

CWP No. 4148 of 2016 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4148 of 2016 (O/M)
Date of decision : 2.3.2017

Rajesh Chaudhry

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ramesh Goyat, Advocate, for the petitioner.

Mr. Naveen Sheoran, Deputy Advocate General, Haryana.

Mr. Baldev Raj Mahajan, Senior Advocate, with,
Mr. Satish Singla, Advocate, for respondent No. 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH, J.

The petitioner possesses the degree in Chemical Engineering. Haryana Agro Industries Corporation Limited-respondent No. 3 (in short 'respondent-Corporation') is registered under the Companies Act, 1956. The employees of respondent-Corporation are being considered at par with the employees of Haryana Government in respect of their pay scales and service conditions. Respondent-Corporation is under the control of Haryana Government. The services of Manager (Food Processing), Assistant Engineer/District Managers are governed by the Punjab Civil Services Rules, as applicable to the Haryana Government employees. The petitioner

CWP No. 4148 of 2016 (O/M)

was appointed as a Manager (Food Processing) in respondent-Corporation on 17.8.1993 on the basis of advertisement dated 19.7.1993 in the pay scale of Rs. 2000-3500. According to the petitioner, the post of Manager (Food Processing) is equivalent to the post of Assistant Engineer of respondent-Corporation (now designated as District Manager) as well as post of Assistant Engineer of other corporations and departments of Government of Haryana. The petitioner has also completed his MBA degree in the year 2000. According to the petitioner, the pay scales of the employees of respondent-Corporation were revised and kept at par with the pay scales of the equivalent post of other corporations and Haryana Government employees. The pay scales of respondent-Corporation were fixed and revised by the Haryana Government, with the prior approval of respondent No. 2-The Bureau of Public Enterprises, Haryana (in short 'the Bureau'). The pay scales of Assistant Engineer were revised from Rs. 350-900 to Rs. 900-1700 with effect from 1.4.1979 and the pay scales of Assistant Engineers of respondent-Corporation were also accordingly revised with effect from 1.1.1986. The pay scales were revised from Rs. 900-1700 to Rs. 2000-3500. On the representation made by the Graduate Engineers of various departments, the Government of Haryana, vide Circular dated 2.6.1989, removed the anomaly in the various pay scales of Graduate Engineers and revised their pay from Rs. 2000-3500 to Rs. 2200-4000 and scale of Rs. 3000-4500 applicable after rendering five years' service and revised the pay scale to Rs. 4100-5300 after rendering twelve years' service. The pay scales became effective from 1.5.1989. Respondent-Corporation also removed the anomaly in the case of District Manager (earlier designated as Assistant Engineer) and granted them pay scale of Rs. 2200-

CWP No. 4148 of 2016 (O/M)

-3-

4000 with effect from 1.5.1989 at par with Assistant Engineer/Sub Divisional Engineer of Haryana Government. The pay scale of Manager (Food Processing) and the pay scale of Assistant Engineer (now District Manager) of respondent-Corporation and the pay scales of other Assistant Engineer of other departments as well as other corporations were equal till 1.5.1989. The State Government, vide circular dated 2.6.1989 (Annexure-P-1), removed the anomaly in the pay scales of HCMS Doctors, Deputy Superintendents of Police and Superintending Engineers and revised their pay scale from Rs. 2000-3500 to Rs. 2200-4400 with effect from 1.5.1989. The same benefit was not extended to the petitioner. The petitioner, while giving details of qualifications of Manager (Food Processing) and Assistant Engineer with respondent-Corporation and other departments pressed that he is also entitled to the equivalent scale as that of Assistant Engineers as mentioned above. It was further stated that the Board of Directors of respondent-Corporation in its meeting held on 14.8.1997, approved the revision of pay scale of the petitioner i.e. Manager (Food Processing) from Rs. 2000-3500 to Rs. 2200-4000, but it was subject to approval of respondent No. 2-the Bureau. However, respondent No. 2-the Bureau, vide letter dated 21.2.2000, asked respondent-Corporation to send the proposal in the form of agenda. The matter was again placed before the Board of Directors of respondent-Corporation in its meeting held on 22.3.2000 and the same was again referred to respondent No. 1-State of Haryana, vide letter dated 11.5.2000, for onward transmission to respondent No. 2-the Bureau. It also comes out that the petitioner had resigned from the service on 1.5.2015. He claims that he had been sending representations to respondent-Corporation in the intervening period, vide letters dated

CWP No. 4148 of 2016 (O/M)

~~-4-~~

23.3.2001, 12.9.2002, 10.12.2002, 28.4.2004, 4.5.2006 and 28.9.2012. He also submitted detailed representation to respondent-Corporation on 13.1.2014 and thereafter approached this Court by filing CWP No. 7147 of 2014, titled as Rajesh Chaudhry Versus State of Haryana and others, which was disposed of by this Court on 25.8.2015 (Annexure-P-6), directing respondent No. 2 to consider and take a decision on the resolution dated 22.3.2000. As the needful was not done within stipulated period of three months as mentioned, the petitioner filed COCP No. 30 of 2016, titled as Rajesh Chaudhry Versus Dr. R.S. Dhillon. During the pendency of the said petition, the impugned order dated 21.1.2016 (Annexure-P-7) was passed by respondent-Corporation, vide which the claim of the petitioner for higher pay scale was denied. Hence, in the present writ petition, the petitioner seeks setting aside of impugned order dated 21.1.2016 (Annexure-P-7). The petitioner also seeks the removal of alleged anomaly and revised the pay scale of Rs. 2200-4000 with effect from 1.5.1989 and subsequent revised pay scale with effect from 1.6.2006, as allowed to the similarly situated engineers working with respondent-Corporation.

