
(2022) 05 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 4921, 4923, 4929, 5761
Of 2020

Virender Kumar And Others

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Citation : (2022) 05 SHI CK 0019

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : B.S. Attri, Rajinder Dogra, Vinod Thakur, Anil Chauhan

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. Since common questions of law and facts arise for consideration and even the relief claimed in all the petitions is same, therefore all these petitions were heard together and are being disposed of by a common judgment.

2. The petitioners were working in various capacities with Special Area Development Authority, Shoghi, Kufri, Ghanahatti, District Shimla. Vide office order dated 29.12.2009, the pay scales of the petitioners were revised to Rs. 10300-34800+Rs. 3600 Grade Pay from pre-existing scale of Rs. 5480-8925.

3. The Government vide its letter dated 28.6.2014 decided to regularize the services of the contractual employees, who had completed six years of service as on 31.3.2014. In terms of the aforesaid communication, the petitioners were eligible for regularization and had completed the requisite six years of continuous service, but their services were not regularized.

4. Thereafter, respondent No. 1, Principal Secretary (TCP) to the Government of Himachal Pradesh issued a letter dated 19.5.2015 regarding creation of posts in various SADAs in Himachal Pradesh for regularization of daily/contract

employees, who have completed 7 years of continuous service with 240 days per calendar year as on 31.3.2014, as per the policy of the government dated 28.6.2014.

5. Later, vide office memo dated 25.8.2015 issued by respondent No. 3, i.e. Deputy Commissioner-cum-Chairman, SADA, Shoghi, Kufri, Ghanahatti, the services of the petitioners were regularized with immediate effect, but on a reduced scale of Rs. 5910-20200+1950 Grade Pay, whereas they had already been placed in the pay scale of Rs. 10300-34800+Rs. 3600 Grade Pay, when they had been working on contract basis.

6. However, notably the similarly situated employees i.e. Sanitary Inspector, whose services had been regularized in the Municipal Corporation, Shimla, Urban Development Department and BBND, Solan, were granted pay scale of Rs. 10300-34800+3600 Grade Pay.

7. Even the Deputy Commissioner-cum-Chairman, SADA was of the view that the petitioners had been discriminated and therefore he issued letter dated 29.8.2016 to the Additional Chief Secretary (TCP), wherein he strongly recommended the pay scale of Rs. 10300-34800+3600 Grade Pay to the petitioners.

8. However, vide letter dated 14.8.2017 issued by the Additional Chief Secretary (TCP) to the Government of H.P. , the aforesaid pay scale was granted, but the same was granted w.e.f. 24.8.2017 and not from the date of their regularization. It was further provided that financial implications of the pay scale would be borne by the concerned SADA from their own resources. This constrained the petitioners to file a representation, however, the same was rejected by the government, vide letter dated 30.7.2018, constraining the petitioners to file the instant petitions for grant of following substantive relief(s):

"i) That the impugned order dated 30.07.2018 (Annexure A-8/A-7), whereby the applicant has been denied the pay scale of Rs. 10300-34800+3600/- Grade Pay from the date of regularization of his service i.e. w.e.f. 25.8.2015 till 23.8.2017, may kindly be quashed and set aside.

ii) That the respondents may kindly be directed to grant the pay scale of Rs. 10300-34800+3600 Grade pay to the applicant from the date of regularization of his service i.e. w.e.f. 25.8.2015 till 23.8.2017 alongwith upto date interest."

9. Even though, SADA, which has been arrayed as respondent No. 3, has filed separate reply, but the same need not be referred to as the grant of pay scale, sought by the petitioners, were admittedly in the sole and exclusive domain of the government.

10. As regards, the reply filed on behalf of respondents No. 1 and 2, it would be noticed that apart from certain preliminary objections, the only ground on which the claim of the petitioners has been rejected is that vide rejection letter dated 30.7.2018 (Annexure A-8), there was no scope for grant of enhanced pay scale

to the petitioners who had been working as Accountant and Sanitary Inspectors in SADA, Shoghi, Kufri and Ghanahatti in various SADAs from the date of their regularization, as is being claimed. It is claimed that vide letter dated 14.8.2017, pay scale of Rs. 10300-34800+3600 Grade Pay has been allowed/granted to the post of Sanitary Inspector in SADAs with immediate effect.

11. Furthermore, it was clearly envisaged in letter dated 19.5.2015, whereby various posts were created that;

I) All the financial implications to be accrued in this regard would be met from the SADA funds only without hampering the pace of Development activities.

II) No additional funds would be demanded on this account.

III) Neither HP Civil Services (Revised Pay) Rules, 2009 nor HP Civil Services (categorywise/postwise revised pay) Rules, 2012 are applicable to the employees of SADA.

Therefore, it was not feasible to grant the revised pay scales retrospectively, as has been claimed by the petitioners.

12. Obviously, the defense taken by the respondents is not at all sustainable, as it leads nowhere, rather it smacks of arrogance and closed mindedness.

13. It is not in dispute that the petitioners were already drawing higher pay scale of Rs. 10300-34800+3600 Grade Pay prior to their services being taken over on contract basis.

