
(1995) 05 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : CWP No. 311 of 1991

The Himachal Pradesh State Small Industries and Export Corporation Ltd.

APPELLANT

Vs

General Secretary Concrete Poles and Paper Conversion Workers Union and Others

RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1995) 2 ILR HP 1149

Hon'ble Judges : L.S. Panta, J; Kamlesh Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—In this writ petition, the Petitioner has challenged the award dated 16th February, 1991, passed by the Presiding Officer, Industrial Tribunal, Himachal Pradesh, Shimla, whereby it is held that the workmen of the Union-Respondent No. 1 are entitled to pay scales from the date of reference, that is, 8th August, 1995, which are given to the corresponding categories of posts in "HPSEB and HP Cooperative Societies".

2. The Petitioner is a Government Company registered under the Companies Act. It has several units, which are engaged in the sale, distribution and manufacture of varied industrial products. In the year 1976, it established two units, namely, Paper Conversion Unit and Concrete Poles manufacturing unit. The Paper Conversion unit was manufacturing stationery and allied items whereas the Concrete Poles Manufacturing unit was manufacturing concrete Poles by casting in moulds.

3. A dispute arose between the workmen of these two units and their management in respect of payment of time-scale and D.A. linked with Price Index as well as payment of bonu's at the rate of 20% for the year 1981-82, which was referred to the Industrial Tribunal after the failure of conciliation

proceedings. The reference made to the Industrial Tribunal was as follows:

1. Whether the demand for the grant of time scales to various categories of workers and the demand of granting DA to linked with price index is justified? Relief, if any, they are entitled to?

2. Whether the demand of bonus @ 20% for the year 1981-82 is justified. If not, the relief, they are entitled to?

4. Before the Industrial Tribunal, the Union-Respondent No. 1 filed its claim stating that they are entitled to time-scale which is being paid to the corresponding categories of workmen employed in Public Works Department, Irrigation and Public Health Department, Transport and Printing Press of the Government of Himachal Pradesh. They also made their claim of 20% bonus for the year 1981-82 keeping in view the production as well as profit of the said Units.

5. In reply, the Petitioner resisted the claim of the workmen mainly on the ground that the workmen are covered under the payment of Minimum Wages Act and there is no justification to give them time-scale of pay being given to corresponding employees of the Departments of Himachal Pradesh Government, as well as its Printing Press.

6. On the pleadings of the parties, the following issues were framed:

1. Whether the petition is not maintainable in the present forum? OPR

2. Whether the workmen are covered under the Minimum Wages Act and this petition is not maintainable? OPR

3. Whether the demand for the grant of the time-scale for various categories of workmen and the demand for the grant of DA to be linked with price-index is justified? If so, to what scale and DA the various categories of workmen are entitled to? OPP

4. Whether the demand of bonus @ 20% for the year 1981-82 is justified? If so, to what amount of bonus and at what rate, the workmen are entitled to? OPP

7. Issues No. 1 and 4 were not pressed during the course of arguments. Issue No. 2 is answered in favour of workmen that the petition was maintainable, despite the fact that they were being paid wages under the Minimum Wages Act. Similarly, issue No. 3 is answered in positive that the workmen are entitled to the scales of pay, along with DA, which are given to the corresponding category of employees of "HPSEB and HP Cooperative Societies". The Presiding Officer, Labour Court has held that the principle of region-cum-industry formula is not strictly applicable to the present case but on the principle of "equal pay for equal work", the demand of the workmen is genuine. It weighed with the Presiding Officer of the Labour Court that since the said two Units of the Petitioner-company are owned and controlled by the Government, there are no reasons that the time-scale given to the corresponding categories of employees in the

Department of Government should not be given to the workmen.

