
(2015) 01 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : CWP No. 2063 of 2012

Swadesh Singh Thakur

APPELLANT

Vs

H.P. University

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Citation : (2015) 01 SHI CK 0019

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Shikha Chauhan, for the Appellant; J.L. Bhardwaj, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The petitioner retired as Finance Officer from the respondent No. 1 - University on 30.9.2002. His pension was fixed as per Annexure P-1 dated 30.9.2002. The University Grants Commission framed a Scheme on 31.12.2008 for revision of pay scales for the posts of Registrar, Deputy Registrar, Assistant Registrar, Controller of Examination, Deputy Controller of Examination, Assistant Controller of Examination, Finance Officer, Deputy Finance Officer and Assistant Finance Officer following the revision of pay scales of Central Government Employees on the recommendations of the Sixth Pay Commission. The pay scale of Registrar/Finance Officer/Controller of Examination was revised from 16400-22400 to pay band of Rs. 37400-67000 with a grade pay of Rs. 10,000/-. Similarly, the pay scale for the post of Deputy Registrar/Deputy Finance Officer/Deputy Controller of Examination was revised to pay band of Rs. 15600-39100 with grade pay of Rs. 7600/- and the pay scale for the post of Assistant Registrar/Assistant Finance Officer/Assistant Controller of Examination was put in the pay band of Rs. 15600-39100 with grade pay of Rs. 5400/-.

2. The State Government issued notification vide Annexure P-2 dated 1.7.2010, whereby the pay scale of Controller of Examination, Addl. Controller of Examination, Planning and Development Officer, Secretary to V.C., Dy. Registrar,

Asstt. Registrar, Public Relations Officer and Administrative Manager (IIHS), were revised as per the following table:

3. However, very intriguingly, the pay scale for the post of Finance Officer was not revised as per the notification dated 30.6.2010. Consequently, the pension of the petitioner has also not been revised. The petitioner has issued legal notice for the redressal of his grievance on 3.9.2010. The case of the petitioner was rejected vide letter dated 18.4.2011.

4. According to the H.P. University Act, 1970, the following are the Officers of the University:

(i) the Chancellor;

(ii) the Vice Chancellor;

(ii-a) the Pro-Vice-chancellor;

(iii) the Dean of Faculties;

(iv) the Registrar;

(iv-a) the Controller of Examinations;

(v) the Finance Officer; and

(vi) such other persons in the service of the University as may be declared by the Statutes to be the officers of the University."

5. Statute No. 5 (Finance Officer) reads as under:

"5. Finance Officer:-

(1) The Finance officer shall be a wholetime salaried officer of the University and he shall be appointed by the Executive Council on the recommendation of a Selection Committee constituted for the purpose, on such terms and conditions as may be prescribed by the Ordinances:

Provided that the Executive Council if it deems fit obtain on deputation for a fixed term the services of an officer, from the Government of Himachal Pradesh/Office of the Comptroller and Auditor General of India to work as Finance Officer who fulfils the minimum qualifications prescribed for Finance Officer under Ordinance 27.8 (2) When the office of the Finance Officer is vacant or when the Finance Officer, is by reason or illness or absence for any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(3) The Finance Officer shall:-

(a) exercise general supervision over the funds of the University and shall advise it as regard its financial policy;

(b) be responsible for the proper maintenance of the accounts of the University;

and

(c) perform such other financial functions as may be assigned to him by the Executive Council or as may be prescribed by these Statutes or the Ordinances;

Provided that the Finance Officer shall not incur any expenditure or make any investment exceeding Rs. 10,000 without the previous approval of the Executive Council.

(4) Subject to the control of the Executive Council, the Finance Officer shall-

(a) hold and manage the property and investments including trust and endowed property for furthering any of the objects of the University.

