
(2019) 09 SHI CK 0131

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1640 Of 2017

Uttam Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 30-09-2019

Acts Referred:

Citation : (2019) 09 SHI CK 0131

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Vivek Singh Thakur, Ajay Thakur, Avinash Bhardwaj, Sudhir Bhatnagar, Sumesh Raj, Sanjeev Sood, Kunal Thakur

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. By way of present petition, petitioner has prayed for the following main relief:-

"(i) The respondents may kindly be directed to release revised pay scale to petitioner Assistant Librarian of Rs.300-600 as revised time to time as being granted to similar situated persons in the light of various judgments & orders passed in petition, COPCs 180, 465 of 2016 & LPA 146 of 2009 & 237 of 2010 etc. alongwith arrears & interest @ 12% p.a.

(ii) That impugned communication/ order under No.702-707/TA-1/SDB/ 2013, dated 12.06.2013 passed by respondent No.4 may kindly be ordered to be quashed and set- aside qua petition."

2. Undisputed facts, as emerge from the record are that the management of "Baba Balk Nath Temple" was taken over by "Baba Balk Nath Temple Trust" w.e.f. 16.1.1987 in terms of the provisions contained in H.P. Hindu Public Religious Institutions and Charitable Endowments Act, 1984. It is also not in dispute that "Baba Balk Nath Temple" stands included in the Ist schedule of the above

mentioned Act and this has been running several institutions i.e. BBN Degree College, BBN Sanskrit College, BBN Senior Secondary School, BBN Model School, an Ayurvedic Dispensary. BBN Degree College, Chhakmoh, Hamirpur, is also managed/run by the "Baba Balk Nath Temple Trust". The petitioner was appointed as Assistant Librarian on 3rd April, 1995 at BBN Sanskrit College, Chhakmoh in the pay scale of Rs. 1200-2100 plus other allowances and since then he has been continuously rendering his services in the same capacity without there being any complaint.

3. The genesis of the dispute appears to be the letter dated 7th July, 1981, issued by the respondent-State, whereby higher pay scale of Rs.300-600 was granted to some senior most Assistant Librarians. Feeling aggrieved, the remaining Assistant Librarians working in Schools/ Colleges/ Public Libraries and Community Centre Libraries under the Himachal Pradesh Education Department, filed writ petitions before this Court on the ground of discrimination. Petitioners in those cases claimed that since senior most Assistant Librarians, who were given the higher pay scale, formed one class and were discharging same and similar duties, they also being similarly situated are also entitled to higher pay scale of Rs.300-600, as granted to some senior most librarians. Writ petitions, as referred hereinabove, on the founding of the State Administrative Tribunal (hereinafter referred to as the Tribunal), came to be transferred to the Tribunal. The learned Tribunal, vide order dated 26th July, 1993, allowed the said writ petitions and directed the State to revise the pay scale of the writ petitioners and similarly placed Assistant Librarians working in the Himachal Pradesh Education Department. It is apt to reproduce the operative portion of the said order dated 26th July, 1993 as under:-

"Following the ratio of the above judgments, we direct the respondents to revise the pay scale of the applicants and other similarly situated Assistant Librarians in Schools/Colleges/Public Libraries and Community Centre Libraries under the Himachal Pradesh Education Department to Rs.300-600 in consonance with the Office order dated July 7, 1981 Annexure PB, within a period of two months and they be allowed all further consequential benefits to which they are found entitled subsequently consequent upon this revised pay scale. We further direct that the arrears found due and payable as a result of such revision be paid to them within a period of three months after such revision."

4. It is not in dispute that aforesaid decision passed by the Tribunal was never laid challenge in any Court of law by the State and as such, it attained finality. It is also not in dispute that aforesaid decision made by the Tribunal was also not implemented by the respondent-Department in its letter and spirit and respondent-Department issued letter dated 16th June, 1994, granting higher pay scale only to the Senior Assistant Librarians. In the aforesaid background, Assistant Librarians again approached the Tribunal by filing the Original Application, but same came to be transferred to this Court after abolishment of the Tribunal and was registered as CWP(T) No.6018 of 2018, titled as Madan Lal

Tomar and others Vs. State of H.P. and others.