8. We have heard the learned Counsel for the parties and also gone through the record. We find that neither in the pleadings nor in the evidence produced by the parties, it was the case that the workmen of the said two Units have been discriminated in the payment of time scale and they are entitled to equal pay for equal work by invoking Article 14 of the Constitution of India. There is no material on record placed by either party to show that the work and responsibilities of the workmen are comparable to that of the corresponding category of employees working in the Departments and other Undertakings/ establishment belonging to the Government. By now, it is well settled that the principle of "equal pay for equal work" has in built restrictions. The Supreme Court in Harbans Lal and Others Vs. State of Himachal Pradesh and Others, , after considering the judgments in State of U.P. and Others Vs. J.P. Chaurasia and Others, and Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others, and other cases, has held that:

...the principle of "equal pay for equal work" has no mechanical application in every case of similar work. Article 14 permits reasonable classification founded on rational basis. It is, therefore, not impermissible to provide two different pay scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority. It was pointed out that in service, merit or experience could be the proper basis for classification to promote efficiency in administration and he or she learns also by experience as much as by other means. Apart from that, the court has expressly observed that the higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenue may also be allowed.

9. The learned Judges of the Supreme Court have also referred to the observations, made in their earlier judgment, in Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, These are:

But equal pay must depend upon the nature of the work done, it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service.

10. We may point out that in the judgment of Harbans Lal's case (supra), the learned Judges were dealing with the case of workers employed at the Wood Working Centre of the Himachal Pradesh State Handicraft Corporation, who had demanded payment of regular pay scale, which was being paid to their counterparts in the regular service. In that context, the learned Judges of the Supreme Court, applying the law laid down in Chaurasia's and Mewa Ram Kanojia's cases

(supra) denied the claim of the workers of regular pay scales on the ground that no material was placed on record to show that their duties and responsibilities were comparable with their counter-parts in government service. However, their Lordships observed that:

...even assuming that the Petitioners' job are comparable with the counter-parts in the government service, the Petitioners cannot enforce the right to "equal pay for equal work". The discrimination complained of must be within the same establishment owned by the same management. A comparison cannot be made with the counter-parts in other establishments with different managements or even in establishments in different geographical locations, though owned by the same masters. Unless, it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work" cannot be enforced." (Also see: All India Sainik Schools Employees Association v. The Defence Minister-cum-Chairman, Board of Governors Sainik School Society, New Delhi AIR 1989 SC 88 and State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, .

11. Applying the ratio of these judgments of the Supreme Court to the case in hand, we hold that in the absence of any material on record that the duties and responsibilities performed by the workmen were comparable quantitatively and qualitatively to that of the corresponding categories of employees of Departments and Undertakings of the Government, the Industrial Tribunal was not justified to award the same time scale and DA, which is payable to the corresponding categories of employees of Departments and Undertakings of the Government.

12. We may now examine the validity of the award from another angle. Even for rationalisation of wage structure of a Unit, it is required to be kept in view that what is the financial capacity of the employer, whether it is able to bear the additional burden and what should be the fair wage structure keeping in view the reasonable living of workmen. Interest of the workmen as well as the financial capacity of the employer has to be harmonised while fixing the wages or revising it. The Supreme Court in Hindustan Antibiotics Ltd. Vs. The Workmen and Others, has held that wages should, normally be fixed on region-cum-industry basis. In that case, on the basis of the material placed before them, the learned Judges came to the conclusion that the service conditions of the employees in the public sector undertakings are not analogous to those of the government employees. As such, the governmental wage structure cannot be conducive to industrial relations. The learned Judges were further of the view that keeping in view the difference in the nature of duties and responsibilities of the staff of the public undertakings and government departments, there cannot be uniform wage structure for both the sectors.

13. In view of the above discussion, the impugned award cannot stand the judicial scrutiny and it is set aside. The workmen of the Union-Respondent No. 1 are not entitled to time-scales with DA, which are being given to the

corresponding categories of employees of "HPSEB and HP Cooperative Societies" as held by the Industrial Tribunal. The writ petition is allowed in the aforesaid terms and the award dated 16th February, 1991 passed by the Presiding Officer, Industrial Tribunal, Himachal Pradesh, is quashed and set aside.

14. No costs.