

COCP No. 2151 of 2008

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No. 2151 of 2008

DATE OF DECISION: 13.2.2017

Shri Niwas and others

.....Petitioners

Versus

Sh. Paramjit Singh Aujla and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. KL Arora, Advocate
for the petitioners.

Ms. Reeta Kohli, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

Petitioners filed CWP No. 10898 of 2002 before this Court with a prayer that the respondents be directed to regularize their services and to grant them salary in the minimum regular pay scale along with allowances as admissible to other regular employees in terms of judgment of Hon'ble the Apex Court in **Secretary, State of Karnataka and others Vs. Umadevi and others** 2006 (3) SLR 1.

Aforesaid petition was disposed on 22.11.2007 and operative part of the same is reproduced as under:-

“In view of the above, the instant writ petition is disposed of with a direction to the respondents to consider the claim of the petitioners for regularization in terms of the policy/instructions dated 15.12.2006 as well as in the light of the judgment of the Apex Court in Umadevi's case (supra). Likewise, the

petitioners claim for wages be also re-determined in the light of the judgment rendered by the Apex Court in Umadevi's case (supra). The competent authority shall pass a well reasoned speaking order, on the issue narrated hereinabove, within six months from the date of receipt of a certified copy of this order.

Liberty is granted to the petitioners to submit a representation/supplementary representation to supplement their submissions on the issue under reference within two months from today.

Disposed of accordingly.”

In view of the opportunity given to the petitioners to file representation/supplementary representation to supplement their submissions on the issue under reference within a period of two months from the date of passing of the order, the petitioners served legal notice dated 11.1.2008 upon the respondents.

In compliance of order passed by this Court the representation of the petitioners was decided and the competent authority passed speaking order dated 19.3.2008 with regard to regularization, whereas, the claim was also for grant of salary in the minimum regular pay scale. Thereafter a revised speaking order regarding the re-determination of wages of the petitioners was also passed on 3.3.2009.

Being aggrieved with the aforesaid orders dated 19.3.2008 and 3.3.2009, the petitioners filed the present contempt petition.

Notice in the contempt petition was issued on 23.12.2008 and vide order dated 30.3.2009, it was ordered to be heard along with COCP

No. 1121 of 2008. Thereafter the case was adjourned on various dates. On 8.10.2009, learned counsel for respondent-State on instructions from respondent No.3, who was present in the Court submitted that the respondents were not willing to extend the benefit of payment of minimum wages to the petitioners by admitting that the other similarly situated persons have been granted this benefit.

On 21.10.2009, learned State counsel submitted that the petitioners would be granted the minimum of the pay scale within two weeks. Thereafter on 11.11.2009, C.M. No. 26407-CII of 2009 was filed by the respondent-State for placing on record order dated 28.10.2009 passed in LPA No. 1109 of 2009 and further for seeking permission to withdraw the undertaking given before this Court on 21.10.2009. Keeping in view order dated 28.10.2009 passed by the Division Bench of this Court in LPA No. 1109 of 2009, this Court adjourned the case sine die with a direction for listing the same after decision of LPA No. 1109 of 2009.

On 19.2.2014, C.M. No. 3137-CII of 2014 was filed for listing of the contempt petition and for revival of proceedings as the LPA was dismissed. The application was allowed and thereafter on 2.3.2015, learned State counsel had brought to the notice of this Court that State has filed SLP No. 20447-48 of 2014 against order of dismissal of LPA No. 1109 of 2009. It was also made clear on the aforesaid date that if Hon'ble the Supreme Court did not pass any order in favour of the respondents then they had to comply with the order passed by this Court. The case came up for hearing before Hon'ble the Apex Court on 1.7.2015 and the contempt petition was adjourned to 10.7.2015 on the request of learned counsel for the petitioner to get instructions with regard to grant of the minimum pay scale to the

respondents therein. Thereafter CM No. 26406-CII of 2009 was filed for placing on record orders Annexures A-1 to A-3. Annexure A1 is the order passed by the contempt Court on 8.10.2009 in COCP NO. 2151 of 2008 and annexure A-2 is the order passed in LPA No. 466 of 2009, whereas, Annexure A-3 is the order passed in LPA No. 1109 of 2009.

Learned counsel for the petitioners submits that the petitioners have not been granted benefits given to other similarly situated employees working in the same department, whereas, learned State counsel submits that the case of the petitioners was considered in view of directions issued by this Court and both the claims i.e. for regularization of their services and for grant of minimum pay scale has already been given to them. It is also the stand of learned State counsel that the case of the petitioners cannot be said to be at par with other similarly situated employees of the respondent-Department. Learned State counsel submits that when the case was listed for hearing before Hon'ble the Apex Court, the following order was passed:-

“These appeals are being disposed of by this common order. For the sake of convenience facts are being taken from Civil Appeal No. 1269 of 2001.

This appeal is directed against the order passed by the High Court of Punjab and Haryana dated 18.4.1995. The Division Bench allowed the Writ Petition and directed respondents to pay to the petitioners salary in the regular pay scale by fixing their pay at the minimum of the pay scale with effect from the date of the filing of the writ petition i.e. 26.4.1995. It was further directed that the petitioners shall get the benefit of

dearness allowance on the minimum of pay scale and arrears shall be paid to the petitioners within four months of the submission of a certificate copy of this order. It was also mentioned that this order shall not entitle the petitioners to claim regularization of services and it will be open to the respondents to dispense with the services of those employees who do not fulfill qualifications but while doing so the respondents shall comply with the requirements of the statutory provisions like Industrial Disputes Act, 1947.

Aggrieved against this order this appeal by way of Special Leave Petition was filed but the operation of the order of the High Court was not stayed by this Court. The net result was that the State of Punjab started paying the minimum of pay scale to all these petitioners from the date of the judgment of High Court. All the writ petitioners are getting the minimum pay scale from 1996 onwards.

Mr. HS Munjral, learned counsel appearing for the appellants has invited our attention to a recent order passed by the State of Punjab on 15.12.2006 whereby after referring to the decision in the case of Secretary, State of Karnataka and others Vs. Uma Devi and other, (2006) 4 SCC 1, scheme has been prepared and by virtue of that scheme now the services of those persons who have put in 10 years of service as on 10.4.2006 shall be regularized, the employee fulfills the minimum basic qualifications for the post against which he was appointed; it shall be certified by the competent authority that no

supernumerary posts were created to retain the employees in service and it shall be the duty of the Administrator Department that while considering that case of each employee, the orders passed by the Court to be implemented in letter and spirit. It was further directed that no further appointment shall be made except in accordance with law since the scheme has not been framed and the State of Punjab has started considering the regularization of all those persons who have put in 10 years of service as on 10.4.2006, therefore, no useful purpose will be served by interfering with the impugned order. Moreso, these persons are already getting minimum pay scale from 1996. It will not be proper to put the clock back. However, learned counsel has invited our attention to the decision of this court in the case of State of Haryana Vs. Jasmer Singh (1996) 11 SCC 77. As against this, learned counsel for the respondents has invited our attention to the decision of this Court in the case of State of Punjab Vs. Devinder Singh (1996) 8 SCC 595. No useful purpose will be served by going into these cases any more as now the decision in the case of Uma Devi (supra). Rendered by the Constitution Bench holds the field and it has cut the root that no further temporary/ad hoc appointment shall be made. **However, now the Government of Punjab has already framed a scheme dated 15.12.2006 for regularization, we do not propose to interfere with the order passed by the High Court as respondents are already getting the minimum pay scale from 1996 i.e. for the last**

more than 10 years. Let the services of these persons may now be regularized in terms of the scheme framed by the State of Punjab dated 15.12.2006. Hence, we do not find any merit in these appeals and the same are dismissed. No order as to costs. However, this order shall not be precedent for future.”

In the order dated 26.4.2007 passed by Hon’ble the Apex Court, it was mentioned that since the Government of Punjab had already framed a scheme dated 15.12.2006 for regularization of the services of the employees, it was not thought proper to interfere with the order passed by this Court as the respondents are already getting the minimum pay scale from 1996 i.e. for the last more than ten years. It was also ordered that the services of the petitioners be regularized in terms of the scheme framed by the State Government dated 15.12.2006 and by finding no merits, the appeals were dismissed.

Learned counsel for the State submits that the petitioners have been granted benefit of dearness allowance along with minimum regular pay scale and arrears have also been paid to them and now nothing is due towards the Department. Learned State counsel also submits that only 973 petitioners, who have filed CWP No. 6162 of 1995 are getting minimum of regular scale plus allowances revised from time to time in accordance with decision of Hon’ble the Apex Court in Civil Appeal No. 1269 of 2001. The petitioners were not party in writ petition No. 6162 of 1995. The LPA Bench in LPA No. 1109 of 2009 has passed the following order:-

“Notice of motion for 25.11.2009.

The proceedings before the Contempt Court shall remain stayed till the final decision of the appeal. It is clarified that stay would not operate in respect of any undertaking which has been given to the contempt Court after the order dated 8.10.2009.”

While dismissing said LPA, it was mentioned that benefit shall be granted on minimum of the pay scale within two weeks to the petitioners in the contempt petition.

Both the grievances of the petitioners i.e. for regularization of their services and for grant of minimum wages in the regular pay scale in the main writ petition have been resolved. Not only the order has been passed but subsequently a revised order has also been passed. There was no direction in the writ petition filed before this Court as to what benefit was to be given. Simply a direction was issued to consider the claim of the petitioners and opportunity was given to them to file representation subsequently. The case of the petitioners has been considered and their services have been regularized and minimum of pay scale has also been granted. Nothing remains to proceed with the contempt petition, hence the same is dismissed.

However, in case the petitioners are still aggrieved in any manner with regard to their claim at par with similarly situated employees, they are at liberty to avail the appropriate remedy.

13.2.2017

pooja

(DAYA CHAUDHARY)**JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes