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2023:PHHC:166604

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17335-2020
DECIDED ON: 14.11.2023

MAHENDER SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rohan Moudgill, Advocate for
Mr. Sandeep Sharma, Advocate for the petitioner.

Mr. Kapil Bansal, DAG Haryana.

Mr. Arvind Seth, Advocate for respondents No.2 to 4.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this court has been invoked under Article 226/227 of the Constitution of India for issuance of writ in the nature of Mandamus directing respondents to give the pay and other benefits to the petitioner as the respondents are giving pay and other benefits to the Patwari (HSVP) in view of the notification dated 03.11.2017 (Annexure P-4).

2. The counsel for the petitioner contends that the petitioner is working as Patwari in the office of respondents since 2007 without any break and is presently posted in the Estate Office, sector-6, Panchkula wherein he submitted the representation dated 10.05.2018 (Annexure P-6) to the respondents for grant of salary and benefits equivalent to the other Patwari of HSVP, claiming his post as

equivalent to the patwari of HSVP . He further contends that the petitioner is eligible to receive salary and other benefits equivalent to the patwari of HSVP in view of the Judgment dated 26.10.2016 in civil appeal no.213 of 2013 case titled ***State of Punjab vs Jagjeet Singh*** and further also as per the State of Haryana notification dated 03.11.2017 in view of the direction passed by the Hon'ble Supreme Court in the above mentioned case(Annexure P-4). Thereafter the Govt of Haryana decided to pay equal pay for equal work to their contractual employee.

3. Counsel for the petitioner vehemently argues that as per the rules, petitioner's post is equal to patwari of HSVP and the Patwari in Department of Haryana is getting Rs. 30,000/-(Annexure P-5) as against the petitioner's salary of Rs.25000/-as fixed amount which is very less and in violation of the notification issued by the State of Haryana and despite giving the representation, the respondent have not taken any action till date whereas the petitioner is suffering loss of Rs.5000/-.

4. On the other hand, counsel for the Respondent contends that the petitioner joined the service on the contractual basis wherein his contract was renewed from time to time but since the work of the petitioner was not found to be satisfactory therefore he was removed from the service by the Administrator,HSVP (erstwhile HUDA) Rohtak vide order dated 31.03.2016.(Annexure R-2/1) which was challenged in this Hon'ble court by filing Civil Writ Petition No. 7227 of 2018 wherein the respondents were directed to reinstate the petitioner within a period of four weeks from the date of receipt of certified copy of the order. It is submitted that in pursuance to that order, the petitioner was reinstated as Patwari on contractual basis in the office of EO, HSVP, Panchkula vide order dated 14.12.2018 and LPA was filed against the said orders of the Hon'ble Court dated 02.08.2018.

5. Counsel for the respondent also vehemently argues that the petitioner has relied upon the salary slip of the other patwari working on a regular sanctioned post however, the petitioner cannot claim pay parity with the other patwari who is working in the Urban Estate Department of the State Government which is different from the respondent department therefore, the judgment passed by the Hon'ble Supreme court titled Jagjit Singh and others(supra) would not apply to the present case wherein it has been held that the contractual employees are only entitled for the pay at the minimum of the pay scale (at the lowest grade in the regular pay scale)

“..42.17. Where there is no comparison between on set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay scales under the principle of “equal pay for equal work”, even if two organizations have a common employer. Likewise, if the management and control of two organizations is with different entities which are independent of one another, the principle of “equal pay for equal work” would not apply.

6. The counsel for the respondent strenuously argues that the initial appointment of the petitioner was not according to the principles of Article 14 and 16 of the Constitution of India hence the petitioner is entitled for minimum pay scale at Rs. 25500/- per month as per the Haryana Civil services (Revised Pay Rules), 2016 which defines the basic pay in the revised pay structure, specifically Rule -3.

