

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

CM-18348-CWP-2023 in/and
CWP-12201-1999

Date of Decision : November 17, 2023

Basant Singh and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Kansal, Advocate, for the petitioners.

Mr. Pankaj Middha, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-18348-CWP-2023

Present application has been filed for recalling the order dated 04.10.2023, by which, the present writ petition was dismissed for non-prosecution.

Notice of the application to the counsel opposite.

Mr. Pankaj Middha, learned Addl. Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondents. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The order dated 04.10.2023 is recalled and the writ petition is restored to its original number and status.

CWP-12201-1999

1. Though a joint petition has been filed by the petitioners but their grievances are different. The grievance of the first four petitioners is that their pay scale has been refixed and a consequent recovery is to be done from them, which is arbitrary and illegal. The grievance of the other petitioners is that anomaly has crept in the revised pay rules qua the fixation of the pay of the petitioners, who are working on the post of 2 Colour Offset Machine Operator/ 4 Colour Offset Machine Operator vis.a.vis the post of General Foreman.

2. Learned counsel for the petitioners submits that though in the present writ petition, the re-fixation of the pay qua the first four petitioners is also under challenge but the same is not being pressed. Only the grievance with regard to the recovery which was imposed upon the petitioners No. 1 to 4 by Annexures P-12 and P-13 is being pressed and further, the claim of rest of the petitioners for the grant of pay as granted to the General Foreman while revision which came into being w.e.f. 23.08.1990.

3. Learned counsel for the petitioners argues that even if a wrong pay scale was given to the petitioners but the recovery of excess amount cannot be done from them in view of the judgment of the Hon'ble Supreme Court of India especially when there was no misrepresentation upon the part of the petitioners to claim the said benefit as the same was granted to the petitioners by the respondents on their own.

4. Learned State counsel, on the other hand, submits that the amount being a public money, once the petitioners were wrongly paid beyond their entitlement, the amount given to them beyond their entitlement should be allowed to be recovered.

5. The issue qua recovery of excess payment made to an employee has already been settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022.*** The Hon'ble Supreme Court of India has held that where there is no misrepresentation on the part of the employee to get any amount, the recovery of excess payment cannot be done.

The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

6. Learned State counsel has not been able to persuade this Court keeping in view the material on record that there was any misrepresentation on the part of the petitioners No. 1 to 4 to claim the excess amount which was paid by the respondents on their own as the pay was fixed by the respondents themselves and not by the petitioners.

7. That being so, the recovery which is being sought to be done from the petitioners No. 1 to 4 in pursuance to Annexures P-12 and P-13 is set aside. In case any recovery has been done in pursuance to the said orders from petitioners No. 1 to 4, the same will be refunded back to them within a period of two months from the receipt of copy of this order.

8. The second argument which has been raised by the learned counsel for the petitioners is that there is an anomaly between the pay revised by the respondents qua the post of 2 Colour Offset Machine Operator/ 4 Colour Offset Machine Operator i.e. the post on which the petitioners are working qua the post of General Foreman as at one given point of time, the post of General Foreman was having equivalent pay scale with that of 2 Colour Offset Machine Operator whereas now by the revision of pay scale, the 2 Colour Offset Machine Operators and 4 Colour Offset Machine Operators have been given pay scale of 1400-2600 whereas, the General Foreman has been granted the pay scale of 1640-2900 w.e.f. 01.01.1995, which is arbitrary and illegal.

9. Learned State counsel submits that the revision of the pay scale is done by the experts and recommendations are made to the Government which are also looked into before accepting the same and keeping in view certain facts, the grant of pay scale to the General Foreman as compared to the cadre in which the petitioners are working, is perfectly valid and legal. Learned State counsel further submits that as per the reply filed, the post of General Foreman is a higher post and is rather a promotional post as compared to the cadre in which the petitioners are working and the said post of General Foreman is a supervisory post to supervise the cadre of the petitioners hence, the claim of the petitioners that the petitioners be granted the same pay scale as granted to the General Foreman is without any basis.

10. Keeping in view the facts which have come on record, it may be noticed that firstly, the experts are given a duty to revise the pay scale of the cadre keeping in view the nature of duties and responsibility. Further, the fact whether a particular post is a feeder post or a promotional post, is also to be kept in mind while making recommendations.

11. It is a settled principle of law that once an expert body takes a decision, the Court will be reluctant to interfere into the recommendations made by the Pay Commission unless and until, the same are discriminatory or arbitrary on the face of it. To support the said view, the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.8329 of 2011 titled as Union of India vs. Indian Navy Civilian Design Officers Association and another, decided on 22.02.2023*** can be relied upon. The relevant paragraphs of the said judgment are as under:-

“ 5. The main question that falls for consideration before this Court is whether the Tribunal and the High Court were justified in equating the posts of JDOs with CTOs, and in fixing the pay scales of JDOs equivalent to that of CTOs, in utter disregard of the legal position settled by this Court in catena of decisions to the effect that the Courts should not interfere with the complex issues of evaluating the nature of duties and responsibilities of posts, and of fixing the pay scales, which task otherwise is best done by the expert bodies like the Pay Commission.