14. That apart, the funds of the revised pay scale were to be paid out of the funds of SADAs and not by respondents No. 1 and 2 and it is not the case of the SADA that it lacked funds and therefrom could not pay revised pay scale from the date of their services being taken over i.e. w.e.f. 25.8.2015 till 23.8.2017.

15. What is still worse is the manner in which respondents have rejected the claim of the petitioners vide letter dated 30.7.2018 (Annexure A-8), which reads as under:

"Government of Himachal Pradesh

Department of Town & Country Planning

Subject: Regarding pay scale for the post of Sanitary Inspector and Accountant in SADA Kufri, Shoghi and Ghanahatti.

Deputy Secretary to the Chief Minister, H.P. may please refer to his U.O. No. Secy/CM/T0504/2017-DEP-C-47198 dated 5.6.2018 on the subject cited above.

In this regard, it is informed that on regularization of services of one Accountant and Three Sanitary Inspectors who were working on contract basis in SADA Shoghi, Kufri and Ghanahatti, following payscales were granted:

Sl. No.

Name of the post

Payscale granted at the time of regularization with the prior approval of the Cabinet

Date since when the pay scale granted

Pay scale granted on the request of the incumbents with the prior approval of cabinet

Date since when the pay scale granted

1.

Accountant

Rs.5910-20200+ 1950/- GP

25.8.2015

Rs. 10300- 34800+Rs. 3800/- GP

24.8.2017

2.

Sanitary Inspector

Rs.5910-20200+ 1950/- GP

25.8.2015

Rs. 10300- 34800+Rs. 3600/- GP

24.8.2017

Now the incumbents of the above two posts are demanding that the pay scale which has been granted to them w.e.f. 24.8.2017, be granted from the date of their regularization i.e. w.e.f. 25.8.2015.

It is relevant to mention here that while according approval for grant of enhanced payscale by this deptt. Vide letter of even number dated 14.8.2017, it was clearly mentioned in the approval, that these payscales would be applicable with immediate effect. Hence, there is no scope for grant of enhanced payscale to the Accountant and Sanitary Inspectors in SADA, Shoghi, Kufri and Ghanahatti from the date of their regularization, as is being claimed by them.

It is, therefore, requested to apprise the Hon'ble Chief Minister, H.P. accordingly.

(Virender Sharma)

Joint Secretary (TCP) to the

Government of H.P.

Deputy Secretary to the

Chief Minister, H.P.”

16. It is evident from the perusal of the aforesaid letter that no reason whatsoever has been given for rejecting the claim of the petitioners and it is simply stated that “it was clearly mentioned in the approval that these payscales would be applicable with immediate effect. Hence, there is no scope for grant of enhanced pay scale to the Accountant and Sanitary Inspectors in SADA, Shoghi, Kufri and Ghanahatti, from the date of their regularization, as is being claimed by them.”

17. By now, it is well settled legal proposition that not only the judicial authorities, but the administrative authorities’ orders must be supported by reasons recorded in it. The rejection order is bereft of any reason and therefore, is not sustainable in the eyes of law.

18. Apart from above, it would be noticed that it is only qua the employees of the SADA that the respondents have drawn different yardsticks, whereas counterparts of the petitioners, whose services have been regularized in the Municipal Corporation, Urban Development department and BBND, have been granted the pay scale of Rs. 10300-34800+3600 Grade Pay from the date of their regularization.

19. A Division Bench of this Court in “Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni versus Satish Chand” and connected matters, Latest Himachal Law Judgments, Vol. 43 2017(1), 184 has clearly held that equal pay for equal work is no more slogan, but the fundamental right, which can be enforced through constitutional remedies.

20. Since it is not in dispute that the petitioners herein were discharging/performing the similar duties and shouldering the similar responsibilities, as the duties being discharged by their counterparts in Municipal Corporation, Shimla, Urban Development department and BBND, Solan and in fact had been drawing the pay scales of Rs. 10300-34800+3600 Grade Pay when they have been regularized, therefore, the petitioners could not have been discriminated qua the pay scales when their services were taken over and regularized.

21. That apart, the respondents ought to have given some justification or reason as to why the claim of the petitioners cannot be acceded to. Merely stating that there is no scope for grant of enhanced pay scale to the petitioners clearly falls short of the requirement of law, in relation to disclosure.

22. In view of the aforesaid discussion and for the reasons stated above, I find merit in these petitions and the same are accordingly allowed. Impugned order dated 30.7.2018 (Annexure A-8/Annexure A-7), whereby the petitioners have been denied the pay scale of Rs. 10300-34800+3600 Grade Pay from the date of regularization of their services i.e. w.e.f. 25.8.2015 till 23.8.2017, is quashed and set aside. The respondents are directed to grant the aforesaid pay scale alongwith grade pay to the petitioners from the date of regularization of their

services, within a period of three months from today, else they shall be liable to pay 9% interest on the delayed payments till the entire amount is paid. The pending application(s), if any, are also disposed of.