...3. Definitions.- In these rules, unless the context otherwise requires

(a) "basic pay in the revised pay structure" means the pay drawn in the prescribed Level in the Pay Matrix but does not include any other type of pay like special pay, etc;

b-j) .xx .xx, xx, xx

(k) "applicable level in the Pay Matrix shall mean the Level corresponding to the Pay Band and Grade Pay/scale as on 1st January, 2016 specified in Schedule-I;

(l-m) .xx .xx, xx, xx

(n) "pay in the level" means pay drawn in the appropriate Cell of the Level as specified in the Schedule-I

(o) "pay matrix" means Matrix specified in the with Levels of pay arranged in vertical

Schedule-I, with levels of pay arranged in vertical cells as assigned to corresponding existing pay band and grade pay/scale;

(p) "pay scale as a measure personal to a Government competent authority to a Government employee as a measure personal to him. It does not include ACP pay structure or any other pay structure granted for possessing additional qualification etc;

(q) "pay" means the amount drawn monthly by a Government employee, other than special pay or pay granted in lieu of his personal qualification or his length of service, in the functional pay structure, which has been sanctioned for a post held by him in substantively or in an officiating capacity or in case where no separate functional pay scale is sanctioned for the post held by the Government employee constituting a cadre, in the pay scale to which he is entitled by reason of his position in a cadre; ...".

Further Rule 7 prescribes the procedure for fixing of the revised pay structure, which is reproduced hereunder for the ready reference of this Hon'ble Court:-

"...7. Fixation of pay in the revised pay structure-

The pay of a Government employee who elects or is deemed to have elected under rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2016, shall, unless in any case the Government by special order otherwise directs,

be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in officiating post held by him, in the following manner namely:-

(A) In the case of all employees--

(i) the pay in the applicable Level in the Pay Matrix shall be the pay obtained by multiplying the existing basic pay by a factor of 2.57, rounded off to the nearest rupee and the figure so arrived at will be located in that Level in the Pay Matrix and if such an identical figure corresponds to any Cell in the applicable Level of the Pay Matrix, the same shall be the pay, and if no such Cell is available in the applicable Level, the pay shall be fixed at the immediate next higher Cell in that applicable Level of the Pay Matrix... ”

7. He further stress upon the fact that the present writ petition is not maintainable since he has not availed the alternate remedy to file an appeal or revision before the Grievances Redressal Committees which was constituted vide order dated 12.02.2021(Annexure R-2/2).

8. Heard learned counsel for the respective parties.

9. The petitioner has claimed pay parity to that of the regular patwari wherein the petitioner is working on a contractual basis receiving monthly salary of Rs.25500/- whereas on the other hand counsel for the respondent while relying upon judgment of this court in LPA NO.40 of 2021 titled as Jyoti and others(supra) wherein it has been held that *“It is a settled principle of service jurisprudence dealing with contractual and adhoc service that equity can exist only so long as it does not conflict with statutory provisions under the law.”*.

10. In the present case, the pay scale of the petitioner is being calculated as per the Haryana Civil services(Revised Pay)Rules 2016, which is statutory in nature

therefore, the court does not feel the necessity to intrude in the policy of the government.

11. Further, the court is of the considered view that contractual employees are often alternatives to hiring full time, long term employees with the same expertise but at the same time cannot be equated at par with the regular employees who have been appointed on a sanctioned post meaning thereby equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work done. Moreover, the fixation of scales of pay is a matter of policy, with which the Courts can only interfere in exceptional cases where there is discrimination between two sets of employees appointed by the same authority, in the same manner, where the eligibility criteria is the same and the duties are identical in every aspect whereas in the present case, the petitioner seeking parity with the respondent employee cannot be equated since both though holding same designation are working under different departments and their mode of recruitment is also different and the same has been enshrined in “In State of Madhya Pradesh vs Ramesh Chandra Bajpai [2009] 13 SCC 635, ***where the Apex Court held that it was well-settled that the doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced in every way. Mere similarity of designation or similarity or quantum of work was not determinative of equality in the matter of pay scales. The Court had to consider all the relevant factors such as the mode of recruitment, qualifications for the post, the nature of work, the value of work, responsibilities involved and various other factors.***” Further, in ***Civil Appeal No. 2661/2015 “State of Uttarakhand vs. Sudhir Budakoti & Others”***, the Apex Court held as under :-

“14. A mere differential treatment on its own cannot be termed as an “anathema to Article 14 of the Constitution”. When there is a

reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one.”

12. Article 39(d) enshrined in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. From the perusal of the facts stated herein above it is clear that though the petitioner might be performing similar functions as that of patwari in HSVP but failed to specifically aver that he stands at parity with patwari(HSVP) in every aspect meaning thereby both have different mode of recruitment, responsibilities, duties and accountability towards their office therefore a valid classification was made in their pay scale without violating Article 14 and Article 16 of the Constitution of India.

13. This petition being devoid of any merits is hereby dismissed with no costs.

(SANDEEP MOUDGIL)
JUDGE

14.11.2023
Meenu

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