5. The said writ petition was allowed by the learned Single Judge vide judgment dated 22nd March, 2010. Aforesaid judgment was further laid challenge by the respondent-State by way of LPA No.237 of 2010, titled State of H.P. and another Vs. Madan Lal Tomar and others. The Division Bench of this Court decided the aforesaid Letter Patent Appeals (LPA No.237 of 2010) alongwith other LPA No.98 of 2011, titled State of H.P. and another vs. Mrs. Ashwani Kumari and CWP No.6680 of 2019, titled D.R.Chauhan and others vs. State of H.P. and another. The Division Bench of this Court though dismissed the LPAs, as referred hereinabove, but allowed the writ petition vide judgment dated 22nd November, 2011. It is apt to reproduce paragraphs 6, 7 and 8 of the said judgment hereunder:-

"6. On the constitution of the H.P. State Administrative Tribunal, the aforesaid writ petitions were transferred to the said Tribunal. All the writ petitions were heard and decided together vide order dated 26th July, 1993. The Tribunal by its order decided the following question:

"Whether the State is justified in granting the revised pay-scale of `300-600 to only a few Assistant Librarians on the basis of seniority, when there is only one cadre of Assistant Librarians in Schools/Colleges/Public Libraries, maintained by the Education Department and all the Assistant Librarians are performing the same and similar functions and duties?"

The Tribunal, after detailed discussion, held as follows:

Following the ratio of the above judgments, we direct the respondents to revise the pay scale of the applicants and other similarly situate Assistant Librarians in Schools/Colleges/Public Libraries and Community Centre Libraries under the Himachal Pradesh Education Department to Rs.300-600 in consonance with the Office order dated July 7, 1981 Annexure PB, within a period of two months and they be allowed all further consequential benefits to which they are found entitled subsequently consequent upon this revised pay scale. We further direct that the arrears found due and payable as a result of such revision be paid to them within a period of three months after such revision."

7. A bare perusal of the operative portion of the order of the Tribunal clearly shows that the Tribunal directed the State to revise the pay-scales of the petitioners and other similarly situated Assistant Librarians to `300-600. It is not disputed before us that this order of the Tribunal attained finality and was never challenged by the State before any higher forum.

8. Unfortunately, the State did not comply with the aforesaid directions, insofar as other similarly situated persons are concerned. It issued a letter on 16th June, 1994 and in this letter it directed that the pay scale of `300-600 would be granted only to the senior Assistant Librarians as a measure personal to the existing incumbents. To say the least, this letter was in total violation of the

directions issued by the Tribunal. The stand of the State that the higher pay-scale of `300-600 was payable only to the senior Assistant Librarians is totally contrary to the orders passed by the Tribunal. At this stage, we are not going into the validity of the orders passed by the Tribunal since they had attained finality. If the State was aggrieved by the orders of the Tribunal, it had the right to challenge the said orders in the appropriate forum. It chose not to challenge the orders and, therefore, was bound to comply with the same. The order, the operative portion of which has been quoted hereinabove, in no uncertain terms states that all Assistant Librarians, i.e. the petitioners as well as other similarly situated were to be granted the pay-scale of `300-600. The judgment was a judgment "in rem and not in personam". The State could not have set at naught the judicial pronouncement of the Tribunal."

6. During the pendency of the appeals before the Division Bench of this Court, the cadre of Assistant Librarians was granted U.G.C. Scale, but respondent-State vide letter dated 31st March, 1995 granted revised pay scale only to 20 senior Assistant Librarians, who were working in District/Public and Central State Library, Solan, which action was further assailed by the other similarly situate persons by way of CWP(T) No.4436 of 2008, titled V.D. Saraswati and others vs. State of H.P and another.

Aforesaid writ petition was allowed by the learned Single Judge vide judgment dated 18th May, 2009 (subject matter of LPA No.146 of 2009), and the benefit of the letter dated 31st March, 1995 was ordered to be extended to all the petitioners. Aforesaid judgment passed by the learned Single judge was followed in other writ petitions, which lateron came to be the subject matter of LPA Nos. 170 of 2013, 172 of 2013 and 157 of 2014. All the LPAs, referred hereinabove, came to be decided by the Division Bench of this Court (Annexure P-5) vide judgment dated 23rd December, 2015, wherein the Division Bench of this Court refused to interfere with the judgment passed by the learned Single Judge and it concurred with the findings returned by the learned Single Judge that all the Assistant Librarians constituted one homogeneous class. It would be profitable to take note of paragraphs No.15 and 16 of the judgment hereunder:-

"15. The question is - Whether, in the given circumstances, the State can now question the judgments made by the learned Single Judge by the medium of Letters Patent Appeals in hand? The answer is in the negative for the simple reason that, admittedly, the principle has been discussed and the findings stand returned by the State Administrative Tribunal, the Writ Court and the Appellate Court that all the Assistant Librarians constituted one homogeneous class, which findings stand upheld by the Apex Court. Virtually, the State, by the medium of instant appeals, has questioned the foundation of the reasoning, on the basis of which the earlier judgments, referred to above, were made, which is not permissible.

16. Having said so, the judgments, impugned in the Letters Patent Appeals, require no interference and the same are upheld. Consequently, the appeals in

hand are dismissed."

7. Petitioner herein alongwith other person namely, Sumna Devi had also filed CWP No.1295 of 2013-J, titled as Sumna Devi and another versus Sate of Himachal Pradesh and another, seeking therein direction to the respondents to grant pay scale of Rs.300-600, alongwith revision of pay as revised from time to time from the date of their appointments in the light of the judgment passed in CWP(T) No.6018 of 2008 dated 22.3.2010 and further upheld in LPA No.237 of 2010, dated 22.11.2011.

8. The Division Bench of this Court having taken note of the fact that case of the petitioners is squarely covered by the judgment dated 30.5.2012, rendered by this Court in CWP No.5118 of 2010, Piare Lal & others Vs. State of Himachal Pradesh and others alongwith other connected matters, judgment dated 22.3.2010 in CWP No.6018 of 2018, Madan Lal Tomar and others versus State of Himachal Pradesh and another and judgment dated 22.11.2011, directed the respondents/competent authority to consider the case(s) of the petitioners herein and dispose of the same within six weeks. However, fact remains that respondent No.4, who happened to be the Chairman-cum- Commissioner, Baba Balak Nath Temple Trust, Deotsidh, vide order dated 12.6.2013 (Annexure P-2) refused to grant pay scale of Rs. 300-600 to the petitioner on the ground that he has been already granted pay scale of Rs.10300-34800 corresponding to pay scale of Rs. 300-600.

9. Being aggrieved and dissatisfied with the aforesaid order passed by respondent No.4, petitioner filed a representation dated 20.6.2013 (Annexure P-3) stating therein that pay scale of Rs. 300-600 stands revised to 2200- 4000 w.e.f. 1.1.1986 and from 1.1.1996, it stand further revised to Rs. 8000-13500 in terms of the order issued by the Director Higher Education and as such, petitioner claimed that since he was appointed on 3rd April, 1995, his pay should be fixed at the pay scale of Rs.2200-4000. Since, no satisfactory answer was received from respondent No.3 and no relief, as prayed for, was granted to the petitioner, he was compelled to file instant petition before this Court, seeking therein directions, as reproduced hereinabove.

10. While refuting aforesaid claim of the petitioner, no plausible explanation has been rendered on record by respondents No.2, 3, 4 and 6. Respondents mentioned hereinabove, while categorically admitting that petitioner joined service in BBN Sanskrit College as Assistant Librarian Class-III (Non-Gazetted) on the pay scale of 1200- 2100 on 6.4.1995, has further stated that at the time of his appointment petitioner was only 10+2 and had one year diploma in Library Science. Respondents have claimed that minimum educational qualification for the post of Assistant Librarian prescribed by UGC/HPU is that candidate must have a Master's Degree in Library Science/ Information Science/Documentation Science or an equivalent professional degree. As per the respondents, candidates seeking UGC pay scale of 300-600 amended from time to time I.e.700-1600(01.01,1976), 2200-4000 (01.01.1986), 8000-13500 (01.01.1996) should

have also cleared NET examination for Librarian conducted by UGC, CSIR or similar test accredited by the State Public Service Commission.

11. In this regard, respondents have placed on record copy of H.P. Higher Education Department, Librarian (College cadre) Class-I(Gazetted) and contract Recruitment and Promotion Rules, 2011 as Annexure P-4. Respondents have also claimed that there is no post of Assistant Librarian available as per sanctioned posts in the Temple Trust. As per the respondents, mentioned hereinabove, petitioner was never appointed through a properly constituted Selection Committee and does not fulfill the eligibility norms prescribed by the UGC/HPU for the post of Assistant Librarian (College Cadre) and as such, prayer for grant of UGC pay scale cannot be accepted. Respondents have also claimed that petitioner has been already granted his due and admissible pay scale of 10300-34800, as is evident from letter No.702-707/TA-1/SDB/2013, dated 12.6.2013. Respondents have claimed that pay scales notified by the Directorate of Higher Education were 700- 1200(1.1.1978) and 1640-2925(1.1.1986) and same cannot be given to the petitioner in view of notification No.Cha (2) 68/93-Shiksha-Ka dated 16.6.1994.

12. Having heard learned counsel representing the parties and perused the material available on record, this Court finds grounds taken by the respondents for denying the relief claimed by the petitioner to be highly untenable and unsustainable. Appointment letter placed on record by the respondents with their reply Annexure R-1, clearly suggests that on 3.4.1995 petitioner was appointed as Assistant Librarian at Chhakmoh and since then petitioner is rendering his services in that capacity.

13. In view of the aforesaid, appointment letter issued by the respondents, objection with regard to petitioner's possessing minimum qualification for the post of Assistant Librarian cannot be allowed to be raised by the respondents, who admittedly have allowed the petitioner to render his services against the post of Assistant Librarian for approximately 25 years uninterruptedly.

14. It is not in dispute that at present petitioner has been rendering his services as Assistant Librarian in the respondent college. Recruitment and Promotion Rules for the post of Assistant Librarian (College cadre) Class-I (Gazetted) in the Department of Higher Education (Annexure P-4), no doubt reveals that minimum educational qualification for the post of Assistant Librarian is Master degree in Library Science/Information Science/ Documentation or equivalent professional degree with at least 55% marks or its equivalent grade of B in the UGC seven point scale plus a consistently good academic record, computerization of Library, but such notification came into force w.e.f. 19th August, 2011 and as such, it cannot be made applicable in the case of the petitioner, who admittedly stood appointed as Assistant Librarian in the respondent College on 3rd April, 1995. Moreover, there is nothing on record suggestive of the fact that at any point of time respondents having noticed aforesaid defect in the appointment of the petitioner, initiated proceedings, if any, against the petitioner for his removal

from the post of Assistant Librarian, rather as per own admission of the respondents, petitioner was granted pay scale of 10300-34800 in terms of letter No. EDN-H(b)B(75) Library/2013, dated 30.4.2013, issued by the Department of Education, Himachal Pradesh.

15. Stand taken by the respondents in their reply is totally contradictory because at one hand respondents have claimed that since pay scales of Rs. 10300-34800, which corresponds to pay scale 300-600 stands granted to the petitioner, but on the other hand, it has been stated that since petitioner does not possess minimum qualification for the post of Assistant Librarian, he cannot be granted pay scale of UGC.