9. Before advertng to the rival contentions raised by the learned counsels for the parties, it deserves to be noted that the power of judicial review of the High Courts in the matter of classification of posts and determination of pay scale is no more res integra. It has been consistently held by this Court in plethora of decisions that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay

scale for a given post and the interference of the Court was absolutely necessary to undo the injustice.

10. xxx xxx xxx xxx

“18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept 1 1989(1) SCC 121 5 it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.”

17. The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning 6 (2009) 15 SCC 705 8 the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.

18. In that view of the matter, we are of the opinion that the Tribunal and the High Court had committed gross error in interfering with the pay scales recommended by the Fifth Central Pay Commission and accepted by the appellant for the posts of JDOs and CTOs, and in upgrading the pay scale of JDOs making it equivalent to the pay scale of CTOs.”

12. Examining the prayer of the petitioners from the said point of

view, it may be noticed that hierarchy which is in the Department is that the feeder post is of Colour Offset Machine Operator, which cadre get promotion from the said post to 4 Colour Offset Machine Operator. Further, 4 Colour Offset Machine Operators get promotion to the post of General Foreman. That being so, all the posts are not equivalent. The cadre in which the petitioners are discharging the duties is a feeder cadre for promotion to the post of General Foreman. It cannot be held that feeder post or the promotional post should carry a same pay scale. Probably, the said factual aspect that the General Foreman supervises the cadre of the petitioners, cannot be treated as an equivalent cadre to the one being held by the petitioners and that is why, keeping in view the certain recommendations made as well as the representation made by the cadre of General Foreman, their pay scale has been fixed at a higher scale as compared to the cadre of the petitioners which is a feeder cadre. The said factual aspect, differentiate the cadre of the petitioners with that of General Foreman so as to grant different pay scales. There is no replication filed to the written statement. Hence, once the cadre of General Foreman is a promotional cadre from the cadre in which the petitioners are working, the petitioners cannot claim the pay scale as being given to the promotional cadre which will lead to anomaly as the petitioners will not be able to get a higher pay scale upon the petitioners.

13. Keeping in view the above, no ground is made out for the grant of the prayer of granting the petitioners the pay scale as granted to the General Foreman.

14. Learned counsel for the petitioners submits that the Government has not placed on record any material to show that there was a difference in job requirement between the cadre being held by the

petitioners and the General Foreman.

15. It may be noticed that once it has already come on record that the post of General Foreman is a promotional post, there is no other document required to be placed on record to show the difference between the cadre in which the petitioners are working as compared to the cadre of the General Foreman.

16. At this stage, learned counsel for the petitioners submits that nothing has been brought on record to show that the cadre of General Foreman is a promotional cadre from the cadre of 2 Colour Offset Machine Operator/ 4 Colour Offset Machine Operator.

17. It may be noticed that in paragraph 11 of the reply, the following averments have been made.

“ 11. It is submitted that the further revision of the pay scale of the post of General Foreman was rightly made by virtue of Finance Department letter dated 23.08.1990 (Annexure P-1) from 1400-2600 to 1640-2900 as this post is a promotional post to the post of Four Colour Machine Operator which the petitioners at Sr. No. 1, 2 and 4 are holding. It is submitted that the petitioners at Sr. No. 3 and 5 to 19 are holding the post of Two Colour Machine Operator which is a feeder post of Four Colour Machine Operator meaning thereby this post is feeder post to the feeder post of General Foreman. It is also stated that duties and responsibilities of General Foreman and that of the petitioners are quite different as the former supervises the work and performance of the petitioners who operate the machines. Since the nature of duties of the post of General Foreman are of superior in nature i.e. supervisory capacity as against of operation of machines by the petitioners, the pay scale of General Foreman was rightly further revised by the Government and as such the petitioners are not entitled to the same pay scale. It is also submitted that the grant of pay scale is a subject matter/jurisdiction of the

Government and until and unless it is discriminatory or unreasonable cannot be questioned and in the present case same was done on the basis of justification the post of General Foreman being the promotional one as well as carrying the superior and supervisory the nature of duties.”

18. These averments have gone un-rebutted at the hands of the petitioners.

19. Once, the respondents have clearly mentioned that the post of General Foreman is a promotional post having supervisory jurisdiction under the cadre in which the petitioners are working, the same has to be accepted for all intents and purposes as the said fact has gone un-rebutted.

20. Further, no material has been placed on record to show that the said averment is incorrect. In case the said averment is incorrect, the petitioners can avail appropriate remedy.

21. The present writ petition is disposed of in above terms.

November 17, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes