

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

CWP No. 9305 of 2015

Date of Decision: 08.08.2018

Dr. Surender Kumar Bhardwaj

...Petitioner

Vs.

Vice Chancellor, M.D. University Rohtak and others

...Respondents

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

Present: Mr. L.S. Sidhu, Advocate for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

Mr. B.L. Gupta, Advocate for respondent Nos. 1 to 3.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner was appointed as Superintendent (Botanical Garden) (in short 'SBG') in the Department of Bio Sciences of Maharshi Dayanand University (Rohtak) (in short 'MDU'). His appointment was temporary till it was made on regular basis. His starting pay scale was 2000-60-2300-75-EB-100-3500 + usual allowances as per University rules. A probation period of one year was prescribed by rule which was extended by another year due to work and conduct being found not satisfactory. He was confirmed as a regular hand on 02.11.1997. The pay-scale of Rs.2,000-3,500 was revised to Rs.9,300-34,800/-+ 4200 GP w.e.f. 01.01.2006 as a result of pay revision. Dis-satisfied with his pay-scale, the petitioner tried to make out a case of anomaly in the pay-scale demanding pay-scale of Rs. 15,600/-39,100/- + 6000 GP by

comparing pay scale of his post with the posts of the same description in Kurukshetra University, Kurukshetra and in the erstwhile Haryana Agricultural University, Hisar presently called Ch. Charan Singh Haryana Agricultural University Hisar (in short 'CCSHAU'). These posts was described as Assistant Botanist-cum-Superintendent (Botanical Garden).

2. In the written statement filed by the University, it is explained that the petitioner was not appointed to a teaching post. On a comparison on the post of SBG in MDU and Assistant Botanist-cum-Superintendent (Botanical Garden) in CCSHAU, Hisar it has been averred in the written statement that the nomenclature of the post and the minimum requisite qualifications of both the posts in both the Universities was different. A comparative chart is reproduced below:

Superintendent (Botanical Garden) In Maharshi Dayanand University, Rohtak	Assistant Botanist-cum-Superintendent (Botanical Garden) in Ch. Charan Singh Haryana Agricultural University Hisar
Minimum second division M.Sc. (Horticulture)/ M.Sc. (Botany)/M.Sc. (Bio-Sciences) (Plant Science) with a through knowledge in any of plant taxonomy, horticulture, plant pathology and plant ecology. Experienced candidates in these specialized areas may be given preference.	Besides fulfilling these qualifications, candidates should have cleared the eligibility test (NET) conducted by the UGC, CSIR, ASRB or similar test accredited by UGC on or before the date of interview. Note:-1 NET shall remain the compulsory requirement for appointment as Assistant Professor/equivalents, even for candidates having Ph.D. Degree. However, the candidates who have completed M.Phil.

	Degree by 31.12.1993 or submitted Ph.D. thesis to the University in the concerned subject on or before 31.12.2002 are exempted from appearing the NET examination. In case such candidates fail to obtain Ph.D. Degree, they shall have to pass the NET examinations. Note:2 The candidates, who qualify the NET on or before the date of interview, are eligible to apply, but they will be allowed to appear in the interview only if they produce a NET qualified certificate on the date of interview.
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3. It is contended by the respondent that parity of pay-scale of different posts having minimum requisite qualifications is not justified. It has been explained by the petitioner on the strength of the chart that the post of SBG in CCSHAU, Hisar was changed to Assistant Botanist-cum-Superintendent (Botanical Garden) in the pay-scale of Rs. 15,600-93,100 + 6000 GP whereas in the year 1992 the post of SBG carried the pay-scale of Rs. 2,200-4,000/-. The qualifications of Assistant Botanist-cum-Superintendent (Botanical Garden) was Master's degree in relevant subject, clearance of eligibility test (NET) conducted by the UGC, CSIR, ASRB or similar test accredited by UGC on or before the date of interview. M.Phil. Degree by 31.12.1993 or submitted Ph.D. thesis on or before 31.12.2002 were exempted from appearing in the NET examination. The post of SBG in CCHAU, Hisar can be filled by the candidate having M.Sc. in Botany with specialization in

Taxonomy/Ecology, having adequate experience of plant collection and identification. Preference will be given to those who have practical experience or working in any ornamental/botanical garden.

4. The qualifications for the post of SBG in CCSHAU are different from the qualifications prescribed for the same post in MDU. Therefore, there can be no comparison between the two regarding the nature of duties and responsibilities, job content, qualifications etc. as they are different. The petitioner holds a technical post while the post he compares his case with is a teaching post and this makes the vital difference.

5. The University may have made recommendations to the Government in favour of the petitioner, but, that is not conclusive since Section 9-F of the Maharshi Dayanand University, Act, 1975 prescribes as under:

“9-F Notwithstanding anything contained in this Act, the University shall not create any teaching and non-teaching posts or revise the pay scales of the teaching and non-teaching employees without obtaining the prior approval of the Government.”

6. Hence, the State Government exercises the prerogative and is the final arbitrator of creation of posts and prescription of pay-scales attaching to the posts. In any case, matters of pay-scale and their revision fall in the domain of the experts and the Court cannot on its

own apply principles of equivalence, parity etc. It is odious to compare pay and post in different Universities suffering disparate elements. A case of discrimination cannot be made inter se Universities. The petitioner has to be paid pay-scale prescribed for the post by his parent University i.e. MDU, Rohtak. Article 14 does not reach to this depth. There can hardly be any scope of active and hostile discrimination. The Government has rejected the proposal of the University and for reaching this conclusion, I find no merit legal infirmity in the action taken, and, therefore would dismiss the petition.

7. With the above observations, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

08.08.2018

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*