

CWP-20174-2002

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:166569

CWP-20174-2002
DECIDED ON:19.07.2023

KASTURI LAL KHANNA

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Petitioner in person.

Mr. Pritam Saini, Advocate
for respondent No.3.

SANDEEP MOUDGIL, J(ORAL)

1. The present writ petition has come up on the scrutiny of sine die cases traced out from the writs branch which were to be listed along/after decision of CWPs pending before the Hon'ble Supreme Court and this Court. Since the reference case CWP no. 12377 of 2002 has been decided by this court vide judgment dated 26.09.2002 therefore this petition has come up in the present court.

2. The jurisdiction of this court has been invoked under Articles 226/227 of the constitution of India for issuance of writ in the nature of Certiorari/Mandamus for setting aside the impugned orders of respondent no.2 conveyed by respondent no.3 on 29.11.2001(Annexure P-21) alongwith impugned order dated 27.03.2000 where the claim for modified pay scale has been rejected by the Standing Committee of HBPE.(Annexure P-16).

3. Dispensing with the brevity of facts, the counsel for the petitioner has put forth the contentions in the following manner, wherein the petitioner joined the services of the Corporation as Technical Assistant (Statistics) on 27.12.1974 in the Groundwater Directorate at Karnal and later he was promoted as Assistant Statistician (Grade-II) on 27.06.1979. After upgrading his educational qualification, the petitioner was transferred from Karnal and posted in Monitoring and Planning Cell at Head Office, Chandigarh w.e.f 02.04.1984. The petitioner was ordered to look after the work of company secretary w.e.f 1.5.1991 and was assigned current duty charge for the post of Secretary w.e.f 1.10.1996.

4. On 4.05.1971, the Board of Directors of Respondent no.3 decided to apply pay scales & DA etc to all its employees as per Haryana Government pattern, which was incorporated in Service Bye laws by respondent no.3 during 1980s. The government of Haryana revised its pay scales in 1981 which were made applicable w.e.f 1.04.1979 for all the categories. Therefore, respondent no.3 granted this revised pay scale of 900-1700 to all the grade II employees except to Assistant Statistician who were granted lower revised pay scale of 800-1600/-. The counsel for the petitioner contends that numerous representations were made to respondent no.3 to remove this anomaly but all in vain.

5. The state government vide GSR-39/const/Art 309/87 dated 29.04.1987 further revised the pay scale of all its employees w.e.f 1.01.1986, which was fully enforced by respondent no.3 to all categories of Corporation employees but here again, the petitioner was granted lower scale of 2000-3200/- instead of 2000-3500/-. Furthermore, in 1990, Government of Haryana again revised the scale for all class II posts(besides revising/modifying the pay scale of other categories of post) vide Finance Department Haryana, notification dated

23.08.1990 and the corresponding modified pay scales were made applicable w.e.f 1.05.1990.(Annexure P-1)

6. In pursuance of the government notification, the matter was placed before Board of Directors of respondent no.3 held on 10.10.1990 wherein the board revised the pay scale for the post of Assistant Statistician from 2000-3200/- to 2000-3500/- w.e.f 1.05.1990 besides revising pay scale of other categories subject to concurrence of Finance Department.(Annexure P-2). Respondent no.3 vide letter dated 10.07.1991, referred the matter for revision of pay scale of all categories including post of Assistant Statistician as approved by Board to Haryana Bureau of Public Enterprises(hereinafter referred as HBPE) which revised the pay scale of all other posts except Assistant Statistician and made it applicable w.e.f 28.10.1992 by respondent no.3. The respondent no.3 in continuation again requested HBPE to revise/modify the pay scale of petitioner.

7. Thereafter, respondent no.2 HBPE revised pay scale of post of Assistant Statistician w.e.f 1.12.1993 which was sanctioned by Government of Haryana dated 1.02.1994.(Annexure P-3). To implement the sanction of Government, respondent no.3 released the revised pay scale of 2000-3500/- w.e.f 1.12.1993 vide order dated 10.05.1994(Annexure P-4) which according to the counsel for petitioner is totally arbitrary as the petitioner was eligible for the revised pay scale w.e.f 1.05.1990. This whimsical action of respondent was immediately represented by the petitioner on 14.07.1994(Annexure P-5) which was referred by respondent no.3 to respondent no.1(Annexure P-6).