16. Having carefully perused the stand taken by respondents No.2,3,4 and 6 as well as arguments advanced by Mr. Avinash Bhardwaj, learned counsel representing the respondents, this Court has no hesitation to conclude that there is no justification at all to deny the pay scale, as has been prayed for by the petitioner that too on the basis of the grounds raised in the reply filed by the aforesaid respondents. This Court in various judgments, which have been taken note hereinabove, has deprecated the action of the respondent-State to pay higher pay scale of 300-600 only to the senior most Assistant Librarians and has categorically held that all the Assistant Librarians constituted one homogeneous class and as such, they all requires to be granted pay scale of 300-600. Learned Tribunal while passing order dated 26th July, 1993, has categorically held that judgment passed by it was a judgment "in rem and not in personam" and as such, State could not have set at naught the judicial pronouncement of the Tribunal.

17. Since question stands duly settled that there is only one cadre of Assistant Librarians in Schools/Colleges/ Public Libraries and Community Centre Libraries and there cannot be any discrimination in paying higher pay scale of 300-600, petitioner, who is rendering his services in the respondent College since 3rd April, 1995 as Assistant Librarian, is also justified in claiming the similar pay scale. Though, respondents have made an attempt to set up a case that they are not governed by notifications issued by the Department of Education, but their such plea is totally contrary to the record because as per own case of the respondents petitioner stands already granted pay scale of 10300-34800 in terms of letter No. EDN-H(b)B(75) Library/2013, dated 30.4.2013. Similarly, respondents while disputing the educational qualification of the petitioner has placed reliance upon the H.P. High Education Department, Librarian (College cadre) Class-I (Gazetted) and contract Recruitment and Promotion Rules, 2011 (Annexure P-4). Careful perusal of Annexure P-16 placed on record by the petitioner alongwith the rejoinder further reveals that Office of the Deputy Commissioner-cum- Commissioner Trust BBN Temple Deotsidh at Hamirpur, Himachal Pradesh, have also adopted the rules of the State of Himachal Pradesh qua the retirement, retirement-cum- death gratuity benefits etc, kind of leave and group insurance etc.

18. Annexure P-9 placed on record by the petitioner alongwith the rejoinder reveals that in the year, 1997 he made representation to Commissioner Temple Trust (respondent No.2) for grant of pay scale of Rs. 1640-2925 in terms of notification dated 16th June, 1994 issued by the Department of Education, Government of Himachal Pradesh, who having taken note of aforesaid letter/ notification issued by the Education Department granted administrative approval for grant of pay scale of Rs. 1640- 2925 in favour of the petitioner. In view of the aforesaid communication, there appears to be no force in the ground taken by the respondents that they are not governed by the instructions/ notification issued by the Department of Education, rather record made available to this Court clearly suggest that respondents-College has been scrupulously adhering/ following instructions/notifications issued by the Department of Education from time to time with regard to qualification for appointment of teachers as well as their pay scales.

19. Record further reveals that pursuant to judgment/ order passed by this Court on 23rd December, 2015 in LPA No.146/2009, titled as State of H.P. and others Vs. V.D. Saraswati and others alongwith other connected matters, Government of Himachal Pradesh vide communication dated 17.10.2017 (Annexure P-10) has already taken decision to pay UGC pay scale alongwith consequential benefits to the Assistant Librarians (petitioners/ non-petitioners), who are similar situated on the analogy of V.D. Saraswati and others. While passing the aforesaid order arrears in respect of the petitioners have been restricted for three years prior to filing of the case and for non-petitioners w.e.f.11.10.2017 i.e. date of approval of the State Government. Vide aforesaid communication dated October, 2017 all the principals of Govt. Collects, SCERT & Sanskrit Collects have been apprised of the aforesaid decision taken by the Government, so that appropriate action is taken at their end.

20. Accordingly, in view of the above discussion, the writ petition is allowed and respondents are directed to grant revised pay scale to the petitioner like other similar situate Assistant Librarians in terms of letter No.EDN- H(15)B(1) 3/97 Fixation, dated 17.10.2017 (Annexure P-10) alongwith up-to-date interest within a period of two months.

Pending applications, if any, also stands disposed of.