

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16879 of 1995 (O&M)
Date of Decision: 02.02.2016

Jasbir Singh Hundal and others

... Petitioners

Versus

The Guru Nanak Dev University, Amritsar
and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Namit Kumar, Advocate,
for the petitioners.

Mr. Amrit Paul, Advocate,
for respondent No.1.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. Learned counsel concedes that the case on which reliance was placed at the time of motion hearing, i.e. CWP No.1854 of 1993, titled *Sham Lal and other vs. State of Punjab and others* rendered on February 09, 1994 involving Senior Assistants on the establishment of the High Court though was in his favour but has been reversed in LPA No.265 of 1994 and LPA No.331 of 1994 which appeals were tagged with CWP No.17141 of 1994, **Tej Kaur vs. Chief Secretary to Government of Punjab**, 1996 (2) SCT 120 delivered by the Division Bench on December 21, 1995. The legal position obtaining is against the petitioners. However, Mr. Namit Kumar, endeavours to carve out a distinction between the judgment in *Tej Kaur* by arguing that when the University was created in 1969 the pay-scales of Assistants and Stenographers were higher than the pay-scales of their

counterparts working in the Punjab Civil Secretariat, Chandigarh and, therefore, the higher pay-scale should have been consistently followed with each successive pay revision. However, as he asserts this, the fact remains that in the year 1970 and onwards the pay-scales of the posts of Assistants and Stenographers in the University and the Civil Secretariat became the same i.e. Rs.225-500. Learned counsel has not been able to point out any specific order equating the posts of Assistants and Stenographer in the University with their corresponding posts in the Civil Secretariat, Chandigarh or to the identicalness of the duties and responsibilities of the two set of employees. The argument rests on the admitted position that the University follows the Punjab Government policies and pay revisions accepted by process of adoption.

2. Mr. Amrit Paul, learned counsel appearing for the University admits the position as emanating from Annexure P-2 dated June 15, 1990 which notification has been adopted by the Guru Nanak Dev University, Amritsar. The Punjab Civil Service (Revised Pay) (Third Amendment) Rules, 1990 are placed at Annexure P-2 brought in force on the appointed date. The First Schedule to the rules prescribes the revised scales of pay for categories of posts specified therein. The posts of Assistants and Senior Assistants were amalgamated to form single cadre of Senior Assistants. Earlier to the revision, Assistants were in receipt of Rs.600-1200 in the Secretariat Office while Senior Assistants enjoyed the pay-scale of Rs.800-1400.

3. Mr. Namit Kumar submits that his clients fall in the 1st category i.e. Assistants in the scale of Rs.600-1200. The pay-scale of both these posts

were revised to Rs.1800-3200 and the petitioners and their counterparts in the Secretariat started to earn their salary in the pay-scale of Rs.1800-3200. The grievance point starts with the issuance of Annexure P-3 dated October 08, 1992 where the Punjab Government granted initial start of Rs.1920/- in the present pay-scale of Rs.1800-3200 w.e.f. January 01, 1986 restricted to those Senior Assistants and Senior Scale Stenographers of Secretariat Officers who were in the unrevised scale of Rs.800-1400 as on December 31, 1985. With this notification, the clamour began for higher pay scale which has resulted in presentation of this writ petition. This policy decision (P-3) of the Punjab Government was adopted by the University in its Syndicate meeting held on December 24, 1993 (P-4) as the rule in the University for its employees in the disputed categories. The benefit was extended by further notification dated April 08, 1993 (Annexure P-4/A) even to those who were in the unrevised pay-scale of Rs.800-1400 from January 01, 1986 to December 31, 1987. This notification has also been adopted by the University. The pay position was viewed as an anomaly by the Union of employees working in the University. They made a representation for removal of the anomaly of the grade of Rs.1800-3200 to Senior Assistants/Senior Scale Stenographers. They pray for 'equal pay for equal work' in the light of the decision in CWP No.1854 of 1993 which has been reversed in *Tej Kaur* case. The claim of the employees Union was rejected by the University vide order dated July 24, 1995 (Annexure P-7). The reason given is that the University follows the decisions of the Punjab Government in respect of pay-scales and other benefits for its non-teaching employees. As and when the Punjab Government adopts the decision

rendered by this Court (Annexure P-6) and grants the same benefits to its employees only then the demand of the Association can be considered. It may be noted that the University was not a party to those proceedings and the decision was not directly binding on it.

4. However, we are not presently concerned with the ratio of the decision in *Tej Kaur's* case and having regard to the arguments addressed by Mr. Namit Kumar and Mr. Amrit Paul, learned counsel appearing for the University, this Court is of opinion that when the predecessors of the complaining Assistants and Stenographers succumbed to the position prevailing in 1990, that is, entitlement to the pay-scale of Rs.225-500 and viewed from this angle the grievance made cannot be seen as one of an anomaly in pay scales in the light of the notifications and the intervening pay revisions by the Punjab Government. Removal of an anomaly does not involve creation of a new right and refers to an omission of a pre-existing one but the present petitioners stake claim to the creation of a fresh right enhancing pay. Rights, if any, stand waived by acquiescence and long standing acceptance of pay-scales and it would be wholly improper to apply the principles of 'equal pay for equal work' in such a stale situation which is in any case seriously impacted by the decision in *Tej Kaur* case against the petitioners. It is well settled that in the matter of pay-scales they are best left to expert bodies to consider and decide on pay and post and the Court has hardly any role to play except when it involves unfair discrimination in breach of Article 14 of the Constitution of India and denial of fundamental rights preserved under Article 16. There appear hardly any distinguishing features in *Tej Kaur* from the case in hand.

5. The claim of the petitioners is not fundamental right based and, therefore, interference is not called for in this petition. It is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

02.02.2016
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