(b) see that the limits fixed by the Finance Committee for recurring and non-recurring expenditure for one year are not exceeded and that all moneys are expended on the purposes for which they are granted or allotted;

(c) be responsible for the preparation of annual accounts and the budget of the University for the next financial year and for presentation of the same to the Executive Council;

(d) keep a constant watch on the state of the cash and bank balances and on the state of investments;

(e) watch the progress of collection of revenue and advise on the methods of collection employed;

(f) see that the registers of building, land, furniture and equipment are maintained up-to-date and that the stock checking of equipment and other consumable material in all offices, teaching departments, colleges and institutions maintained by the University is conducted at regular intervals, or as may be required from time to time;

(g) call for from any office or department or college or institution under the University any information or returns that he may consider necessary to discharge his financial responsibilities.

(5) The receipt of the Finance Officer or of the person or persons duly authorised in this behalf by the Executive Council for any money payable to the University shall be sufficient discharge for the same."

6. The eligibility criteria for appointment as Finance Officer has been laid down under Ordinance 27.8 of Handbook (Volume II), the First Ordinances of Himachal Pradesh University, 1973. It is not in dispute that the Finance Officer is one of the Administrative Officers of the University as per the Act, Statutes and Ordinances framed thereunder. According to the notification dated 31.12.2008, the pay scale of Registrar/Finance Officer/Controller of Examination was revised from 16400-22400, but while issuing notification dated 30.6.2010, the category of Finance Officer has been excluded without assigning any cogent and convincing reasons. The petitioner has been discriminated against by the

respondents by not revising the pay scale of the post of Finance Officer on the basis of notification dated 31.12.2008. The pay scale of Controller of Examination, Addl. Controller of Examination, Planning and Development Officer, Secretary to V.C., Dy. Registrar, Asstt. Registrar, Public Relations Officer and Administrative Manager (IIHS), have been revised as per the notification issued by the University Grants Commission on 31.12.2008, vide notification dated 30.6.2010.

7. The Finance Officer has to discharge the duties as per the Statutes. He has to fulfill the eligibility criteria, as noticed hereinabove. Equals cannot be treated unequals. The pay scale for the post of Finance Officer ought to have been revised when the pay scale of similarly situated persons i.e. Controller of Examination, Addl. Controller of Examination, Planning and Development Officer, Secretary to V.C., Dy. Registrar, Asstt. Registrar, Public Relations Officer and Administrative Manager (IIHS), have been revised on 30.6.2010. The petitioner has been discriminated against by respondents No. 1 and 2 which has also affected his pensionary benefits.

8. In the reply filed by respondent No. 1, the issuance of notification dated 30.6.2010 has been admitted but it is averred that the revision of pay scales of the Registrar and the Finance Officer has not been decided so far. The Court is anguished to notice that no decision for a considerable period has been taken after the issuance of notification dated 30.6.2010.

9. Their lordships of the Hon'ble Supreme Court in the case of Shivanarain and others Vs. State of Madhya Pradesh and another, , have held that it is not open to the government to deny the benefit of the revised grade and scale w.e.f. January 1, 1973 in the case of all persons merely because of some administrative difficulties. Their lordships have held as under:

"....The scale of salary was also revised but effect was given to the revision from October 1, 1975 instead of from January 1, 1973 as in the case of all other persons. It has been pointed out in the writ petition that in the case of Field publicity Officers (Border) effect was given to the revised grade and scales from January 1, 1973. These facts are admitted in the counter-affidavit filed on behalf of the government but it is stated that the petitioners could not be given the revised scales with effect from January 1, 1973 on account of some administrative difficulties. We do not think that it is open to the government to deny the benefit of the revised grade and scale with effect from January 1, 1973 as in the case of all other persons merely because of some administrative difficulties. To do so will be discriminatory. A direction will, therefore, issue to the respondents to give effect to the revised grade and scales from January 1, 1973 to the petitioners. Writ petition is disposed of accordingly."

(Emphasis supplied)

10. Their lordships of the Hon'ble Supreme Court in the case of State of Karnataka and Others Vs. N. Parameshwarappa and Others, , have held that the

denial of the benefit of the revised pay scale to Lecturers teaching pre-university classes only was not justified. Their lordships have held as under:

"7. We have carefully considered the submissions made, on either side. In our view, the approach, the method of dealing and the manner of differentiation sought to be made by the authorities of the government for denying the benefit of the revised scales of pay to the respondent category of teachers alone does not seem to rest on any firm or definite legal stand. The benefit of coverage is found extended to all the teachers in first grade degree colleges, also called as composite colleges and merely because such colleges have been permitted to have pre-university courses also, the teachers should not be discriminated merely on the ground as to which teacher is assigned, at a particular point of time to teach which class of students, though individual entitlement of each of the teachers may depend upon the fulfilment of other requirements stipulated therefore. This is obvious, in our view, from the omission of the state to bring forth positively any definite factual aspect for such differential treatment not only before the High Court but also in this Court which necessitated this Court on 16-1-2001, 24-4-2001 and 26-7-2001 to issue directions calling for disclosure of the specific stand and statement of facts to have an effective adjudication of the issue. We have been taken through the three affidavits filed in this Court by the principal secretary, education department, and as observed in the order of this Court on 24-4-2001 they seem to be more of argumentative nature, than the presentation of a specific and relevant fact or criteria based upon any concrete basis of fact and the affidavit filed thereafter also, except being in the nature of a mere assertion does not contain that relevant detail for this Court to take a different view of facts than the one consistently arrived at by the learned single judge as well as the division bench of the High Court. In that view of the matter and taking into account also to some extent the other factor such as the injustice that may result in denying the benefits of the order to merely about 80 or so of the teachers in the composite colleges in question imparting education for degree and PUC courses, we do not consider it appropriate to disturb the findings on this aspect as to the coverage of such teachers in composite colleges, for purposes of revised UGC scales of pay to them."

(Emphasis supplied)

11. Their lordships of the Hon'ble Supreme Court in the case of K.T. Veerappa and Others Vs. State of Karnataka and Others, , have held that the 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 and unjust. Their lordships have held as under:

"13. 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 Another Vs. Haryana Civil Secretariat Personal Staff Association, and Union of India (UOI) and Another Vs. S.B. Vohra and Others, . There is no dispute nor can there be any to the principle as settled in the case of State of Haryana and 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."

(Emphasis supplied)

12. Their lordships of the Hon^{ble} Supreme Court in the case of Union of India (UOI) and Others Vs. Satya Brata Chowdhury and Others, , have held that the differential treatment to similarly situated employees is invalid. Their lordships have held as under:

"18. We may, at the outset, notice that the only contention raised by the appellant before the Tribunal, as also before the High Court, was that the recruitment Procedure in the Eastern Railway Administration was different for the Time-keepers. It has been held not to be so. The judgment of the Central Administrative Tribunal dated 5.7.1991 in TA No. 1585 of 1986 has been noticed by us. Therein, the Tribunal directed the workmen of the workshops at Liluah and elsewhere to be treated at par with their counterparts of Kharagpur, Banaras and Chittaranjan locomotive workshop. It was, therefore, impermissible for the appellant to treat the workers similarly situated, differently. They were to be treated as workers under the Factories Act. Only because some overtime allowance became payable to them or a separate seniority list was maintained or a cadre for the said workers on workshop basis was constituted, the same by itself, in our opinion did not authorize the Eastern Railway Administration to discriminate the workers working in one workshop with the workers working in the other."

(Emphasis supplied)

13. Accordingly, the Writ Petition is allowed. Annexure P-4 dated 18.4.2011 is quashed and set aside alongwith letter dated 4.10.2010. The Court would have ordered the respondents to consider the case of the petitioner for revision of pay scales on the basis of notification dated 31.12.2008, but taking into consideration that the petitioner is a senior citizen and in the interest of justice, the category of Finance Officer would be deemed to be included in the notification dated 30.6.2010 in the revised pay scale of Rs. 37400-67000 with grade pay of Rs. 8900 w.e.f. 1.1.2006, for all intents and purposes. The respondents are directed to revise the pension of the petitioner in the pay scale of Rs. 37400-67000 with

grade pay of Rs. 8900, within a period of four weeks from today. The revised pension shall carry interest @ 9% per annum from the due date.