In the written statement, respondents took the plea that the post of Manager (Food Processing) was sanctioned for the first time by the Standing Committee on Public Enterprises in the meeting held on 30.12.1992 in the pay scale of Rs. 2000-3500, vide proceeding dated 30.12.1992 (Annexure-R-1). In pursuance to the same, advertisement dated 19.7.1993 was issued and the petitioner was appointed on 17.8.1993 in the pay scale of Rs. 2000-3500. The petitioner joined the duty on 26.8.1993 as Manager (Food Processing). The post of Manager (Food Processing) was never treated equivalent to the post of Assistant Engineer. As per circular

CWP No. 4148 of 2016 (O/M)

-5-

dated 2.6.1989 (Annexure-P-1). the pay scales of Assistant Engineer have been revised to Rs. 2200-4000 with effect from 1.5.1989, whereas the post Manager (Food Processing) was sanctioned/created by the Haryana Bureau of Public Enterprises much later on 30.12.1992 with the pay scale of Rs. 2000-3500. Therefore, the claim of the petitioner that the post of Manager (Food Processing) is equivalent to the post of Assistant Engineer is without any substance. There is no order of any authority equating the post of Manager (Food Processing) with the post of Assistant Engineer (now designated as District Manager). The petitioner later on resigned from the service of respondent-Corporation on 1.5.2015. He first time approached this Court by way of CWP No. 7147 of 2015. It was admitted that the same was disposed of with a direction to respondent No. 2-the Bureau to consider and taken a final decision on the claim of the petitioner, vide order dated 25.8.2015. The passing of the impugned order was not denied. It was asserted that the same was correctly passed. Respondents pleaded that the pay scales of the Government employees are prescribed keeping in view the various factors, which are reproduced as under :-

- a. method of recruitment ;
- b. level at which recruitment is made ;
- c. the hierarchy of service in a given cadre ;
- d. minimum education/technical qualifications required ;
- e. avenues of promotions ;
- f. the nature of duties and responsibilities ;
- g. the horizontal and vertical relativities with similar jobs ;
- h. public dealings ;
- i. satisfaction level ;

CWP No. 4148 of 2016 (O/M)

-6-

j. employer's capacity to pay etc.

It was stated that there was no anomaly in the pay scales allowed to the petitioner and the Assistant Engineer. The word 'anomaly' is defined in 'Webster's New Twentieth Century Dictionary' to mean 'abnormality, irregularity, deviation from the regular arrangement, general rule or the usual method'. It was further stated that as per the rule of the business of the Government of Haryana, there are certain matters, which are mandatorily required to be referred to the Finance Department. Following Rule 7 was relied upon in the written statement :-

“Rule 7. (1) No department shall without previous consultation with the Finance Department, authorize any orders (other than orders pursuant to any general delegation made by the Finance Department) which :-

(a) either immediately or by their repercussion will affect the finances of the State or which, in particular -

(i) involve any grant of land or assignment of revenue or concession, grant of lease or license of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession ; or

(ii) in any way involve any relinquishment of revenue ; or

(b) relate to the number or grading or cadre of posts or the emoluments or other conditions of service or posts.

(2) No proposal which requires the previous consultation of the Finance Department under this rule, but in which the Finance Department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council.”

Therefore, it was asserted that the approval of Haryana Bureau

CWP No. 4148 of 2016 (O/M)

Public Enterprises (respondent No. 2) was necessary as the same was monitoring and reviewing the working of State Public Enterprises like Boards, Corporation, Companies and Cooperative Institutions.

I have heard the learned counsels for the parties and have also carefully gone through the file.

Admittedly, the post of the petitioner was approved by respondent No. 2-the Bureau on 30.12.1992, as per the proceeding (Annexure-R-1). Thereafter, the advertisement was issued on 19.7.1993 and the petitioner was appointed on 17.8.1993 in the pay scale of Rs. 2000-3500. The petitioner joined the duty on 26.8.1993. The claim of the petitioner that the said post of Manager (Food Processing) was treated equivalent to that of Assistant Engineer and that revision of pay scales of Assistant Engineer were granted with effect from 1.1.1986 and that the anomalies were removed on 2.6.1989 is without any force as at that time the post of the petitioner did not exist. When the post was created, it was for the concerned authority to see as to what are the service conditions, what are the qualifications and then fix the salary. The post of the petitioner was first time created on 30.12.92 and the applications were invited on 19.7.93. In the advertisement, a specific pay scale of Rs. 2000-3500 was mentioned. It is not understood as from where the petitioner has concluded that his post of Manager (Food Processing) is equivalent to the post of Assistant Engineer (now designated as District Manager) appointed in respondent-Corporation and in the other departments of the Government of Haryana. Admittedly, according to the petitioner himself, respondent-Corporation is controlled by the Haryana Government and the Punjab Civil Services Rules, as applicable to Haryana, are applicable. Therefore, whatever were the pay

CWP No. 4148 of 2016 (O/M)

scales of Assistant Engineer before the post of the petitioner was created, cannot be treated as anomaly with the post of the petitioner, which was created much later in year 1992. The petitioner has also resigned from the job on 1.5.2015.

The learned counsel for the petitioner has heavily relied upon the copy of resolution of the department, vide which it was recommended that the post of Manager (Food Processing) should be equated with the Assistant Engineer. The copy of the minutes of meeting shows that the said minutes are subject to approval from respondent No. 2-the Bureau. The said Bureau called for the minutes of meeting and after considering the same declined the approval, vide impugned order dated 21.1.2016 (Annexure-P-7), passed by respondent-Corporation. The learned counsel for the petitioner has relied upon the authority of the Division Bench of this Court in Uttar Haryana Bijli Vitran Nigam Limited and another Versus Pawan Kumar and others, rendered in LPA-383-2014, decided on 18.2.2015, to press that the permission of the State Bureau is not required. The perusal of the said judgment shows that in the said case, the said Uttar Haryana Bijli Vitran Nigam Limited had passed a resolution, which was not subject to approval of the State Bureau. Moreover, in the said case, the post was not created by the State Bureau as in the present case and the State Bureau has different Articles of Association as observed in the said judgment. In the present case, the petitioner himself states that respondent-Corporation is a Government Corporation, controlled by the Haryana Government, in which the Government is stated to have 100% shares and the rules applicable to the Haryana Government employees are applicable to the employees of respondent-Corporation also. Therefore, the case of Pawan Kumar and

CWP No. 4148 of 2016 (O/M)

others (supra) where the Haryana Government has majority shareholder is different from the present case.

The learned counsel for the petitioner has also relied upon the Division Bench authority of this Court in Haryana State Minor Irrigation Tubewells Corporation Versus G.S. Uppal, 2002 (2) SCT 216 to state that equal pay for equal work is to be given. The said authority is not attracted in the present case as the post of Manager (Food Processing) is different than that of Assistant Engineer and even their duties are also totally different, though the basic qualification for appointment may be same.

The learned counsel for the petitioner has also relied upon the authority of this Court in Deva Singh and others Versus State of Haryana and others, 2011 (2) SCT 546, which pertains to Haryana Financial Corporation. There, the pay scales of Legal Assistants and Law Officers of the Corporation at par with the Assistant District Attorney and Deputy District Attorney of the State were approved by the Managing Director.

The learned counsel for the petitioner has also relied upon the authority of this Court in Anil Kumar Aggarwal and another Versus State of Haryana and others, 2009 (2) SCT 452, which pertain to Haryana Agriculture Marketing Board, wherein the pay scales of Sub Divisional Engineers in the Haryana State Agriculture Marketing Board were equated with the similarly situated engineers by maintaining pay parity.

I am of the view that in the said cases, the pay scales were equated of the employees holding the same post. In the present case, when the post of the petitioner i.e. Manager (Food Processing) was created, the pay scales were fixed. Whatever parities in the pay scale of Engineer is mentioned by the petitioner, that is prior to creation of the post of the

CWP No. 4148 of 2016 (O/M)

petitioner. It has been held by this Court that there is no reasonable ground to hold that the post of Manager (Food Processing) is equivalent to the post of Assistant Engineer. Therefore, the said authorities are distinguishable from the facts of the present case.

Similarly, in another authority of this Court in Jitender Kumar Verma Versus The State of Haryana, 1994 (4) SCT 37, the question was of granting same pay scale to all the incumbents working on the same post, which is not in the present case. The authority of this Court in CWP No. 3969 of 2012, titled as Ram Pal and others Versus Haryana Rural Development Fund Administration Board and others, decided on 8.7.2016 pertains to the implementation of pension scheme to its employees at par with Haryana Government employees.

The learned counsel for the petitioner has also relied upon the Single Bench authority of this Court in Haryana Warehousing Corporation Godown Keepers/Accounts Clerks Union Versus State of Haryana and others, 2015 (3) SCT 552, which pertains to Haryana Warehousing Corporation. The Articles of Association of Haryana Warehousing Corporation are different as in case of Haryana Bijli Vitran Nigam Limited (supra). As stated above, respondent-Corporation is 100% Government owned corporation, which is controlled by the Haryana Government. The post of Manager (Food Processing) was created by the Bureau of Public Enterprises, Haryana (respondent No. 2 herein), giving particular scales and for revision of the pay scales, approval of Bureau (respondent No. 2) was must. It is not a case of anomaly and there is no reasonable basis whatsoever for equating the post of Manager (Food Processing) with the Assistant Engineer of respondent-Corporation and other departments of

CWP No. 4148 of 2016 (O/M)

Government of Haryana.

It being so, there are no merits in the present writ petition and
the same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

2.3.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes