IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.6205 of 2019
Decided on: 30.10.2026

K.K. Kapoor and others

...Petitioners

Versus

State of HP and another

...Respondents

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting? [1]

For the petitioners: Mr. Lokendar Paul Thakur, Advocate.

For the respondents: Mr. R.P. Singh, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners by way of present petition have prayed for the following substantive reliefs:-

> *"(i) That the respondents may kindly be directed to grant four tire pay scale to the applicants at par with Er. Bahadur Singh Rana, Divisional Engineer (Soil Cons) Retired from due dates with all consequential benefits.*
>
> *(ii) That the orders rejecting the representation of the applicants may kindly be quashed and set-aside."*

2. Shorn of unnecessary details, the key facts of the case are that the petitioners who are senior to one Sh. Bahadur Singh Rana had made representations to

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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respondent No.1 to grant them the benefit of four tier pay scale as was extended to him as per the order dated 27.11.2006, passed by the erstwhile Himachal Pradesh Administrative Tribunal (in short 'the Tribunal') in OA No.1712 of 1991, titled, ***Sh. Bhadur Singh Rana vs. State of H.P. & Others,*** which came to be rejected vide order dated 11.08.2015 (Annexure A-10), whereby it was informed that the petitioners had exercised their options for revision of pay scales from time to time, whereas Shri B.S. Rana had not exercised his option, and thus their case is not covered on the analogy of B.S. Rana. D.E. (S.C.) retired as advised by the Government, have approached this Court, *inter alia*, on the grounds that once the junior has been extended the benefit and he was granted more pay scale, the petitioners who admittedly are senior to him cannot be denied the said benefit.

3. The respondents filed reply to the petition and in preliminary submissions averred that Sh. Bahadur Singh Rana, Divisional Engineer was allowed three tier pay scale in personam and not in rem by the respondents in compliance with the judgment passed by the Tribunal and the petition is not maintainable and deserves dismissal. It has further been

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averred that the State of Himachal Pradesh takes into consideration Punjab pattern of pay scales based on the recommendations of Punjab Pay Commission, while examining the pay scales in the State, as this State has its own staffing pattern, service or R&P Rules, method of recruitment, prescribed educational qualifications, geographical and traditional/territorial conditions, natural and financial resources. The State Government is not legally bound to follow Punjab pattern of pay scale. The pay scales notified by Punjab Government are taken only as basis for the revision of pay scales of State Government employees. The Government of Himachal Pradesh implements the pay scales in respect of its employees with the approval of the competent authority, after detailed examination at various levels by framing service rules under Article 309 of the Constitution of India.

4. The Government of Himachal Pradesh has exclusive jurisdiction to legislate or issue the executive instructions on State public services as per Entry 41 of State List of Schedule-7 of the Constitution of India. Thus, the State Government can decide the pay scales etc., which is also one of the service conditions prescribed in the R&P

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Rules notified under Article 309 of the Constitution of India. Further it has been averred that as per the judgment passed by the Hon'ble Supreme Court in ***P.U. Joshi and others vs. Accountant General, Ahmedabad and others*** (2003) 2 SCC 632, it has been held that parity of pay scales and determination of service conditions are exclusively within the realm of the executive Government and granting of pay scale is the prerogative of the Government. Further it has been averred that as per the judgment passed by the Hon'ble Supreme Court in ***State of H.P. vs. P.D. Attri and others,*** (1999) 3 SCC 217, each State has its own individualistic way of governance under the Constitution and one State is not bound to follow the Rules and Regulations applicable to the employees of other States or if it had adopted the same Rules or Regulations, it is not bound to follow every change brought in the Rules and Regulations of other States. Further the original application filed by the petitioners suffers from delay and laches as the same is preferred after lapse of more than 20 years after exercising their option for fixation of pay from time to time. Therefore, the petition is liable to be rejected on this ground also. Sh. B.S. Rana had not given any option and not opted the scale

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time to time. He filed a petition in the year 1991 before the Tribunal and this Court had upheld the claim and granted relief to him, which is persona and not in rem. The claim of the petitioners on the analogy of Sh. B.S. Rana cannot be granted and as such the petition is not maintainable. It was further averred that Sh. B.S. Rana was appointed in the Department of Agriculture as Junior Engineer and was posted in Agriculture Workshop, Bhangrotu, District Mandi and he joined duties on 01.10.1977. Subsequently, the Bhangrotu workshop along with its assets, liabilities and staff was transferred to Himachal Pradesh Agro Industries Corporation Limited on 01.01.1978 and his services were also transferred as such to the said corporation with certain terms and conditions. He served with the corporation till 31.03.1994. This workshop was again transferred to the Agriculture Department on 01.04.1994. On this date, Sh. B.S. Rana was working as Branch/Service Manager. The posts of different categories were created in the Department of Agriculture on 17.09.1996, so that the services of Sh. B.S. Rana amongst others could be absorbed/ accommodated in the Department of Agriculture with specific terms and conditions with clear mention that these posts shall be

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treated as dying cadre. Since no post of Branch/Service Manager was available in the Department, post of Assistant Agriculture Engineer was created in the pay scale of Rs.2200-4000 with retrospective effect i.e. with effect from 01.04.1994 just to accommodate him. He along with others had accepted the aforesaid terms and conditions stipulated by the Department of Agriculture. After joining the Department, he filed an original application No.3585 of 2001 before the Tribunal with a prayer that his post may be included in common cadre of Sub Divisional Soil Conservation Officer w.e.f. 01.04.1994 with consequential benefits. After transfer of the cases from the Tribunal to this Court, this Court passed orders in favour of Sh. B.S. Rana and directed the State Government to place the petitioner in common cadre along with equal status posts, which were re-designated as Divisional Engineer (Soil Conservation) for all intents and purposes. Thereafter he was granted three tier pay scale i.e. (i) 2200-4000 (ii) 3500-4500 (after 8 years) and (iii) Rs.3700-5300 (after 18 years) as was applicable to his compeers in the Department. Further he was given placement as Divisional Engineer (Soil Conservation) from the date when his junior was given placement i.e. with effect

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from 10.09.2009.

5. On merits, it has been averred that the judgment passed by the Tribunal is in personam and is not in rem and, therefore, the petitioners are not entitled to get the same benefit as has been given to Shri B.S. Rana.

6. I have heard the learned counsel for the parties and also perused the record carefully.

7. It is not in dispute that the petitioners are senior to Sh. Bahadur Singh Rana (Sh. B.S. Rana) in whose favour the benefit of pay scale has been extended on the basis of the direction given by the Tribunal in his original application, which order was assailed before this Court by way of a writ petition and the petition was dismissed on 10.09.2010. The respondent-State had preferred the petitions for Special Leave to Appeal (Civil) before the Hon'ble Supreme Court against the judgment passed by the Division Bench of this Court, however, the same was dismissed on 26.09.2012. Once the person who was junior to the petitioners has been extended the benefit of pay scale and the petitioners are getting less pay, it is settled law that the seniors cannot be paid less pay/amount as per the various pronouncements of the Hon'ble Supreme Court,

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wherein it has been held that the junior cannot draw more salary than his senior. In ***Union of India and others vs. C.R. Madhava Murthy and another,*** (2022) 6 SCC 183, it has been held that the senior cannot be paid less pay on the ground that the junior has been granted upgradation under the ACP scheme.

8. Learned Deputy Advocate General has vehemently argued that the petitioners had given their option for revision of pay scales from time to time, whereas Sh. Bahadur Singh Rana had not exercised his option and thus, their case is not at par with his case and the benefit of the judgment cannot be extended to the petitioners. However, the said contention cannot be accepted for the reason that once admittedly the petitioners are senior to Sh. Bahadur Singh Rana, they cannot be pay less pay scale, which would amount to arbitrary action on the part of the respondents and also violative of Articles 14 & 16 of the Constitution of India.

9. Learned Deputy Advocate General has further vehemently argued that since the petitioners have approached the Court after more than 20 years, relief cannot be extended to them. However, the said contention

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cannot be accepted for the reason that since the petitioners are getting less pay, after every month, which is a recurring cause of action, this Court at the most can deny them the arrears from the due date, but their claim cannot be rejected on the ground of delay and laches. In this regard a reference is made to the judgment of the Hon'ble Supreme Court in ***Union of India and others vs. Tarsem Singh*****,** (2008) 8 SCC 648 and the relevant para of the judgment reads as under:-

> *"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence,*

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> *the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."*

10. Learned Deputy Advocate General has also vehemently argued that as per the judgments of the Hon'ble Supreme Court, it is the prerogative of the State Government to fix the pay scale and this Court cannot equate the pay scale of two posts. No doubt, it is settled preposition of law that the Court cannot equate the pay scale of one post with another, but at the same time, if the junior is granted more pay, the senior cannot be denied the said benefit and, therefore, the aforementioned judgments referred to above are not attracted to the case of the petitioners. Had the petitioners been claiming the benefit of the pay scale solely on the basis of the pay scale granted to the other employees in other Departments, this Court would have refrained from entering into that arena. However, in the present case the claim of the petitioners is based mainly and solely on the order passed by the Tribunal, whereby the benefit was granted to Sh. Bahadur Singh Rana and they are also claiming the same relief, being senior to Sh. Bahadur Singh Rana. Once the order passed by the Tribunal has been

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tested up to the Hon'ble Supreme Court and the SLP filed by the respondent-State has been dismissed, the petitioners who admittedly are senior to Sh. Bahadur Singh Rana cannot be denied the said benefit and thus the action on the part of the respondents in rejecting the claim of the petitioners vide office order dated 11.08.2015 (Annexure A-10) is illegal, arbitrary and discriminatory and as such is quashed and set aside and the petitioners are held entitled to the grant of same pay scale as given to Sh. Bahadur Singh Rana, Divisional Engineer (Soil Conservation), but they are held entitled to arrears only from three years prior to the institution of the present petition.

11. Consequently, the present petition is allowed and the respondents are directed to grant the four tier pay scale to the petitioners at par with Shri Bahadur Singh Rana, Divisional Engineer (Soil Conservation) with all consequential benefits. However, the petitioners are held entitled to the arrears only from three years prior to the date of institution of the present petition. In case the arrears of salary and pension are not paid to the petitioners within a period of six months from today, the respondents shall pay interest thereon @6% per annum from today till actual

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payment.

12. The petition is accordingly disposed of. No order as to costs. Pending miscellaneous application(s), if any, also stand disposed of.

30th October, 2026 **(Jiya Lal Bhardwaj)**
(Anurag) **Judge**