8. The petitioner while referring to ***Ajmer Singh JE and others vs State of Haryana and others 1994(3) SLR 169(DB)*** represented his case to respondent no.3(Annexure P-8) that being a similarly situated person, the petitioner may be allowed the revised/modified the pay scale w.e.f 1.05.1990

instead of 1.12.1993. On 7.02.1996, the petitioner again submitted its representation which was not decided by the respondent no 3.

9. Thereafter, the petitioner again referred ***Raj Pal and others vs State of Haryana and others 1997(1) SLR 665(DB)*** and requested the respondent no.3 for allowing the revised pay scale for the petitioner w.e.f 1.05.1990 instead of 1.12.1993. On 17.12.1997, the respondent no.3 demanded complete copy of judgment of Hon'ble High Court passed in Raj Pal's case and the petitioner supplied the same and again on 12.01.1998, a representation was submitted by the petitioner to respondent no.3 but no heed was paid to again as per the contention put forth by the counsel for the petitioner.

10. Respondent no.3 on 19.02.1998 made a detailed reference to the Government of Haryana and HBPE for the grant of revised pay scale to the petitioner and other categories of employees who were similarly situated persons and their case was covered under Raj Pal's case.(Annexure P-13). Few categories included in Annexure P-13 had filed a ***CWP 16519-1994*** titled as ***V.L Aggarwal & others vs State of Haryana and others***, which was pending for decision before this court. Respondent no.3 vide letter dated 10.09.1998 informed the petitioner that the subject matter stands referred to HBPE, thereafter the petitioner on 30.10.1998 requested respondent no.3 to take immediate action in the said matter.

11. Respondent no.3 on 27.03.2000(Annexure P-16) informed the petitioner that HBPE has not agreed to the recommendations of respondent no.3. Since the petitioner had not filed ***V.L Aggarwal & others vs State of Haryana & others*** were not similarly situated persons and thus cannot be allowed to be covered under the judgment & orders of this court passed in Raj Pal's case. Further respondent no.3 stated that representations of petitioner were made from 14.07.1994 onwards stands disposed off. Respondent no.3 vide memo dated 5.12.2000(Annexure P-19) again requested HBPE to remove the grievances and

injustice being made to only a handful of 1% employees of corporation. That on 11.05.2001, respondent no.3 sent another detailed reference but the same was not accepted keeping in view the financial health of the corporation which was intentional and arbitrary.(Annexure P-21)

12. The counsel for the respondent contends that the 'closure' in the respondent corporation has already been effected w.e.f 30.07.2002 as a result the services of the petitioner were also dispensed with. Moreover, the petitioner was well aware about the denial of the revised pay scale w.e.f 1.05.1990 and despite that he has filed this writ petition on frivolous grounds. The counsel for the respondent further contends that the corporation is controlled by the state government therefore it does not have the power to grant revised pay scale w.e.f. 1.05.1990. Indeed, the sub committee of Standing Committee constituted by Finance Constitution reviewed the entire staffing pattern along with its pay scales of Haryana State Minor Irrigation and Tubewells Corporation Limited(herein after referred as HSMITC) in a meeting held on 06.02.1992 decided to defer the revision of pay scale of Assistant Statistician because equivalence was needed to be established with other posts in Government Departments. The same was approved by the Standing Committee on Public Enterprises in its meeting held on 28.05.1992 and the pay scales of other categories of posts were revised w.e.f 28.05.1992. Thereafter the proposal regarding revision of pay scales of Assistant Statistician was considered by the Standing Committee in its meeting on 30.11.1993 wherein it was decided to grant the modified pay scale of 2000-3500'/- w.e.f 1.12.1993. Thereafter, the proposal was again considered by the standing committee on public enterprises on 24.04.2001 and keeping in view the financial health of the corporation,it was decided to grant revised pay scale to assistant statistician w.e.f 1.12.1993 instead of 1.5.1990.

13. The state counsel putforth his averments by stating that the petitioner never seeked prior permission of the respondent Nigam for pursuing further studies and infact, the additional charge for the work of company secretary was given on the request of the petitioner himself. The petitioner even submitted an undertaking that he will not claim the pay scale of the post of secretary while discharging his duties(Annexure R-3). He further averts that the judgments referred by the petitioner in his support are all together on a different footing and does not have bearing in the present case since the petitioner was an employee working in the corporation which cannot be equated at par with the duties performed by the government employees.

14. Heard learned counsels for the parties.

15. The petitioner has been seeking revised pay scale of 2000-3500/- for the post of Assistant Statistician w.e.f 1.05.1990 instead of 1.12.1993. The petitioner while working in the corporation upgraded his educational qualification and later was given the additional charge of company secretary and secretary but on the pay scale of Assistant Statistician. From the contentions putforth by the counsel for the petitioner, it is evident that the petitioner has been facing discrepancy in receiving revised pay scale since 1981 wherein for the first time in 1981, respondent no. 3 granted revised pay scale of 900-1700/- to all grade II employees except to Assistant Statistician who was granted lower revised scale of 800-1600/-. Similarly, on 29.04.1987, respondent no. 3 vide notification of State Government revised the pay scales of its employees w.e.f 1.1.1986 and again in an arbitrary manner the petitioner was granted low revised pay scale of 2000-3200/- instead of 2000-3500/-. Further, the State Government revised/modified the pay scale to 2000-3500/- for all class II employees(besides revising/modifying the scale of pay of other categories) w.e.f 1.5.1990 which the

petitioner has not been granted even after the closure of the corporation in 1.07.2002.

15. The petitioner after giving various representations was at last relieved from the corporation on the basis of closure of the corporation, further it stated the reason of financial crunch for not granting the petitioner the revised pay scale w.e.f 1.5.1990 which in the opinion of this court is completely an eye wash, wherein it was only for the post of handful of employees including the petitioner that the respondent did not pay from the actual date i.e 1.5.1990.

16. Having a glance at the judgment of this court in ***Ajmer Singh vs State of Haryana 1995(1) PLR 91*** relied upon by the petitioner makes it clear that the case of the petitioner is very well covered under the given judgment specifically para 7 which states that :-

“7. In the present case, the respondents claim that it is the "inherent administrative power of the Government" to grant scales of pay "from any date". This statement made on behalf of the respondents cannot be accepted in its entirety. The State cannot arbitrarily fix different dates for revision of scales of employees who are similarly situated. Unless good reasons are shown for a differential treatment, all employees who are similarly placed, shall normally be entitled to a parity of treatment. To illustrate, an employer may show that even though the pay scales of the employees of various Corporations have been revised but those in a particular corporation cannot be given these benefits on account of the peculiar financial situation prevailing therein. In such a case the action may be justified. However, unless a clear justification is shown, the action of the authority may suffer from the vice of discrimination and arbitrariness.”

17. Further, the Apex court in *Union of India vs Munshi Ram sc (1493) 2022* has held that ‘*Denying similar benefits to similarly situated Government employees working under same employer amounts to discrimination*’. Hence, in

the present case 99% of the employees working under the same corporation were

granted revised pay scale w.e.f 1.05.1990 whereas only 1% of handful employees including the petitioner were not granted the benefit of the revised pay scale which has amounted to violation of Articles 14 and 16 of the Constitution of India.

18. As has been discussed hereinabove appreciating the submissions of learned counsel for the parties and the material placed before this Court, I hereby allow this writ petition with a direction to the respondent to grant the benefit of revised pay scale of 2000-3500/- w.e.f 1.05.1990 alongwith all the consequential benefits with interest at 9% p.a from the date it became due till the date of realization.

19. Petition stands allowed in the aforesaid terms.

(SANDEEP MOUGIL)
JUDGE

19.07.2023
Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No