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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

-.-

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**RSA-2597-2001 (O&M)
Date of Decision :01.10.2024**

Ms. Nirmal Parmar

....Appellant

Versus

State of Haryana and another

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sunil Panwar, Advocate
for the appellant.

Mr. Harish Nain, AAG, Haryana.

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SUDEEPTI SHARMA, J.

1. The present appeal is filed against the impugned judgment and decree dated 17.02.2000 passed by the learned Civil Judge (Junior Division), Rohtak whereby the suit for declaration filed by the appellant was dismissed and the appeal preferred against the said judgment and decree dated 17.02.2000 was also dismissed vide judgment and decree dated 25.01.2001 passed by the learned Additional District Judge, Rohtak.

2. Brief facts of the case as mentioned before the Civil Judge (Junior Division), Rohtak in suit for declaration are as under:-

“The plaintiff feeling aggrieved by the act of defendant who vide letter no.ME-1/95/A-V/19742-47 dated 28.11.95 have minimised the plaintiff's pay scale of Rs.2000-3500 to 2000-3200 already given to her, in terms of letter no. ME-1/91/2329-31 dated 13.3.91, who was appointed as Orthopist- cum-



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Optometrist in the pay scale of Rs.800-1600 which was revised to 2000-3500 as per rules Punjab, 1987 and there is no pay scale of Rs.2000-3200 in existence in Punjab Rules, 1987 and further alleged that the Department was not competent authority to change the rules as the Financial Department has revised the pay scale of Rs. 800-1600 to 2000-3500 instead of Rs. 2000-3200 and the defendants have not given any opportunity of being heard to the plaintiff and further alleged that as per rules 1987 Group B and C have not been separately categorised in the notification rather the defendants suo-moto presumed the plaintiff's post as Group C category Class III and Mrs. Parveen Oberoi has been presumed as 'B' Category. Hence, there is discrimination for which a notice under section 80 CPC was given to the defendants but to no effect. A decree be passed in favour of plaintiff that she has a legal right to draw pay in pay scale of Rs. 2000-3500 and the action of defendants in minimising pay scale of Rs.2000-3500 to 2000-3200 is illegal, null and void.

2. On the other hand, defendants have filed their written statement by taking preliminary objections inter alia on the ground that suit is not maintainable, suit is bad for mis-joinder and non-joinder of necessary parties, plaintiff has no locus-standi and plaintiff is estopped by her own act and conduct and further alleged that the pay scale of Rs.2000-3500 have been granted to Group 'B' employees whereas, the plaintiff is a



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Group 'C' employee whereas, Sh. S.P.S.Rathor is Group'B' employees. On merit, admitted that w.e.f. 1.1.86 the pay scale of Rs.800-1600 were revised and plaintiff was given pay scale of Rs.2000-3200 which was later on modified and was fixed as Rs.2000-3200 to 2000-3500 in terms of letter dated 23.8.90 in respect of Gazetted Group 'B' Officers and not for group 'C' employees. But the modified pay scale of Rs.2000-3500 was inadvertently granted to the plaintiff in terms of order dated 13.3.91, which has rightly been withdrawn as the plaintiff is Group 'C' employee and further alleged that the plaintiff is drawing the pay scale of Rs.2000-3200 from the date of joining as Orthoptist-cum-Optometriest and further alleged that the pay scale of Punjab State is not applicable to the Haryana Govt. Employees. However, in order to distinguish Group 'B' Officers from Group 'C' employees the pay scale of Rs.2000-3200 was modified to Rs.2000-3500 in respect of gazetted Group 'B' officers. It has further been alleged that the plaintiff alongwith Sh. S.P.S. Rathore was appointed as Orthoptist-cum-Optometriest by a standing selection committee which is constituted for the recruitment of Class-III employees whereas, Smt. Parveen Obroi was selected as Class-II gazetted officer by the State Govt. Thus, the plaintiff and Sh. S.P.S.Rathore are class-III employees and Smt. Parveen Obroi, Orthoptist-cum-Optometriest whose name was recommended by the HPSC for selection and appointed by the Govt, is a gazetted Class-



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II(Group'B') Officer drawing the pay-scale of Rs.2000-3500.Thus, the plaintiff is not entitled for the pay scale of Rs.2000-3500 being the Class-III(Group 'C') employee. Thus, prayed for dismissal of the suit.

