

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 4340 of 2012

U.K. Chandra S/o R.L. Chandra, Aged About 54 Years, occupation service presently working as Draftsman, Department of Agriculture, posted at Assistant Soil Conservator Office, Saktik, District Janjgir Champa, R/o Behind Irrigation Colony, Champa, District Janjgir Champa (CG).

---Petitioner(s)

Versus

1. State of Chhattisgarh through Secretary, General Administration Department, DKS Bhawan, Raipur, Chhattisgarh
2. Secretary Department of Agriculture, DKS Bhawan, Mantralaya, Raipur, District : Raipur, Chhattisgarh.
3. Director (Agriculture) Chhattisgarh, Raipur, Chhattisgarh.
4. Joint Director (Agriculture) Bilaspur Division, Bilaspur, Chhattisgarh.
5. Deputy Director (Agriculture) Janjgir, District Janjgir Champa, Chhattisgarh.
6. Assistant Soil Conservator, Sakti, Distt Janjgir Champa, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Rajeev Shrivastava, Advocate.
For State	:	Ms. Sunita Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03.07.2020

1. The challenge in the present writ petition is to the order Annexure P/1 dated 09.07.2012 whereby the representation which the petitioner had made in respect of reduction in the pay scale of the promotional post of Draftsman from Rs. 5000-8000 to Rs. 4000-6000 has been rejected.
2. Brief facts of the case is that, the petitioner is an employee under the Agriculture Department initially appointed on the post of Tracer way back in the year, 1991. By virtue of length of service, the petitioner was promoted on the post of Draftsman vide order dated 15.07.2008 (Annexure P/4) in the pay scale of Rs.5000-8000. However, subsequently the said pay scale was withdrawn by the State Govt. and it was ordered that the petitioner would be entitled for the pay scale of Rs.4000-6000 instead of Rs.5000-8000. It is here that the petitioner had made a

representation to the authorities concerned who have rejected the representation vide impugned order dated 09.07.2012 (Annexure P/1) leading to the filing of the present writ petition.

3. According to the petitioner, the feeder post on which the petitioner was working was that of Tracer and the next promotion post from Tracer was that to the post of Draftsman which he in-fact he was promoted w.e.f. 15.07.2008. When he was promoted, the order of promotion clearly reflected that the pay scale granted to the petitioner and other similarly placed persons who were promoted along with the petitioner was Rs.5000-150-8000. According to learned counsel for the petitioner, once having been granted the pay scale of Rs.5000-8000 there could not had been any occasion for the respondents to have unilaterally withdrawn the said pay scale and revise the pay scale to a different scale detrimental to the interest of the petitioner. A pertinent point which the petitioner has raised during the course of argument was that the Draftsman in the PWD and other department of the State Govt. were still being granted the pay scale of Rs.5000-8000 and if that be so there could not be a discrimination made with the petitioner who is working in the Agriculture Department when the nature of duty performed by the Draftsman is the same everywhere.
4. The further ground of challenge by the petitioner is that the change in the pay scale seems to have been made in the light of Brahmswaroop Committee's report, however the said report has given the pay scale of Rs.4000-6000 also to the Assistant Draftsman. This according to the petitioner creates more anomaly as Assistant Draftsman is the feeder post to Draftsman which otherwise means that Draftsman post is the promotional post from the post of Assistant Draftsman. If the pay scale of

the promoted post itself was the pay scale that was given to the feeder post of Assistant Draftsman, the granting of promotion becomes redundant.

5. Further contention of the petitioner is that, as per the Brahmswaroop report, all those employees who have got the benefit of a particular pay scale, their scale of pay would not be reduced. The recommended salary of Rs.4000-6000 would be only for all those persons who would be subsequently promoted at a later stage and on this count also the reduction of pay scale of the petitioner from Rs.5000-8000 to Rs.4000-6000 was arbitrary and violative of Article 14 and also thereby becoming bad in law.
6. The State counsel on the other hand opposing the petition submits that since the petitioner is working in the Agriculture Department, he cannot claim parity with the Draftsman working in the other department as the mode of recruitment and the nature of duties discharged also are quite different. It was further contended that granting of pay scale and other fringe benefits are concerned, those are awarded as per the recommendations made by the committees constituted in this regard periodically. In the instant case, there is a recommendation made by the Brahmswaroop Committee which provides for a particular pay scale to be granted to the Draftsman in the Agriculture Department and the Govt. has only acted upon on the recommendation made by the said Committee. Therefore, it cannot be said to be bad in law.
7. The State counsel also took the ground that though the promotion orders were issued on 15.07.2008 with a particular pay scale, but the same was subsequently rectified vide order dated 24.07.2008 keeping in view the recommendations made by the Brahmswaroop Committee. That since the

petitioner's promotion was subsequent to the implementation of the Brahmswaroop Committee report, he could not have got the pay scale of Rs.5000-8000.

8. Having heard the contentions put forth on either side and on perusal of records, what reflects from the proceedings drawn and the records available with the writ petition is that the petitioner was working as a Tracer in the Agriculture Department. On account of his seniority, the petitioner was promoted to the post of Draftsman w.e.f. 15.07.2008. The order of promotion shows the pay scale to be awarded to the petitioner to be Rs.5000-8000. This order stood modified vide order dated 24.07.2008.
9. The question that needs consideration is as to whether the Draftsman in the department promoted prior to the implementation of the Brahmswaroop Report dated 11.02.2008 can be allowed to have a different pay scale as compared to the persons who have been promoted subsequently and working on the same post, which in the opinion of this court would clearly give rise to disparity between two set of employees drawing different salaries though working on the same post and discharging same nature of duties.
10. Another aspect which needs consideration is that, when the pay scale for an Assistant Draftsman has been fixed at Rs.4000-6000, the post of Draftsman is promotional post from Assistant Draftsman, can the pay scale of the promotional post also be the same that of the feeder post. Likewise, it also needs consideration that when the Draftsmen in the other department of the State Govt. discharging the same nature of duties and where under the service rule the eligibility criteria also happens to be the same, could there be a disparity in the pay scale?

- 11.** All these aforesaid issues have not been dealt with while deciding Annexure P/1 dated 09.07.2012. This court is conscious of the fact that granting of a particular pay scale is exclusively within the domain of the State Govt. which it turn acts upon the recommendations made by the Pay Commission established from time to time. There are catena of decisions which holds that in the event of an anomaly that arises on account of implementation of the pay scale, the court has to refer the matter to the State Govt. for reconsideration of the pay scale so disputed by the claimants.
- 12.** Given the said facts and circumstances of the case, this court also is inclined to dispose of the writ petition and referring the matter back to the State Govt. for reconsidering the representation of the petitioner. If required, the State Govt. also can refer the matter to an anomaly committee dealing with disparities in the pay scale recommend by the Brahmswaroop Committee or can create one and an appropriate decision is taken. It is also expected that the State Govt. or the Committee so constituted, if any, while deciding the representation afresh shall take into consideration all the aforesaid issues which have been observed by this court in the preceding paragraphs. It is also expected that the authorities would give reasoning on these issues while deciding the claim of the petitioner.
- 13.** Needless to mention that if ultimately it has been held that the petitioner is entitled for the pay scale of Rs.5000-8000, the respondents are directed to recalculate the payments that the petitioner would have received in the

prerevised scale and the difference of the payment after adjusting the amount already received be paid at the earliest.

14. The Writ Petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder