

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15216-2013 (O&M)

Date of Decision:-14.01.2019.

G.S. Chahal

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. B.S. Seemar, Advocate for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. J.R. Syal, Advocate for respondent No.2.

ARUN MONGA, J. (Oral)

1.) Vide order dated 3.12.2004 (Annexure P-10), respondent No.2-Markfed, *inter alia*, revised the pay scales of its Executive Engineers. The present petition has been filed seeking mandamus for compliance thereof. Annexure P/10 in turn is based on Notification dated 19.05.1998 issued by Department of Finance, Government of Punjab, pursuant thereto, the pay scale of Executive Engineers were also revised. The benefit thereof was duly conferred on other employees and the Executive Engineers but the petitioner has been denied the same by respondent No.2/Markfed.

2.) The petitioner has made a further prayer for issuance of a writ in the nature of *certiorari* seeking to quash the impugned order dated 30.05.2012 (Annexure P-7). Whereby, the benefit of revised pay scale has

been declined to the petitioner, ostensibly on the ground that he being an Executive Engineer in the Mechanical Engineering is not entitled to it, as revised pay scale is to be granted only to the Executive Engineers working in Civil Engineering.

3.) For better appreciation of the case, the relevant part of the order dated 03.12.2004 (Annexure P-10), implementation whereof is being sought, is extracted hereinbelow:-

“.....the matter relating to revision of pay scale of markfed employees has been considered and as per decision taken, the pay scales of following categories of employees file following pay scale of the categories mentioned below have been approved to be implemented w.e.f. 1.1.1996.

Sr. No.	Name of Post	Pay Scale	Remarks
1	Jr. Asstt.	4400-7000	The incumbent who are in the pay scale of 5000-8100 their pay will be protected as personal measure to them in the pay scale of 4400-7000
2	Jr. Scale Stenographer	4400-7000	The incumbent who are in the pay scale of 5000-8100 their pay will be protected as personal measure to them in the pay scale of 4400-7000
3	Executive Engineer	12000-15500 14300-18150	Entry Scale After 14 years of regular service including service as SDE.

”

The reason assigned in the impugned order dated 03.05.2012 (Annexure P-7), for negating the petitioner's claim is reproduced hereinbelow:-

“These higher pay scales were allowed only to Civil Engineers working in PWD (B&R) and same were adopted by Markfed vide orders No.EST/EAG-6/04/4028 dated 03.12.2004 (flag 'A'), for its Sub Divisional Engineers working on common cadre side

whose educational qualification and type of work was same as that of Civil Engineers of PWD (B&R).

XXXX-----XXXX-----XXXX

The qualifications and duties of Assistant Engineers (Mech) were quite different from qualifications and duties of Civil Engineers working in Markfed. Further, Govt. of Punjab has allowed the pay scales vide letter dated 19.05.1998 only to the civil engineers.

XXXX-----XXXX-----XXXX

Thus, Sh. G.S. Chahal has no claim for grant of pay scale and benefit under ACP Scheme as granted to the Civil Engineers working in Engineering Section, Markfed.”

4.) Learned counsel for the petitioner contended that perusal of Annexure P-10 clearly reflects that respondent/Markfed had considered the revision of the pay scales in tune with 4th Punjab Pay Commission recommendations read with the decision taken by the Punjab Government vide Circular dated 19.05.1998, and, accordingly, the pay scale of Executive Engineer was revised, subject albeit, to the condition, that the Executive Engineer ought to have an entry scale after 14 years of regular service including service as a Sub-Divisional Engineer. He *inter alia* contends that the Markfed order dated 03.12.2004 (Annexure P-10) nowhere states that the benefit is to be confined to “only” Executive Engineers from the Civil Engineering stream. He further contends that the refusal to grant him the revised pay scale which has been granted to the Executive Engineers from Civil Engineering is discriminatory and is violative of Article 14 of Constitution of India as also the settled principle of service jurisprudence

“equal pay for equal work”. He further contends that the ostensible

reasoning given in the impugned order that the qualifications and duties of Executive Engineer (Mechanical Engineering) are different from that of Executive Engineer (Civil Engineering) is completely misplaced and is legally not tenable.

5.) Learned counsel for respondent No.2-Markfed relies on the impugned order and contends that the same is a speaking order, records that the qualification and duties of Mechanical Engineers are different from qualification and duties of Civil Engineers. Therefore, regardless of their being otherwise equivalent to each other i.e. Executive Engineers, the benefit of the revised pay scales cannot be granted to both the petitioners and the same is to be confined to Civil Engineers. When confronted with the query of this Court, as to from where the term “only” to be granted to the Civil Engineers has been coined, as neither the Government Notification dated 19.05.1998 nor the order dated 03.12.2004 passed by the Markfed, which adopted the said Notification, brought out such separate category of Civil Engineers. He points out that even though there is no such distinction, but since the speaking order states that the nature and duties as also the qualification of Civil Engineers are different from Mechanical Engineers, therefore, the impugned order dated 30.05.2012 (Annexure P-7) has been rightly passed.

6.) Having gone through pleadings on record and after hearing rival contentions of learned counsels, I am in complete agreement with the contentions of the learned counsel for the petitioner. Coupled with the fact, that once the Board of Directors of Markfed itself noted that vide Notification dated 19.05.1998, Government of Punjab had granted the revised pay scale to Executive Engineers, it (Markfed) had decided to grant

the same revised pay scale then there was no occasion to coin and add the term “only” to its Executive Engineers, confining the benefit to Civil Engineers alone and for excluding the Mechanical/Electrical Engineers therefrom.

7.) The learned counsel for the petitioner rightly pointed out that the said term has been coined out of bolt from the blue and wrongly relied upon in the impugned orders. Neither the decision taken by the Board of Directors of respondent No.2 as adopted vide order dated 3.12.2004 nor, even otherwise, the Government Notification dated 19.05.1998 provide for any such distinction. Learned counsel for the petitioner further points out that it is not the case of respondent No.2 that the duties of Executive Engineer (Mechanical Engineering) are not equivalent to that of Executive Engineering (Civil Engineering).

8.) As already noted that once the position in law is clear that neither the Notification nor the impugned order bring out any such distinction, therefore, by way of the impugned order, the same cannot be invoked for denial of the benefit to the petitioners. The impugned order has not been passed in accordance with the Notification/decision of Board of Directors and the same cannot over-ride the said Notification. The impugned order passed by the Managing Director is in complete defiance of the Notification dated 19.05.1998 of the Government of which parity has been admittedly adopted by the Markfed. In view thereof, the impugned order dated (Annexure P-7) passed by the Managing Director of Markfed is set aside with a further direction to confer the benefit of revised pay scales of Executive Engineer to the petitioner with all consequential benefits to be

similar benefit to other Executive Engineers in Markfed, till its payment to the petitioner.

9.) Writ petition is, accordingly, allowed with no order as to cost.

(ARUN MONGA)
JUDGE

January 14, 2019.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.