3. From the pleadings of the parties, following issues were framed:-

- 1. Whether the plaintiff is entitled to draw the pay in the pay scale of Rs.2000-3500 as per rules?OPP.*
- 2. Whether the act of the defendant in reducing the pay of the plaintiff from pay scale of Rs.2000-3200 to 2000-3200 is illegal, null and void?OPP.*
- 3. Whether the suit is not maintainable?OPD.*
- 4. Whether the suit is bad for mis-joinder or non-joinder of necessary parties?OPD.*
- 5. Whether the plaintiff has no locus-standi to file the present suit?OPD.*
- 6. Whether the plaintiff is estopped to file the present by her own act and conduct?OPD.*
- 7. Relief.”*

4. After hearing both the parties and the perusing the whole record, the learned Civil Judge (Junior Division), Rohtak dismissed the suit filed by the appellant. Relevant portion of the same is reproduced hereunder:-

“7.After hearing the arguments advanced by both the ld. counsel for the plaintiff as well as Govt. Pleader for defendant, I have observed that admittedly, the scale of plaintiff was revised from 800-1600 to 2000-3200 which



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was later on revised from 2000-3200 to 2000-3500 and the defendants vide letter dated 28.11.95 has minimised the pay scale of Rs.2000-3500 to 2000-3200.

8. The perusal given to Ex.P1 shows that the plaintiff was appointed as Orthoptist-cum-Optometrist on 21.9.87 whereas, the perusal given to Ex.P2, Ex.P3 and Ex.P4 reveals that the plaintiff was given increments on different occasions. Ex.P6 photo copy of Haryana Govt. Finance Department Regulations Notification dated 29.4.87 also shows the fact that initial pay scale of plaintiff was Rs.800-1600 which was later on revised to 2000-3200.

9. The defendants have placed on file Ex.D1 which is the same document as Ex.P6 and Ex.P7 is letter dated 23.8.90 in respect of revision of pay scale wherein the Haryana Govt. Gazette Notification dated 29.4.87 vide which the pay scale was revised w.e.f. 1.1.86 has been referred and it has been also mentioned in Ex.P7 that certain discrepancies in the pay scale revised w.e.f. 1.1.86 were pointed out by some employees association and also by some Departments and it has been decided to modify the pay scale of some of the post w.e.f. 1.5.90. Thus, it is crystal clear that by virtue of Ex.P7 the pay scale of the plaintiff has been modified and minimised to 2000-3200 w.e.f. 1.5.90 whereas, the plaintiff has not



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placed on file any cogent and reliable documentary evidence to show that she was entitled for the pay scale of Rs.2000-3500 instead of 2000-3200 which was allegedly minimised by the defendants.

10. Whereas, on the other hand, the defendants have alleged that the plaintiff is a group 'C' Govt. employee whereas the pay scale of Rs.2000-3500 was given to Group 'B' employees. The perusal given to Ready Reckoner for pay and allowances and revised pay rules, 1987 reveals that the pay scale of Rs.2000-3200 granted w.e.f. 1.1.86 to all categories has been modified to Rs.2000-3500 w.e.f. 1.5.90. Thus, the stand taken by the defendants has been corroborated and it was on the plaintiff to prove that she is group 'B' employees of the State Government and therefore, entitled to the modified pay scale of Rs.2000-3500 w.e.f. 1.5.90. Thus, after going through the documentary as well as oral evidence available on record, I arrive at the conclusion that the plaintiff being Group 'C' employees was not entitled for the pay scale of Rs. 2000-3500 although, it was earlier given to her but later on when the defendants have distinguished the categories of Group 'B' gazetted and group 'C' employees, the pay scale of the plaintiff was minimised to Rs.2000-3200 and plaintiff has miserably failed to prove that she was entitled to draw the pay scale



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of Rs.2000-3500 therefore this issue is answered against the plaintiff.”

