

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.1822/2010**

% **Date of Decision: 17.03.2010**

Central Council for Research in Ayurvedi & Sidha Petitioner
Through Mr.V.K.Rao, Sr. Advocate with
Mr.Vaibhav Kalra, Advocate.

Versus

Shri Rakesh Agarwal & Anr Respondents
Through Mr.Rajesh Srivastava, Advocate for
respondent No.1
Mr.Jagrati Singh with
Mr.A.K.Bhardwaj, Advocates for the
respondent/IOI

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, Central Council for Research in Ayurvedi & Sidha has challenged the order dated 6th November, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A No.385/2009 titled Sh.Rakesh Agarwal v. Central Council for Research in Ayurveda & Sidha allowing the application of the respondent and

directing the petitioner to grant pay scale of Rs.2000-3500/- to the respondent with effect from 24th July, 1990.

The respondent, a Library Information Assistant sought the pay scale of Rs.2000-3500/- with effect from 1st January, 1986 and also prayed that pay scale be extended from the date of the report of the review committee on library staff.

This cannot be disputed by the petitioner that the report of the review committee on library staff had been extended by the Government long back but it was implemented only with effect from 14th November, 2005. This has also not been disputed that 5th Pay Commission recommended restructuring of different cadres. Restructuring of different libraries had been recommended and implemented by other libraries and the benefits have been accorded of this pay scale.

The Tribunal has held that there cannot be hostile discrimination in the matter of pay scale when identical duties are performed and the functional requirements are also the same. If the act of the petitioner is of hostile discrimination then, the Tribunal is justified in directing the petitioner to grant the pay scale to the respondent from the date it has been granted to others in other libraries. The committee report had to be implemented on acceptance and approval immediately after

recommendations and delay of 15 years has not been explained by the petitioner. This has also been noticed by the Tribunal that in case of other libraries the recommendation had been accepted immediately on 24th July, 1990 and, therefore, the petitioner has been directed to grant pay scale of Rs.2000-3500/- to the applicant with effect from 24th July, 1990.

The learned counsel for the petitioner has contended that the petitioner cannot be directed to grant pay scale of Rs.2000-3500/- to the respondent with effect from 24th July, 1990 and has relied on JT 1997 (9) SC 307, Sri Suryanarayan Sahu etc v. The Council of Scientific and Industrial Research. In Suryanarayanan (Supra) it was held that CSIR is an autonomous body and the recommendation of the pay commission cannot be made applicable to CSIR suo motto and it would be upto the governing body to adopt the recommendation of pay commission. It was also held that 3rd Pay Commission report was accepted by the Government for its employees with effect from 1st January, 1973 and CSIR had adopted broad pattern of Government of India scale of pay. The Apex Court in the facts and circumstances had held that different scales of pay can be granted based on experience and merit to the employees working in the same grade and classification based on experience shall be valid as an employee having more length of service is certainly better equipped to perform his duties of office

than a relatively new employee. In the circumstances, the Supreme Court had set aside the direction of the Tribunal to give the scale of pay of Rs.425-700/- when the employee in the said case was promoted to the grade of Senior Draftsman as per the rules of CSIR and the rules were held to be valid.

Apparently the case of the respondent is distinguishable. It is not that the respondent has been held to be not entitled for the recommendation of the committee report which has been implemented. It is not disputed that recommendation has been implemented in case of other libraries on 24th July, 1990 and no facts have been disclosed as to why the recommendation should not be implemented in the case of petitioner. This is not the case of the petitioner that the recommendations were considered and a decision was taken on cogent grounds not to implement them in case of petitioner. Unless the petitioner disclose apparent differences in case of the petitioner, the recommendation of the committee shall be applicable and in the circumstances, the direction of the Tribunal to grant pay scale to the respondent according to recommendation of the committee cannot be faulted.

This is not disputed that the job performed by Library Information Assistant with the petitioner is similar to the job performed

by other Library Information Assistants in respect of whom the recommendation had been accepted immediately on 24th July, 1990. First the petitioners have not given any cogent reason for the delay nor have disputed that the petitioners shall not be entitled for similar recommendations.

Though granting of pay scale is a highly specialized job which a specialized body has to perform but in case anomalies are left by the pay commission or the pay commission recommendations are not implemented then removal of anomalies resulting from the award of pay commission is not usurping the duties and responsibilities of the pay commission.

In case of petitioner, the Tribunal has not awarded the new pay scales but has agitated the implementation of the recommendation of the committee from a particular date from which it has been implemented in similarly situated libraries. The Tribunal would have been wrong if it were to suggest a fresh pay scale for the petitioners and it would have certainly committed an error, however, in the case of respondent, the Tribunal has implemented the pay scale from the date from which the similar pay scale has been granted in other libraries on acceptance of recommendation. Apparently not granting the pay scale recommended by the appropriate committee in case of petitioner to the

respondent and granting the same scale by other libraries will be a case of hostile discrimination which can be corrected by the Court and for this reliance can be placed on 1997 SCC (L&S) 838, Union of India and Anr v. P.V.Hariharan and Ors. The Supreme Court in the said case had held that often the Administrative Tribunals interfere with pay scales without proper reason and though being conscious of the fact that fixation of pay is not their function. However, if a clear case of hostile discrimination is made out, then there would be justification for interfering with the implementation of the pay scales. The observation of the Supreme Court in P.V.Hariharan (Supra) are as under:-

“Quite often the Administrative Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Changes of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The pay commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. Sometimes orders have been passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising as least one Judicial Member.

In the circumstances, it is apparent that the ratio of Suryanarayan Sahu (Supra) is distinguishable from the present case of the respondent who had sought implementation of the recommendation of the appropriate committee pursuant to the pay commission which has been accepted by other libraries from 24th July, 1990. The Tribunal has also ordered implementation of similar pay scale in case of the respondent from the said date. The petitioner has failed to disclose sufficient grounds for delay in implementation which will entitle the petitioner to grant pay scale not from 24th July, 1990 but from some other date.

In the totality of facts and circumstances, therefore, we do not find any grounds to interfere with the order of the Tribunal granting the pay scale of Rs.2000-3500/- to the respondent from 24th July, 1990. The writ petition is, therefore, without any merit and it is dismissed.

ANIL KUMAR, J.

MARCH 17, 2010
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MOOL CHAND GARG, J.