

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-1653-2019 (O&M)
Decided on :18.04.2024

DIN DAYAL

.PETITIONER

Versus

STATE OF HARYANA AND ORS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Sunil K. Nehra, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present petition, the challenge is to the order dated 27.04.2016 (Anneuxre P-13) by which, the claim of the petitioner is for the grant of pay equivalent to that of Library Attendant which claim of the petitioner has been declined by the respondents.

2. Further prayer of the petitioner is that one of the junior, namely, Bacha Naryan who is working in the health department has been promoted as Assistant and he is getting more salary then the petitioner, hence the petitioner is also entitled for the step-up of his salary equivalent to that of Bacha Naryan.

3. The claim of the petitioner is being rejected by the respondents on the ground that the notification dated 21.02.1992, copy of which has been appended as Annexure P-1, which is being relied upon by the petitioner to claim the benefit of step up of his salary only relates to the Library

attendants whereas , the petitioner is working as Swasthya Sahayak, which is a class-IV post, hence, no benefit of said notification dated 21.02.1992 (Annexure P-1) can be extended to the petitioner.

4. With regard to step-up the equivalent pay to that of Bacha Narayan, the respondents have submitted that the petitioner, though initially petitioner was working in the health department but after the bifurcation of the said department, the petitioner has been allocated the department of Food and Drugs Administration, Haryana, which is totally a separate department and as the petitioner as well as Bacha Narayan are working in two different departments there is no question of inter se seniority between them, hence, no grievance can be raised by the petitioner with regard to any salary being paid to Bacha Narayan.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. It is a settled principle of law that the right of equation of post and the grant of the salary qua a particular post is within the jurisdiction of the employer. In the present case, the petitioner is claiming that keeping in view the notification dated 21.02.1992 (Annexure P-1) as the petitioner is also a matriculate, he is entitled to be treated as class III employee so as to give him salary equivalent to one being given to matriculate library attendants.

7. It may be noticed that the petitioner is working as Swasthya Sahayak which post concededly is not the part of the notification dated 21.02.1992 (Annexure P-1). The court does not have any power to include any category of post into the notification published by the administration so as to grant any relief. Unless and until the post of Swasthya Sahayak is included in the notification dated 21.02.1992 (Annexure P-1), the petitioner

cannot claim the salary of a matriculate library attendant. The claim of the petitioner has rightly been declined by the respondents as not admissible.

8. With regard to the second claim of the petitioner that his junior Bacha Narayan is getting higher salary hence his pay should be step-up, this claim of the petitioner also cannot be accepted. Learned counsel for the petitioner has not been able to dispute the fact that the petitioner as well as Bacha Narayan are working in a different department after the bifurcation of the same.

9. Even if initially Bacha Naryan was junior to the petitioner in the department of health, but after the bifurcation of the said department and the petitioner been allotted the department of Food and Drugs administration coupled with the fact that there is no inter se seniority between the petitioner and Bacha Narayan any more, petitioner cannot claim that Bacha Narayan is junior to him. In the absence of any inter se seniority between the petitioner and Bacha Narayan, it cannot be said that the Bacha Narayan will remain junior to the petitioner even after the bifurcation of the department.

10. Further the argument of the learned counsel for the petitioner is that the recommendation made by the Civil Surgeon dated 09.05.2013 vide Annexure P-9, the petitioner is entitled for the step up of his salary, is no ground. The entitlement is to be seen on the basis of orders/notifications issued by the Government time to time and not on the basis of any recommendation made by any authority not competent to grant the benefit and that too by ignoring the actual notification. It may be noticed that while making the recommendation, nothing has come on record as to whether the issue has been examined whether the post of library attendants is to be equated with that of Swasthya Sahayak. The Civil Surgeon has no power to

make such recommendation as the authority only lies with the competent authority which is the Government.

11. With regard to the last claim of the petitioner that the petitioner is entitled for equal salary by placing reliance upon the judgment of Hon'ble Supreme Court of India passed in *Civil Writ Petition No. 455 of 1988, titled as Jaipal Singh and others v. State of Haryana and others, decided on 02.06.1988*. It may be noticed that no benefit of said judgment can be given to the petitioner. Nothing has come on record to show that the post of Swasthya Sahayak as well as Lab Attendant are identical in any manner. Nothing has been brought to show that both the said posts has been treated as equivalent at any given point of time. Even otherwise, the equivalence can only be decided by expert or by the Government and not by the Court. In the absence of any such documents being placed on record to show that the Government has treated the post of Swasthya Sahayak and Lab Attendant equivalent, no benefit of *Jaipal Singh's case (Supra)* can be extended to the petitioner.

12. Hence, keeping in view the facts and circumstances of the present case recorded herein above, no ground is made out for interference in the present petition, hence the same stands **dismissed**.

13. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

18.04.2024

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No