

(2006) 08 P&H CK 0149
In the Punjab And Haryana At Chandigarh
Case No : COCP No. 276 of 2006

Surinder Pal Singh and Another

APPELLANT

Vs

Shri D.S. Bains

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Citation : (2006) 08 P&H CK 0149

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : Arvinder Singh, for the Appellant; G.S. Cheema, Sr. Dy. A.G., for the Respondent

Judgement

Surya Kant, J.—The petitioners, along with one Narender Pal Singh, filed CWP No. 13471 of 1998 seeking a direction to the Punjab Public Service Commission to recommend their names for appointment as Veterinary Officers against the posts reserved for the Scheduled Castes and Scheduled Tribes of the Punjab State. Their writ petition was allowed by this Court on April 5, 1999 in the following terms:

On the basis of above discussion, we hold that the decision of the Commission not to recommend the names of the petitioners, is legally unsustainable. Consequently, the writ petition is allowed. The respondent-Commission is directed to forward the names of the petitioners and other eligible candidates of Scheduled Castes (General) who have not been adjudged unsuitable to the Government for appointment against the vacant posts of Scheduled Castes (General as well as Balmikis/Mazhbi Sikhs). This shall be done by the Commission within 30 days of the receipt of certified copy of this order. Within next 30 days, the Government shall appoint the candidates recommended by the Commission subject to their being found suitable in other respects.

2. It appears that the petitioners did not get appointments in terms of the above stated judgment, therefore, they filed another writ petition bearing No. 6404 of

2005, which was disposed of on May 3, 2005 in the following terms:

Learned Counsel for the respondents, on instructions from Mr. Harsh Kumar, Superintendent, Office of the Secretary, Animal Husbandry Department, Punjab states that the judgment rendered by this Court in *Narinder Pal Singh and Ors. v. State of Punjab and Ors.* (Civil Writ Petition No. 13471 of 1998, decided on 5.4.1999) will be implemented in letter and spirit within one month, by which time, all consequential benefits shall be released to the petitioners.

3. In compliance to the above stated orders and the stand taken before this Court, the respondents have passed an order dated 13/20 October, 2005 (annexure P-3) whereby their claim for retrospective appointment as Veterinary Officer from 12 October, 1998, i.e., the date on which the junior -most candidate in the reserved category of Scheduled Castes was appointed, has been accepted. They have also been granted the consequential benefits except "the arrears of pay" on the plea of "no work, no pay".

4. It may also be mentioned at this stage that the petitioners were selected in a subsequent selection also and were given appointment pursuant thereto in September 2000. However, as a consequence of the above stated directions issued by this Court, they were entitled to be appointed from October, 1998.

5. The petitioners, thus, claim that they are entitled to be paid arrears of pay from 12 October, 1998, i.e., their deemed date of appointments till they were otherwise appointed in September 2000 on the basis of subsequent selection.

6. In response to the show cause, respondent No. 1 has filed an affidavit dated 28.7.2006, which is taken on record. Various steps taken by the respondents to comply with the orders passed by this Court have been enlisted in para 1 of the affidavit, the relevant part of which reads as follows:

(i) initially the answering deponent passed an order dated 13.10.2005 (Annexure P-3) for releasing rightful consequential benefits to the petitioners, which accrued to them by virtue of these orders. Vide this order, the petitioners have been allowed all consequential benefits to which they were legally entitled,

(ii) the petitioners have been appointed as Veterinary Officers w.e.f. 12.10.1998 (the date on which junior most candidate Sh. Varinder Singh belonging to Scheduled Caste category of 1998 batch joined),

(iii) the pay of the petitioners for the period from the new date of appointment to the actual date of appointment has been fixed notionally,

(iv) separate orders regarding the clearance of their probation period w.e.f. 12.10.2000 have been passed by the deponent,

(v) orders giving them higher pay scale along with the due arrears on the completion of 4 years of service (by reckoning the date of appointment as 12.10.1998) have been passed by the deponent and,

(vi) decision regarding their seniority has also been taken vide order dated 24.7.2006.

7. As regards arrears of pay, the respondent, in his affidavit, has taken the following plea:

However, as the petitioners had not worked in the department during the intervening period, it was decided on the advice of the Finance Department that in accordance with the principle of "no work no pay", the petitioners shall not be entitled to any arrears on account of pay. Law on this principle has already been set by the Hon"ble Supreme Court of India which is the law of land. The Hon"ble Apex Court in its judgment delivered in A.K. Soumini Vs. State Bank of Travancore and Another, rejected the claim of the appellant by applying the principle of "no work, no pay".

8. As can be noticed from the order dated 3.5.2005 passed by this Court in CWP No. 6404 of 2005, a positive stand was taken before this Court that the judgment dated 5.4.1999 passed in CWP No. 13471 of 1998 shall be implemented in letter and spirit within one month by which time "all consequential benefits shall be released to the petitioners". In these contempt proceedings, an endeavour has been made to contend that the directions issued by this Court have been faithfully complied with.

9. It may be true that the petitioners have been granted all the "consequential benefits" like deemed date of appointment, seniority, increments, etc. but the fact that one of the consequential benefit, namely, "arrears of pay" from October 1998 till September 2000 have not been paid to them.

10. In the contempt proceedings, the respondents cannot be permitted to seek review or modification of the order passed by the Writ Court. Similarly, the scope of these proceedings cannot be enlarged to act as an Appellate Court. Even if their defence with regard to non-payment of arrears of pay is assumed to be correct, yet the same being contrary to the directions contained in the order dated 3.5.2005 passed by this Court, the respondents are obligated to release those arrears.

11. However, having regard to the fact that the respondents being harping under a misconception of law as if denial of arrears of pay to the petitioners is justified in law, did not implement the said order and as such are not, prima-facie, guilty of deliberate and willful defiance of the directions of this Court, this petition is disposed of with a direction to the respondents that the arrears of pay shall be paid to the petitioners within a period of two months from today, failing which the petitioners shall be claiming the same along with interest @ 6% per annum.

12. Disposed of.

13. Rule discharged.