
(2012) 08 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15883 of 2011 (O and M)

Virender Parshad and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 2 SCT 728

Hon'ble Judges : Surya Kant, J; R.P. Nagraath, J

Bench : Division Bench

Advocate : Puneet Gupta, for the Appellant; R.S. Kundu, Addl. AG and Ms. Nimrata Shergill, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Surya Kant, J.—The petitioners are Judicial Officers serving in the State of Haryana. All of them have done their Masters in Law. They seek quashing of the Haryana Government Instructions dated 19.05.2011 (Annexure P6) whereby the benefit of three additional increments on acquiring a Degree in LL.M. has been restricted qua those Judicial Officers only who possess the LL.M. Degree at the time of joining service and not to those who obtain such Degree subsequently. The petitioners have obtained their Degrees in LL.M. admittedly while in service. In All India Judges Association and Others Vs. Union of India (UOI) and Others, the Hon'ble Supreme Court had issued several directions for the improvement of service conditions including reasonable hike in the pay scales of Judicial Officers. The recommendations made by the First National Judicial Pay Commission, popularly known as "Shetty Commission" in this regard, including for the grant of three advance increments to Judicial Officers having Post-graduate degree in Law, were also accepted.

2. While recommending uniform pattern of eligibility conditions and pay structure throughout the country for initial entry in the Judicial Services, "Shetty Commission" also considered the desirability of granting "Additional Benefit for

Higher Qualification". The Commission referred to the Service Rules and conditions of service prevailing in different States at the entry level and took notice in para 8.46 of its Report Vol-II of the fact that except Delhi and Rajasthan, in none of the States additional benefit to a selected candidate possessing higher qualification was admissible. The Commission thereafter made the following recommendations in paras 8.48 and 8.49 of the report (Vol-II):-

8.48 If selected candidates are having a higher qualification like Post-Graduation in Law, we recommend that three advance increments be given as it is allowed by the Delhi Administration. It is an acknowledged fact that Post-Graduation in Law is a difficult course and it is better to reward appropriately such candidates.

8.49 But we do not propose to suggest any advance increments to those who are having more experience as Advocate than the minimum prescribed. Giving any advance increment for additional Bar practice is not proper. It should not be a bonus for those who have not been able to make their way immediately after acquiring the minimum qualification.

3. The Supreme Court in the cited decision directed all the States to implement these recommendations and grant the benefit of three additional increments to those possessing higher qualification. The reluctant executive with a clear agenda to frustrate these directions, started misinterpreting the Shetty Commission recommendations to mean as if the three advance increments in issue were to be adjusted against future annual increments of the eligible Judicial Officers. Such like misconstruction given to these recommendations by the State of Punjab was set at naught by one of us (Surya Kant, J) in 2011 (3) S.C.T. 319 : CWP No. 6954 of 2009 (Priya Sood v. State of Punjab & Ors.) decided on 24.01.2011, holding as follows:-

8] The expression "advance" as mentioned in paragraph 8.48 of the recommendations does not mean that three increments granted to the petitioner or other judicial officers possessing higher qualifications are a temporary measure only to be adjusted against their future annual increments to which they are otherwise entitled to as a matter of right save these are with-held under Rule 4.7 of the C.S.R. (ibid).

9] I say so for the reason that the Shetty Commission has referred to the phrases "additional" and "advance" both in Para 8.46 of its recommendations inter-changeably and since the solitary object of these recommendations was to grant an extra benefit to these officers who join judicial services with higher qualifications, the word "advance" shall connote the same meaning as the word "additional" is understood in general parlance.

(Emphasis applied)

4. The unsuccessful challenge at the instance of the High Court was turned down by a Division Bench of this Court in LPA No. 970 of 2011 decided on 30.05.2011 (Annexure P10) with an additional reason to the following effect:-

In the present case the degree of Masters of Laws would certainly bring efficiency in discharging duties by a Judicial Officer in comparison to those who do not possess such a degree. There is no real benefit of advancing advance increments if in the due course of time the writ petitioner-respondent No. 1 is to become equal to those who do not have additional higher qualification. Such an interpretation adopted by the appellant would not advance the basic object of the recommendation made by the Shetty Pay Commission. Therefore, we are of the view that the instant appeal does not merit admission and the view taken by the learned Single Judge deserves to be upheld.

(Emphasis applied)

5. The Special Leave to Appeal was also turned down by the Hon"ble Supreme Court.

6. We are informed that the Judicial Officers in the State of Punjab have still not been able to harvest their dues due to one or the other technicalities raised by the establishment.

7. State of Haryana also did not lag behind. Firstly, it issued a circular dated 28.10.2010 (Annexure P5) saying that the three advance increments on account of LL.M. Degree will be provided from the date of issue of letter dated 30.03.2010 and only "at the entry point those who have post-graduate qualification i.e. LL.M. Degree".

8. Meanwhile, some of the Judicial Offices of Haryana approached this Court in CWP No. 5966 of 2011 (Ritu Garg and others v. Punjab & Haryana High Court & Anr.) which was allowed by a learned Single Judge on 22.07.2011 following the above-cited decisions in the Punjab case.

9. The impugned circular dated 19.05.2011 restricting the benefit of three increments to those Judicial Officers "who possess the qualification of LL.M. at the time of joining of service and not to those who obtained the degree of LL.M. subsequently", was issued pending the above-stated writ petition.

10. The above-reproduced restricting clause does deprive the petitioners of the benefit of three increments as they have obtained LL.M. Degree after joining the service.

11. The question that arises for our consideration is whether the classification sought to be made between the Judicial Officers who possess LL.M. Degree at the time of joining service and those who obtain the same subsequent to their appointment, is a reasonable classification based upon an intelligible criteria?

12. A somewhat similar artificial distinction drawn between the Masters appointed with higher qualification and those acquiring higher qualification while in service, for the purpose of grant of higher pay, was annulled by a Division Bench of this Court in Rattan Singh v. State of Haryana, 1995 (J) SCT 711, holding as follows:-

11. Circular dated 9.3.1990 issued by the Government of Haryana, in our opinion, cannot be used to deny relief to the petitioners. A careful perusal of that circular shows that the issue of the same is nothing but an attempt to frustrate the rights of the existing teachers to get higher pay from the date they acquired higher qualifications. Distinction sought to be made out between the persons appointed as Masters with higher qualifications and those acquiring higher qualification while in service is illusory and unwarranted. A similar situation was considered by the Supreme Court in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, In that case petitioners, who were holding the posts of professors were denied higher pay scale because they did not possess a particular qualification. While upholding their claim for grant of higher pay scale according to the principle of equal pay for equal work, the Supreme Court observed.

(Emphasis applied)

13. The right to equality in pay scale amongst "two classes of employees performing identical or similar duties and carrying out same functions with the same measure of responsibility having same academic qualifications" has been approved by the Apex Court in a catena of decisions including in V. Markendeya and Others Vs. State of Andhra Pradesh and Others,

14. We are, however, conscious of the fact that wherever the classification made by the State in giving different treatment to the two classes of employees is founded upon a rational criteria and has nexus with the object sought to be achieved, the allegation of invidious discrimination must fail. The Court would, thus, before forming an opinion in this regard shall consider various factors like nature of duties, functions, measures of responsibility and educational qualifications etc. Applying these yardsticks, we find no tangible distinction amongst the Judicial Officers possessing higher qualification of LL.M. whether obtained before or after joining the Judicial services. If the Degree of Masters of Law brings efficiency and improves quality of discharging duties by a Judicial Officers as held by this Court in Priya Sood's case (supra), we fail to understand as to why such a qualitative advantage will not be achieved by an Officer who does LL.M. after joining the Service

15. It shall be beneficial at this stage to refer to the Circular dated 04.12.1961 (Annexure P7) issued by the erstwhile State of Punjab laying emphasis on permitting the Government servants to improve their academic qualifications as "the acquisition of higher qualifications is always beneficial and broadens the outlook of an individual who should naturally give better work to Government...".

16. The extent of hostile discrimination against the Judicial Officers or complete non-application of mind behind issuance of the impugned letter is writ large in the Haryana Government's Finance Department Circular dated 30.08.2011 (Annexure P14) issued for the "grant of two advance increments to the Junior Engineers on acquiring AMIE or an equivalent degree during service". The

Circular says that a Junior Engineer if acquires higher qualification of AMIE or an equivalent degree during service is entitled to two advance increments. There is nothing on record to justify the somersault taken in the case of Judicial Officers acquiring higher qualification of LL.M. while in service to whom the benefit of three increments is being denied. If the acquisition of higher qualification in engineering services improves the work efficiency, why the qualification of LL.M. will also not broaden the outlook of a Judicial Officer and enrich his knowledge for quality decisions?

17. We now advert to the justification advanced by the State Government in its reply/affidavit. It is claimed that the Shetty Commission in para 8.48 has recommended three advance increments only "if selected candidates are having a higher qualification like post-graduation in law...". In other words, the higher qualification should be possessed by the Officer at the time of his/her selection.

18. The above-noticed plea, in our considered view, is wholly unjustified. Firstly, Shetty Commission has nowhere recommended that three advance increments are not to be granted to those Officers who acquire higher qualification while in service. The phrase "selected candidates.... having higher qualification" does not and cannot mean that if higher qualification is acquired by the selected candidates after their appointment, it would not improve their efficiency with better knowledge of Law. Secondly, the Judicial Officers having Postgraduate Degree in Law before appointment and those who acquire such Degree after joining the service, constitute one homogenous class and the artificial classification to discriminate against the latter category of Officers does not satisfy the test of equality within the meaning of Articles 14 & 16 of the Constitution. Thirdly, the classification professed in the case of Judicial Officers contradicts the State when confronted with the other services like Junior Engineers to whom benefit of advance increments, on acquisition of higher qualification "during service", has been expressly granted vide circular dated 30.08.2011 (Annexure P14).

19. For the reasons afore-stated, we allow this writ petition and quash the impugned circular dated 19.05.2011 (Annexure P6) to the extent it denies the benefit of three increments to those Judicial Officers who have acquired/acquire higher qualification of LL.M. after joining the service. We further direct that:-

- i. the benefit of three additional increments shall be admissible to the petitioners as well as other similarly placed Judicial Officers;
- ii. the only permissible distinction shall be that the Judicial Officers who acquire LL.M. Degree before joining the service shall be entitled to additional increments from the date of joining the service, while those who have acquired/acquire the same after joining the service shall be entitled to these increments from the date of acquisition of the higher qualification of LL.M.;
- iii. the three increments granted to the Judicial Officers on acquisition of LL.M. Degree shall be treated as "additional increments" in the same manner as has

been directed by this Court in Priya Sood's case (Punjab matter);

iv. the additional increments shall continue to be drawn by the Judicial Officers on their further promotion and/or placement in higher pay scale, as the case may be.

No costs. Dasti.