5. The appeal preferred against the judgment and decree dated 17.02.2000 was dismissed by the learned Additional District Judge, Rohtak vide judgment and decree dated 25.01.2001. Hence, the present appeal.

SUBMISSIONS OF COUNSEL FOR THE PARTIES

6. Learned counsel for the appellant submits that both the Courts below erred in deciding issue No.1 and 2. He further contends that the judgments passed by both the Courts below are contrary to law, perverse and against the evidence on record and prayed for allowing the appeal.

7. Per contra, learned State counsel argues on the line of the judgment and decree and contends that the same are rightly dismissed.

8. I have heard learned counsel for the parties and perused the whole record of this case.

ANALYSIS OF RECORD

9. A perusal of the record shows that appellant was appointed as Orthoptist-cum-Optometrist in the scale of Rs.800-1600, vide appointment letter dated 21.09.1987. Vide letter dated 16.09.1991 issued by the Director Medical College, Rohtak, the appellant-plaintiff was granted increments in the scale of Rs.2000-3500 w.e.f. 01.09.1991, raising her pay from Rs.2181/- to Rs.2240/- under Rule 4.7 of Punjab Civil Service Rules, Vol-I, Part-I, as applicable to the State of Haryana. Earlier thereto, the plaintiff-appellant was held entitled and placed in the scale of Rs.2000-3200, as per government notification dated 29.4.1987, in shape of Haryana Civil Service (Revised Pay) Rules, 1987, which

notification revised the pay scales of all the employees drawing salary in the pay

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scale of Rs.800-1600 to Rs.2000-3200 w.e.f. 1.1.1986. The said scale of Rs.2000-3200 was later on modified vide letter of Haryana Government in respect of posts falling under Group 'B' with pay-scale of Rs.800-1600 as revised in pay scale of Rs.2000-3200. Ex.P-7 and Ex.P-3 were issued on 23.8.1990, modifying the pay-scale of Rs.2000-3200 to Rs.2000-3500 w.e.f. 1.5.1990, in respect of Group 'B' employees. The plaintiff-appellant, by virtue of Exhibit P-4 had been granted annual increment in the scale of Rs.2000-60-2200-75-2900-EB-100-3500. Vide order dated 28.11.1995 of the Director, Bhagwat Dyal Sharma, PGIMS, Rohtak, the plaintiff-appellant was put in scale of Rs.2000-60-2300-EB-75-3200 w.e.f. 1.5.1990. Thereby withdrawing order dated 13.3.1991, by virtue of which, she had been put in scale of Rs.2000-60-2200-75-2900-EB-100-3500, fixing her pay at Rs.2180/- in the scale of Rs.2000-3500 w.e.f. 01.05.1990, with the next date of increment on 1.9.1990, raising her pay to Rs.2180/- from Rs.2120/-, vide letter dated 16.9.1991. The Director, Medical College, Rohtak, vide order dated 12.9.1991 had placed the plaintiff-appellant in the pay scale of Rs.2000-3500 w.e.f. 01.09.1991, raising her pay from Rs.2181/- to Rs. 2240/-. The order dated 7.9.1995 from the Financial Commissioner and Secretary to Government Health and Medical Education Department, Haryana, addressed to the Director, Bhagwat Dyal Sharma PGIMS, Rohtak, simply stated that if the appellant was not eligible for the grade 2000-3500 as per government instructions dated 23.9.1990, then scale of Rs.2000-3200 be ordered for her and S.P.S. Rathore. The reference of aforesaid order dated 7.9.1995 in the order dated 28.11.1995 of Director B.D.S.PGIMS, Rohtak (Ex.D-7), withdrawing the order dated 13.3.1991(Ex.D-5), by which appellant-plaintiff had been put in the pay scale of Rs.2000-3500 without giving

any show-cause notice to the appellant-plaintiff and minimising her pay scale to

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Rs.2000-3200, retrospectively w.e.f. 1.5.1990, after the appellant-plaintiff had drawn salary in the scale of Rs.2000-3500 w.e.f.1.5.1990, is not acceptable to this Court.

10. The emoluments of the appellant-plaintiff was reduced retrospectively without any show-cause notice and without any opportunity of being heard to her. The benefit granted to the employees could not be withdrawn retrospectively. Further a perusal of the record shows that extract of Service Book of appellant-plaintiff (Ex.P-8) also shows that the appellant-plaintiff was given salary of Rs.2675/- w.e.f. 1.1.1986 in the revised pay scale of Rs.2000-3200, with next date of increment as 1.10.1987. It also shows that the pay of the appellant-plaintiff was subsequently fixed at Rs.10,500/- w.e.f. 1.1.1996 in the pay scale of 6500-200-8500-EB-10500, with next date of increment on 01.10.1997. The order minimising the pay scale and emoluments of the appellant-plaintiff without any show cause notice and without following the principles of natural justice is bad in the eyes of law.

11. A perusal of the record further shows that an employee on the same post and cadre and in the same scale i.e. Rs.800-1600, namely, Smt. Parveen Oberoi had been allowed to continue in the pay scale of Rs.2000-3500, by observing that her case is different from that of the appellant-plaintiff, for the reason that she was selected by the Public Service Commission and appointed by the Government and, therefore, was a Gazetted Officer of 'B' category is not justifiable. There is nothing on record to show that Smt. Parveen Oberoi was appointed as a Gazetted Officer or that she belongs to 'B' category or that the post Orthoptist-cum-Optomatrist held by her is Gazetted or Class 'B' and that the same post held by appellant-plaintiff is class-III or 'C' category post. There is no

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evidence on record to show that the post Orthoptist-cum-Optomatrist held by the appellant-plaintiff and Smt. Parveen Oberoi were different or there was any Government order or notification categorising the post held by the appellant-plaintiff and Smt. Parveen Oberoi as Gazetted or non-Gazetted or as 'B' category or 'C' category.

CONCLUSION:-

12. The evidence on record further shows that the nature of duties of the post held by appellant-plaintiff and Smt. Parveen Oberoi were the same, their scale of pay was initially same i.e. 800-1600, before revision by the Haryana Civil Services (Revised Pay) Rules, 1987 and that they were initially appointed on the same post of Orthoptist-cum-Optomatrist i.e. in the same cadre.

13. The action of respondents in treating two persons appointed in the same cadre by minimising the pay of one is discriminatory, since the nature of the work is the same. There is nothing on record to show that Smt. Parveen Oberoi, was gazetted or of B Category and that the post of Orthoptist-cum-Optomatrist is not of 'B' Category. Rather Naresh Chander, who was examined as DW-1 admitted in his cross-examination that there is no letter by which the post of Orthoptist-cum-Optomatrist is of Group 'B' or that of Group 'C' category. He also admitted that no notice was given to appellant-plaintiff before withdrawing the pay-scale of Rs.2000-3500 and minimising the same to Rs.2000-3200 vide order Ex.D-7.

14. In view of the above, I find merit in the present appeal and the same is allowed. The judgments and decrees dated 17.02.2000 and 25.01.2001 passed by the learned Courts below are set aside and the suit filed by the appellant-plaintiff is decreed in her favour. Letter No.ME-1/95/A-V/19742-47 dated 28.11.1995

whereby the pay scale of the appellant-plaintiff has been minimized from Rs.2000-

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3500 to Rs.2000-3200 is set aside and the appellant-plaintiff is held entitled to the pay scale which was revised to Rs.2000-3500 as per Punjab rules, 1987.

15. Decree-sheet be drawn accordingly.
16. Pending applications, if any, also stand disposed of.

October 1, 2024
A.Kaundal

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No