

CWP No.10581 of 2014

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

CWP No.10581 of 2014

DATE OF DECISION *November 24, 2020*

BALJIT SINGH CHAWLA AND OTHERS

...PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Kunal Mittal, Advocate,
for the petitioners.

Mr. Nikhil Chopra, Addl. A.G., Punjab.

Mr. A.P.S. Sandhu, Advocate,
for respondents No.2 & 3.

SUDHIR MITTAL, J.

The State is supposed to be a model employer. However, the facts of this case show that the State can be more callous than a private employer. A private employer may justify his actions citing profit but the State does not even have this excuse. It may try to impute callousness to the impersonal nature of the State machinery but such justification can never be acceptable. While considering issues concerning its employees, the State cannot remain impersonal. It must adopt a humane approach so that the employees remain motivated and serve to the best of their abilities.

The Punjab State Forest Development Corporation (hereinafter referred to as the Corporation) created five posts of Deputy Project Officers vide Agenda Item No.65.4(3) adopted by its Board of Directors in its meeting held on 27.06.2000. The reason for the creation of these new posts

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was increase in the workload at the level of Project Officers and the fact that the Forest Department was unable to provide suitable staff on deputation to the Corporation to work in the Projects. Consequently, petitioners No.1 & 4 were promoted to the said post vide order dated 18.07.2000 whereas petitioners No.2 & 3 were appointed vide orders dated 06.12.2000 and 21.02.2001 respectively after transfer of cadre. Fifth Pay Commission recommendations were made after the petitioners were promoted/appointed as Deputy Project Officers and some time in the year 2009, the Government of Punjab accepted the recommendations. Consequently, vide notification dated 27.05.2009 issued by the Finance Department, Government of Punjab, the Punjab Civil Services (Revised Pay) Rules 2009, were notified. The Finance Department constituted Pay Revision Committees to implement Fifth Pay Commission recommendations in public sector corporations and cooperative sectors. One such Committee recommended revision of pay scales in the Corporation and this recommendation was accepted by the Board of Directors in its meeting held on 01.06.2010. Thus, office order dated 02.06.2010 was issued granting the revised pay scales to all its employees. However, the Deputy Project Officers were not included in the said order. Aggrieved, the petitioners submitted a representation dated 22.10.2012 to the Managing Director of the Corporation. This was followed by representation dated 23.02.2014. Meanwhile, vide instructions dated 31.11.2006, the Punjab Government had made an Assured Career Progression Scheme applicable to the employees of the Corporation under which the employees were entitled to additional increments after 4/9/14 years of service. The petitioners were denied the benefit of this scheme as

well.

The Corporation appoints its employees from two sources; deputationists from the Forest Department, Government of Punjab and by direct recruitment. Deputationists working as Deputy Project Officers were designated as Deputy Range Officers and were given the same responsibilities as Deputy Project Officers. Their pay scale was further revised vide Finance Department communication dated 21.12.2011.

Through this writ petition, the petitioners not only claim revision of pay scales in accordance with the recommendations of the 5th Pay Commission but also seek grant of additional increments in accordance with the Assured Career Progression Scheme made applicable vide instructions dated 31.11.2006.

Separate replies have been filed on behalf of the State of Punjab and the Corporation.

The Corporation has submitted that after creation of the posts of Deputy Project Officer, the said post was not included in its bye-laws and unless and until the amended bye-laws were approved by the State Government, revised pay scales could not be granted to the petitioners.

The State of Punjab has averred that the post of Deputy Project Officer is not a separate cadre post and is merely a designation accorded to Field Supervisors who have 05 years of experience. Even after creation of the posts by the Board of Directors of the Corporation, the bye-laws were not amended. Dispute has also been raised regarding the appointment/promotion of the petitioners, however, in the later part of the written statement it has been accepted that the service dispute was decided in the favour of the petitioners by the High Court. Regarding amendment of

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the bye-laws it is stated that unless and until provision of proper modes of appointment and avenues of promotion to the post of Deputy Project Officer was made in the bye-laws, the same could not be approved. The matter is under consideration of the State Government. The fact that Deputy Project Officers and Deputy Forest Rangers perform the same duties and have the same responsibilities, has not been denied.

Rejoinder has been filed to the written statement filed on behalf of the State. It has been pleaded therein that the Board of Directors of the Corporation is the Competent Authority for creation of new posts. This power vests in it by virtue of the Articles of Association of the Corporation. Thus, creation of new posts of Deputy Project Officer is legal and valid and the objection raised on behalf of the State that it is not a substantive post but only a designation for Foreman, has no legal basis. Moreover, the Deputy Forest Rangers have been granted the revised pay scales and they perform the same work as the petitioners and have the same responsibilities. Thus, there is no justification in denying revision of pay scales to the petitioners. Other averments not admitted have been controverted.

During the pendency of the writ petition, order dated 28.08.2017 passed by the Punjab Government has been placed on record as Annexure P-13 according to which revised bye-laws of the Corporation have been approved by the State.

Thereafter, the Corporation filed an additional affidavit dated 04.11.2020 of its Managing Director wherein it has been stated that the amended bye-laws stand approved vide communication dated 28.08.2017. The case of the petitioners was thereafter considered by the Committee appointed for the purpose of revision of pay scales of employees of the

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Corporation in accordance with the Fifth Pay Commission recommendations and the said Committee sent the proposal for approval of the Finance Department which has however not approved the same. The matter was again taken up vide letter dated 14.06.2018 but has been returned once again by the Government.

Learned Senior counsel for the petitioners has argued that the posts of Deputy Project Officers were created by the Board of Directors of the Corporation and it was competent to do so in terms of the Articles of Association of the Corporation. The petitioners were validly appointed/promoted to the said posts. Thus, they are bonafide employees of the Corporation and all employees of the Corporation have been granted revised pay scales pursuant to the acceptance of the recommendations of the Fifth Pay Commission by the State Government. Denial of the said revised pay scales to the petitioners is arbitrary and discriminatory. It is also violative of the principle of equal pay for equal work as admittedly, the petitioners perform the same duties and have the same responsibilities as Deputy Forest Rangers. Delay in amendment of the bye-laws by the Corporation and the approval thereof is not attributable to the petitioners and they cannot be made to suffer for the lethargy of the respondent. Thus, the writ petition deserves to be allowed and apart from revision of pay scales in accordance with the recommendations of Fifth Pay Commission, the petitioners are also entitled to the benefit of Assured Career Progression Scheme made applicable vide instructions dated 31.11.2006.

Learned State counsel has argued that the delay in approval of the bye-laws occurred on account of the fact that the Corporation delayed their amendment. Even after approval of the amended bye-laws, unless and

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until the Finance Department grants approval, the petitioners cannot be given any benefit.

Learned counsel for the Corporation has placed the entire blame upon the State Government and has submitted that the delay has occurred on account of delayed approval of the amended bye-laws.

From the aforementioned pleadings and arguments of the parties, it is evident that the petitioners have been appointed/promoted to the post of Deputy Forest Officer created by the Board of Directors of the Corporation. The Board of Directors were competent to do so in accordance with the Articles of Association of the Corporation. In fact, the learned State counsel has not raised any argument in accordance with the written statement that the post of Deputy Forest Officer was not a cadre post or that the same had been invalidly created. Consequently, it is held that the post of Deputy Forest Officer is a separate cadre post and that it is equivalent to the post of Deputy Forest Ranger. All employees of the Corporation have been granted revised pay scales after the recommendations of the Fifth Pay Commission were accepted by the State Government and denial of the same benefit to the petitioners is arbitrary and discriminatory. For the same reason, the petitioners are also entitled to the benefit of Assured Career Progression Scheme made applicable to all the employees vide instructions dated 31.11.2006. Delay in amendment of the bye-laws by the Corporation and the approval thereof by the State Government cannot be attributed to the petitioners and they cannot be made to suffer on account of the inefficiency of the State apparatus.

The objection of the State that unless and until the Finance Department grants approval, revised pay scales cannot be granted to the

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petitioners is noticed only to be rejected. A Committee for revision of pay scales of employees of Corporations was constituted only after the Finance Department of the State Government had accepted the recommendations made by the Fifth Pay Commission. Thus, there is no logic behind the objection being raised now. After amendment of the bye-laws, the post of Deputy Forest Officer is deemed to be in existence on the date the revised pay scales were granted to the employees of the Corporation. On the said date, the approval of the Finance Department existed and thus there is no requirement of a fresh approval now. Only a bureaucratic hurdle is being created even though the same is not supported either by rule or logic.

The writ petition is accordingly allowed and it is directed that the petitioners be given the benefit of revised pay scales w.e.f. the date that the same benefit was granted to the other employees of the Corporation. The petitioners shall also be granted the benefit of Assured Career Progression Scheme made applicable vide instructions dated 31.11.2006. Consequential benefits on account of the revised pay scales be also granted to the petitioners. Since, the delay has taken place on account of the State machinery, the petitioners are also entitled to grant of interest @ 10 % per annum on the arrears of pay from the date the same are payable till date of actual payment. The arrears be calculated and paid to the petitioners within four weeks from the date of receipt of a certified copy of this judgment. All pending miscellaneous applications stand disposed of.

(SUDHIR MITTAL)
JUDGE

November 24, 2020

Ankur

Whether speaking/reasoned
Whether Reportable

Yes
Yes