government may appoint a person from the panel of names prepared by District Magistrate. Since the petitioner has assigned duties involving higher responsibilities, the ratio decidendi culled out by Full Bench in Subhash Chander's case clearly covers controversy in dispute. Thus, certainly is entitled to salary of his officiating post in higher grade. Ratio decidendi culled out in A.K. Ahlawat's case, do not apply to the facts and circumstances of the present case as the said case pertains to appointment by way of direct recruitment against the post of Public Prosecutor.

12. In view of what has been observed above, the impugned order Annexure P-1, is hereby, quashed and accordingly, the petitioner is held entitled for fixation of pay in regular and higher pay scale on his promotion and appointment as Public Prosecutor vide notification dated 30.01.2002 i.e. from the date he assumes charge of Public Prosecutor with all consequential benefits.

13. Accordingly, the writ petition is allowed.