

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-23059-2016

Date of decision: 07.11.2016

Sucha Singh (now Retd.) and others

..... Petitioners

Versus

Postgraduate Institute of Medical Education & Research and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Karan Singla, Advocate for the petitioners.

RAMENDRA JAIN, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have, *inter alia*, prayed for issuance of a writ of Certiorari for quashing the order dated 09.12.2015 (Annexure P-1) passed by respondent No. 4-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') whereby the Original Application No. 060/01134/2015 was dismissed and also the order dated 06.01.2016 (Annexure P-2) passed by the Tribunal in RA No. 060/00001/2016. Further a writ of mandamus has been sought directing respondents No. 1 to 3 to grant/extend the benefit of 2nd cadre review to the petitioners who are the victims of hostile discrimination in parity with the Technicians of the Engineering Department and the Lineman/Wireman

EPBAX from due date with all consequential benefits.

2. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioners were appointed as Technicians Grade-I (Laundry) in the Postgraduate Institute of Medical Education & Research, Chandigarh (PGIMER) between the period 03.11.1978 to 28.11.2009. Vide office order dated 12.09.1984, the administrative and operational control of the PGIMER, laundry was transferred from Engineering Department to the Medical Superintendent, PGIMER, Chandigarh. The respondent-Institute in its meeting held on 27.05.1995 constituted a Cadre Review Committee for Engineering Staff, but it did not submit its report for about 5 years. On 18.02.2000, the Committee submitted its report and left the date of its implementation to the competent bodies of the respondent-Institute. The report of the Committee was placed before the Standing Finance Committee, Governing Body and Institute on 13.07.2005, 31.08.2005 and 20.12.2005, respectively. The report recommended mergers of various grades and up-gradations of few posts at each level for various categories of employees and also amended Recruitment Rules/Mode of Recruitment, however, the number of posts in the Engineering Cadre remained the same. The authorities implemented 2nd Cadre Review for the whole staff of PGIMER (except Engineering Department) w.e.f. 01.03.1992, whereas for the staff of Engineering Department, it was implemented w.e.f. 03.10.2000. The petitioners are working on an isolated post in their own cadre without there being any promotional avenues. The respondent-Institute after the implementation of 2nd Cadre Review, formulated a Cadre Anomaly Committee, wherein the case of the petitioners was also positively considered and recommendations were made in their favour. As per minutes of the Anomaly Committee dated

23.03.2011 (Annexure A-1), the committee notices anomaly to the effect that benefits of 2nd Cadre Review were not given to the category of the petitioners. Despite there being positive recommendations by the Anomaly Committee with respect to the grievance of the petitioners, the benefits of the 2nd Cadre Review were not extended to them. The petitioners have made a representation dated 07.11.2012 with regard to restructuring the cadre of Laundry Technicians and vide letter dated 21.12.2012 (Annexure A-2), it was informed that the matter is under consideration/examination of the Coordination Committee. A legal notice dated 31.03.2015 (Annexure A-4) was served upon respondents No. 1 to 3 for extending the benefits of 2nd Cadre review to the petitioners. In response thereto, it was informed vide letter dated 11.05.2015 that the case of implementation of 2nd Cadre Review of Laundry Technicians Grade-I is under consideration and latest position will be intimated in due course of time. The petitioners sought information under the Right to Information Act (RTI) and a report dated 29.05.2015 (Annexure A-5) was received wherein it was recommended to place the matter before DPGI to grant approval to place agenda before the relevant Committee. However, even despite the recommendations, no benefit of the 2nd Cadre review till date has been extended to the petitioners as proposed and the matter is still under consideration before the respondent-Institute. Now, the petitioners have come to know that instead of extending them the benefits of 2nd Cadre Review, the process for constitution of 3rd Cadre Review Commission has been initiated. Being aggrieved, the petitioners have filed Original Application No. 060/01134/2015 before the Tribunal which was dismissed vide order dated 09.12.2015 (Annexure P-1). The petitioners have filed RA No. 060/00001/2015 which was also dismissed

vide order dated 06.01.2016 (Annexure P-2) passed by the Tribunal. Hence, the present writ petition.

3. Learned counsel for the petitioners contended that the findings recorded by the learned Tribunal in the impugned order Annexure P-1 are baseless and against the judicial functionality which is to protect the interest of the petitioners, in case, there is an apparent violation of fundamental rights as enshrined under the Constitution of India. The learned Tribunal has lost sight of the fact that the diversion of case of the petitioners to the 3rd Cadre Review was a simple apprehension, whereas the petitioners were only seeking a direction to respondents No. 1 to 3 to take appropriate decision and grant/extend the benefits of 2nd Cadre Review. It was urged that the impugned orders dated 09.12.2015 and 06.01.2016 (Annexures P-1 and P-2, respectively) passed by the Tribunal are patently illegal and arbitrary.

4. After hearing learned counsel for the petitioners and going through the impugned orders Annexures P-1 and P-2 passed by the Tribunal, we do not find any merit in the present writ petition.

5. Admittedly, no order had been shown by the petitioners that respondents were in the process of constituting 3rd Cadre Review Committee and in such circumstances, the apprehension of the petitioners that their right for grant of 2nd Cadre Review would be prejudiced was unwarranted. Moreover, the petitioners had also served a legal notice dated 31.03.2015 (Annexure A-4) upon respondent-Authorities and in response thereto, the matter was recommended for placing before the Committee and the claim of the petitioners was pre-mature at this stage. The learned Tribunal in para 4 of the impugned order dated 09.12.2015 (Annexure P-1) observed as under:-

“4. Cadre review or reconstructing of cadre is a policy decision to be taken by the Government based on its requirement and financial capacity and a court of law cannot issue direction to the authorities to carry out such restructuring even if it was done in other cadres. The applicants have stated that now the authorities are in the process of constituting 3rd cadre review Committee and as such the case of the applicants for grant of 2nd cadre review would be prejudiced. This cannot be a ground to seek mandamus from a court of law. We have not been shown any order or decision in this context and as such it would not be proper for us to make any comment at this stage. However, the fact remains that the applicants had got issued a legal notice dated 31.3.2015 upon which the matter was recommended for placing before a Committee. However, the applications have not exhausted any departmental remedy qua apprehended formation of 3rd Review Committee without finalizing the 2nd cadre review. The claim raised in this case is apparently pre-mature and in any case relates to a policy decision which is to be taken by the respondents after considering all the relevant facts and circumstances and this Court cannot issue any direction to the respondents to carry out the 2nd cadre review mandatorily.”

6. Learned counsel for the petitioners has not been able to show any illegality in the impugned orders 09.12.2015 and 06.01.2016

(Annexures P-1 and P-2, respectively) warranting interference by this Court.

7. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

8. Registry is directed to send a copy of this order to respondents No. 1 to 3 to avoid its concealment by the petitioners.

**(RAMENDRA JAIN)
JUDGE**

November 07, 2016
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**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No