

218

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24551-2018(O&M)

Date of Decision: 01.03.2024

Kartar Singh

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajesh Arora, Advocate, for the petitioner.

Mr. Padamkant Dwivedi, Advocate, for respondent No.3.

Mr. Himmant Singh, Advocate, for respondents No.4 & 5.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 23.08.2018 (Annexure P-10).

2. The brief facts of the present case are that the petitioner was appointed in HUDA on work charge basis as Water Pump Operator in the year 1986 i.e. on 28.10.1986 vide Annexure P-2 and now HUDA is renamed as HSVP. Thereafter, there was an agreement between the HUDA and Faridabad Administration Complex with regard to transfer of employees who were working on work charge basis in HUDA. Consequent upon the aforesaid agreement, the services of the petitioner were transferred to the Faridabad Municipal Corporation vide Annexure P-3 dated

22.07.1996 w.e.f. 01.04.1992 without altering terms and conditions. As per aforesaid Annexure P-3, the petitioner was sanctioned pay scale of 1200-2040 and he was appointed subject to the condition that if he has completed 5 years service from the date of appointment upto 31.03.1993 and was in service on 31.03.1993 and there had not been a continuous break for more than 30 days, then his services are regularized w.e.f. 01.04.1993 in the pay scale of 1200-30-1560-EB-40-2040 and other allowances as per rules. Thereafter, the petitioner had been continuing working with the Municipal Corporation as a regular employee and thereafter, he retired on attaining the age of superannuation during the pendency of the present petition.

3. The grievance of the petitioner in the present petition is that there were some other employees as well who were similarly situated as the petitioner and especially two persons namely, Satish Kumar son of Kanhi Ram and Jawahar Singh son of Bishan Singh who were exactly at parity with the present petitioner and who were also appointed in the similar fashion in the same year by HUDA and thereafter in pursuance of the agreement between HUDA and the Municipal Corporation, they were also transferred to Municipal Corporation by way of the similar order on the same day and they were also regularized from time to time and there is no difference at all between the petitioner and the aforesaid two persons. However, when the Municipal Corporation was giving salary to the petitioner, then a discrepancy arose in the salary. Vide Annexures P-6 and P-7 which are the salary slips the salary of the aforesaid two persons is higher than that of the petitioner, although they were working on the same post of Water Pump Operator and they are identically situated.

4. Learned counsel appearing on behalf of the petitioner submitted

that he had earlier filed a writ petition before this Court seeking the same relief vide CWP No.874 of 2018 which was disposed of by a Co-ordinate Bench of this Court on 18.01.2018 vide Annexure P-9 wherein the respondents were directed to consider and decide the claim of the petitioner and also the legal notice which the petitioner had given dated 18.12.2017 within a period of three months and in the aforesaid representation, he submitted that he had raised the aforesaid claim that an anomaly has arisen because the petitioner has been given low salary than that of the aforesaid two persons and there is no justification with regard to the same. He submitted that in pursuance of the aforesaid order passed by a Co-ordinate Bench of this Court, the respondent-Corporation passed an order Annexure P-10 which is impugned in the present case and in the aforesaid order nothing has come forth as to how the petitioner is different from the aforesaid two persons. While referring to the aforesaid order, he submitted that all the factual position has been so stated in the aforesaid order except that what was the pay scale which the petitioner was getting at the time when he was working with HUDA, whereas the pay scale of the aforesaid two persons i.e. 1200-2040 has been mentioned and therefore, no comparison was made with regard to the present petitioner and the aforesaid two persons and by a totally unreasoned and a cryptic order, the claim of the petitioner was declined.

5. He submitted that now the plea which has been taken by the respondent-Corporation in the present petition is that the petitioner was not drawing the same salary as that of the aforesaid two persons when they were working with HUDA and the salary which they have withdrawn was required to be continued at the time when they were transferred to

Municipal Corporation and in this way, in case there was a difference of salary between the petitioner and the aforesaid two persons when they were working in HUDA, then no claim could be raised by the petitioner. Learned counsel submitted that such a plea which has been raised by the learned counsel for the respondent-Corporation even today is absolutely unhypothetical and a plea which is not based on record. He submitted that had it been so then the pay scale of the petitioner while working in HUDA and that of the aforesaid two persons would have been compared but there is nothing either in the impugned order or in the reply filed by any of the respondents how the pay scale of the petitioner was different from that of the other persons and in this way, the petitioner has been deprived of his lawful rights because the petitioner was not only at parity with the aforesaid two persons but was rather senior to the aforesaid two persons in view of the order of regularization Annexure P-4 where the petitioner is at serial No.2 and the aforesaid two persons are at serial No.7 and 19 and in this way, loss has been caused to the petitioner with regard to fixation of pay from the date when he was transferred till the date he has retired and thereafter, while fixation of retiral/pensionary benefits, the same has been erroneously fixed because earlier the pay scale was erroneously fixed.

6. On the other hand, Mr. Padamkant Dwivedi, learned counsel has appeared on behalf of respondent-Corporation and Mr. Himmant Singh, learned counsel has appeared on behalf of respondents No.4 & 5-HUDA. So far as learned counsel appearing on behalf of respondent-HUDA is concerned, he submitted that they have filed a short reply only to contend that they have nothing to do with the present subject matter of the case because the services of the petitioner have already been transferred to

Municipal Corporation and he also submitted on instructions that HUDA has already transferred the entire record of all the employees which was transferred to Municipal Corporation at the time of transfer and they do not have any record.

7. Learned counsel appearing on behalf of the respondent-Corporation however sought to justify the aforesaid anomaly by submitting that when the petitioner was earlier working with HUDA, then his pay scale was different from that of the aforesaid two persons. However, a query was raised to the learned counsel for the respondent-Corporation as to on what basis and on what material he has based his submissions because neither in the impugned order nor in the reply it has been so specifically stated in this regard. The learned counsel was not able to answer the aforesaid query. A perusal of the reply which has been filed by the Municipal Corporation would show that although the pay scale which was given to the aforesaid two persons namely, Satish Kumar son of Kanhi Ram and Jawahar Singh son of Bishan Singh has been so mentioned in para No. 7 and 8 but there is nothing mentioned as to what was the pay scale of the petitioner when he was working with HUDA. Even otherwise in the impugned order Annexure P-10 also there is no clarity at all in this regard and therefore, it is very clear that the order Annexure P-10 which was passed by the respondent-Corporation in the light of the orders passed by this Court vide Annexure P-9, the order is absolutely unreasoned and cryptic order.

8. Apart from the above, there is another issue which has been raised by the learned counsel for the petitioner that even otherwise also when the petitioner and other aforesaid two persons were transferred on the same date to that of Municipal Corporation, then it was result of an

agreement between the two entities. He also submitted that assumingly for the sake of arguments, the petitioner was drawing a pay scale different from that of the aforesaid two persons while working in HUDA but they were transferred and absorbed in Municipal Corporation and once two employees are working on a same cadre, then there cannot be any difference in the pay and in case any such anomaly arises, then the same has to be cured. He also submitted that there is nothing on record placed by the respondents to show that there is anything contrary to the agreement because the agreement itself is not placed on record.

9. I have heard the learned counsel for the parties.

10. A perusal of the order Annexure P-10 would show that the same has been passed in pursuance of order passed by this Court vide Annexure P-9. This Court had directed vide Annexure P-9 to decide the claim of the petitioner but a bare perusal of order Annexure P-10 would show that no reason has been assigned at all which is germane to the claim of the petitioner. Although the pay scale of the aforesaid two persons has been mentioned but there is nothing mentioned in the order as to what was the pay scale of the petitioner and how a comparison has been drawn. The order Annexure P-10 is totally unreasoned and cryptic order and does not deal with the claim of the petitioner at all. The HUDA has already washed off their hands by stating that we have got nothing to do with the subject matter of the present case and learned counsel for the respondent-HUDA has today stated that all the records were transferred to Municipal Corporation. Therefore, it was the duty of the Municipal Corporation to have placed on record the material to show as to how a distinction can be drawn with regard to the pay scale of the petitioner and the other two persons. The only reason

which has been stated by the learned counsel for the respondent-Corporation is that since the petitioner was drawing less pay than the aforesaid two persons in HUDA and those pay scales were to be continued would not suffice in view of the fact that there is nothing on record to show that there was a discrepancy between the pay scale of the petitioner and the aforesaid two persons. An opportunity was given to the Corporation earlier when a Co-ordinate Bench of this Court had directed to decide the legal notice but still the respondent-Corporation has not even been able to make out their case in the impugned order which is otherwise also unreasoned and cryptic order. Even when a second opportunity has been given to the respondent-Corporation to file reply in the present petition and reply to the present petition is absolutely vague and has been filed in a casual manner and there is nothing on record to show as to how discrepancy has arisen. It is a settled law that when two employees are working on the same post, then there can be no discrepancy with regard to their pay scale and they are entitled for the parity of pay scale.

11. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 18.01.2018 (Annexure P-10) is hereby set aside. The respondent-Corporation is directed to re-fix the pay of the petitioner with effect from the date when the discrepancy arose between the petitioner and the aforesaid two persons and to pay the difference of salary to the petitioner alongwith interest @ 6% per annum. Since the petitioner has already retired and his pensionary/retiral benefits have been fixed on the last pay drawn which was lesser than that of the aforesaid two persons, the respondent-Corporation shall also re-fix the salary of the last pay drawn at the time of retirement and then to re-fix the

pensionary/retiral benefits of the petitioner and grant all the consequential benefits to the petitioner alongwith interest @ 6% per annum. The entire payment shall be made to the petitioner within a period of three months from today.

01.03.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

Whether speaking : Yes/No
Whether reportable : Yes/No