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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9862-2010(O&M)
Date of decision: 08.04.2024

Samayojit Karamchari Sangathan Haryana (Regd.)

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Shivam Malik, Advocate, for the petitioner.

Mr. Narinder Singh Behgal, AAG, Haryana.

Mr. Amit Jaiswal, Advocate, for respondent No.3.

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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 impugned instructions dated 12.10.1998 (Annexure P-3) only to the extent to which it denies the benefit of revision of pay scale w.e.f. 01.01.1996 to the surplus employees and also quashing the impugned order dated 26.04.2010 (Annexure P-13).

2. Learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner which is a Union had earlier also filed a petition before this Court and vide Annexure P-12 the same was disposed of on the basis of the statement given by the State counsel that the case of the

petitioner will be considered by the concerned authority in the light of the judgment of the Hon'ble Supreme Court in ***Haryana State Minor Irrigation Tubewell Corporation and others Vs. G.S. Uppal and others, 2008(7) SCC 375.*** He submitted that in pursuance of the aforesaid order dated 11.01.2010, the impugned order (Annexure P-13) was passed on 26.04.2010 whereby it has been so stated by the Managing Director of the respondent-Federation that the case of the petitioner was considered in the light of the instructions issued by the Government dated 12.10.1998 (Annexure P-3) and no benefit can be granted to the petitioner in view of the aforesaid instructions which clearly spell out that the employees who were declared as surplus will not be granted benefit of revision of pay scale pursuant to 5th Pay Commission. He submitted that apart from the above it was also so stated in the aforesaid impugned order that the case titled ***HMITC Vs. G.S. Uppal and others (Supra)*** is not applicable to the present case and the facts were totally different and in this way, by way of the impugned order (Annexure P-13), the claim of the petitioner was rejected.

3. Learned counsel submitted that the claim of the petitioner-Union which has filed the present petition in a representative capacity on behalf of the employees is that they were working as Salesmen in the respondent-Federation and the respondent-Federation had taken a decision that since they are surplus, they will be declared as surplus and appropriate procedure under the Industrial Disputes Act will be followed. He submitted that after being declared as surplus in the year 1989, they continued to work in the respondent-Federation till the year 2001-2002 and they were paid their salaries on the post where they were discharging their duties. They have been granted the benefit of

the Pay Commission Report uptil 4th Pay Commission Report but when it came to the implementation of 5th Pay Commission Report, they have been declined the benefit on the ground that the Government of Haryana vide Annexure P-3 has issued a Notification dated 12.10.1998 whereby it has been so decided that for those employees who have been declared as surplus, they will not be granted the benefit of revision of pay scale. Para No.3 of the aforesaid Annexure P-3 is reproduced as under:-

> *"3. The revised pay scales should be implemented w.e.f. 1.1.1996. In case of the employees of State Enterprises/Institutions which incurred losses for 3 years or more out of preceding 5 years i.e. from 1993-94 to 1997-98 the matter is being considered separately and for the employees who have been declared surplus, the pay scales of such employees should not be revised at present.*
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> *The arrears of pay from 1.1.96 to 31.12.97 for the employees of State Enterprises/Institutions should be deposited in the Provident Fund Accounts of the respective employee's and the arrers deposited should not in any case be allowed to be withdrawn by them atleast for one year from the date on which it was so deposited. The arrear w.e.f. 1.1.98 should be paid in cash."*

4. Learned counsel submitted that there were other Salesmen also and other employees working in the same Organization i.e. the respondent-Federation to whom the benefit of revision of pay scale of 5th Pay Commission Report has been granted but the only reason as to why those Salesmen who were declared as surplus in the year 1989 were deprived of the aforesaid benefit of revision of pay scale of 5th Pay Commission Report was that they have been declared as surplus. He submitted that the aforesaid amounts to wrongful discrimination and there is no intelligible criteria with regard to the same and there is no nexus with the object sought to be achieved.

He submitted that when two sets of employees are working in the same Organization, then the mere fact that some of them have been declared surplus but have been already directed to continue on their post and they have discharged their duties on that post, then such kind of discrimination under the head of one and same Organization is not permissible under the law. He submitted that when the impugned order (Annexure P-13) was passed, then the basic reason for rejecting the claim of the petitioner was that the respondent-Federation had to implement the instructions (Annexure P-3) issued by the Government of Haryana. He submitted that in this way the instructions (Annexure P-3) are also challenged in the present petition on the ground of discrimination and on the ground of equal pay for equal work.

5. Learned counsel also brought to the notice of this Court a judgment of the Hon'ble Supreme Court in ***HMITC Vs. G.S. Uppal and others (Supra)*** (Annexure P-14) wherein some of the employees who were working in the HMITC were seeking parity with the similarly situated employees of PWD Department in the State of Haryana and they were granted the same benefit on the basis of doctrine of 'equal pay for equal work' and they were also granted the benefit of revision of pay. He submitted that by way of the aforesaid judgment it was also observed by the Hon'ble Supreme Court that mere paucity of funds or financial difficulty cannot come in the way for the grant of financial benefits when there is a discrimination among two sets of employees. He submitted that the case of the present petitioner is at much better footing than that of the aforesaid of ***HMITC Vs. G.S. Uppal and others (Supra)*** in view of the fact that in that case the employees of a Corporation were seeking parity with that of the employees of the Government, whereas in

the present case the employees under the same Organization are seeking parity with the employees who were discharging the same duties on the same post and the only point of discrimination was that some of the employees were declared as surplus and the Government decided not to grant the benefit of 5th Pay Commission to the employees who were declared as surplus notwithstanding the fact that they were already working and they discharged the duties on the post. He submitted that once an employee works and discharges his duties on a particular post, then at least till the time he is declared as surplus he cannot be discriminated. He also referred to another judgment of Hon'ble Supreme Court in ***State of Punjab and others Versus Jagjit Singh and others, (2017) 1 SCC 148*** which is an authoritative judgment which pertains to the law relating to the equal pay for equal work in this regard. He submitted that in this way those salesmen who were declared as surplus but continued to work on their respective posts till the time they were retrenched, they were entitled for the grant of the benefit of the revision of pay scale in pursuance of the 5th Pay Commission Report and necessary directions may be issued in this regard.

6. On the other hand, Mr. Narinder Singh Behgal, learned AAG, Haryana and Mr. Amit Jaiswal, learned counsel appearing on behalf of respondent No.3 have submitted that revision of pay scale in pursuance of 5th Pay Commission Report was based upon a differential criteria and it amounts to a reasonable classification under the law. They submitted that those salesmen who were not required, they although continued to discharge their duties as salesmen but that was only a kind of benefit conferred upon them as to earn their livelihood and the reason as to why they were declared as surplus was that most of the outlets of the respondent-Federation were closed but certainly

they continued in service at least till the year 2001-2002 and this was the reason as to why in the impugned instructions issued by the Government of Haryana vide Annexure P-3 it was so decided that those who were declared surplus will not be granted the benefit. They submitted that the same formula also applies to all the other Organization within the State of Haryana because it was a common instruction issued by the State of Haryana.

7. I have heard the learned counsels for the parties.

8. It is a case where the petitioner is a Union and has filed the present petition in representative capacity. Earlier also they had filed a petition before this Court and a Co-ordinate Bench of this Court has disposed of the petition vide Annexure P-12. The aforesaid order is reproduced as under:-

> *"This judgment will dispose of CWP No.16790 of 2000 and CWP No.15961 of 2000 as similar question of law is involved in both the writ petitions.*
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> *The only prayer made in the instant petition preferred by the Haryana CONFED Employees Welfare Union (Regd.) is for the issuance of a writ in the nature of mandamus to grant revised pay scale to all salesmen in the same manner as other similarly placed salesmen in the service of the Haryana State Federation of Consumers Co-operative Wholesale Stores Limited.*
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> *Learned counsel for the petitioner submits that during the pendency of this writ petition a similar matter CA No.9244 of 2003 titled as Haryana State Minor Irrigation Tubewell Corporation and others Versus G.S. Uppal and others came up before the Apex Court, which was decided on 16.04.2008. According to him, members of the petitioner union are entitled to relief in the same terms.*
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> *Learned counsel for the respondents federation submits that a communication was sent to the State Government vide letter dated 18.01.2000 (Annexure P-8) followed by similar letters dated 01.03.2000 and 07.08.2000 (Annexure P-9 and P-10 respectively) but no response was received from the State Government.*

Mr. Kulvir Narwal, Addl. A.G.Haryana, appearing on behalf of the State of Haryana submits that the case of the petitioners shall be considered by the concerned authority in the light of the judgment referred to by the counsel for the petitioner and a speaking order thereon shall be passed within three months.

In view of statement made by the learned State Counsel, no further ordered are called for at this stage. Disposed of.

However, it is made clear that in case still aggrieved, it will be open to the petitioner to avail the remedy available to it under the law.

9. A perusal of the aforesaid order would show that on the basis of the statement made by the learned State counsel, the petition was disposed of and a stand was taken by the State that the case of the petitioner will be considered by the concerned authority. However, when the impugned order (Annexure P-13) was passed in pursuance of the aforesaid order passed by this Court two reasons were given by the Managing Director of the respondent-Federation for rejection of the claim. The first reason which was given was that since there are instructions by the Government which have not been challenged and they have the force of law, the petitioners were not entitled for the benefit of the 5th Pay Commission since they were declared as surplus and the second reason which was given by the Managing Director of the respondent-Federation was that the ratio of the case of ***HMITC Vs. G.S. Uppal and others (Supra)*** is not applicable to the present case because the aforesaid judgment was different on facts.

10. So far as the second reason given by the Managing Director is concerned, this Court is of the view that as far as the facts of the aforesaid judgment of ***HMITC Vs. G.S. Uppal and others (Supra)*** are concerned, they were different because in that case the writ petition was filed before this Court by some of the employees of the HMITC seeking parity with that of the

similarly situated employees of the Government in the department of PWD. The learned Single Judge had allowed the petition which was assailed in LPA which was also dismissed. Thereafter, an SLP was filed by the HMITC which was also dismissed and the aforesaid judgment is Annexure P-14. A perusal of the aforesaid judgment would show that a proposition of law has been discussed in the aforesaid judgment. It was observed that so long as the value judgment is made *bona fide*, reasonably on an intelligible criteria which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The judgment of administrative authorities concerning the responsibilities which are attached to the post, and the degree of reliability expected of an incumbent would be a value judgment of the authorities concerned which, if arrived at *bona fide*, reasonably and rationally, is not open to interference by the Court. It was further observed that there was no dispute nor can there be any principle as settled in the aforecited decisions that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decisions in this regard is very limited. However, it is also equally well-settled that the Courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. It was further observed that it is well-settled that the State can make reasonable classification if it has a nexus with the object sought to be achieved. The Hon'ble Supreme Court also discussed the issue with regard to the paucity of funds and financial difficulties of an Organization. It was observed that the plea of the Corporation that it was running into losses and it

cannot meet the financial burden on account of revision of pay scale has been rejected by the High Court and rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a pay scale lower than that of the sanctioned for those employees who are brought on deputation. In this way, the Hon'ble Supreme Court came to the conclusion that when the employees are manning the posts and they are continuing with the posts, then mere paucity of funds and financial difficulties would not come in the way.

11. In this way, the reason given by the Managing Director of the respondent-Federation that the aforesaid judgment was on different facts is not sustainable in view of the fact that proposition of law of the aforesaid judgment would certainly apply to the present case on the ground of grant of benefit of pay scale. In the aforesaid judgment of ***HMITC Vs. G.S. Uppal and others (Supra)***, the petitioners were employees of a public sector undertaking and they were claiming parity with that of the employees of the Government which was allowed, whereas in the present case the employees who were declared as surplus but are claiming parity with that of the similar employees on the same posts who were not declared as surplus and therefore, rather the present case appears to be on a better footing than that of the aforesaid judgment of ***HMITC Vs. G.S. Uppal and others (Supra).***

12 The law with regard to equal pay for equal work is now no longer *res integra*. The Hon'ble Supreme Court has also dealt with this issue in a judgment of ***State of Punjab and others Versus Jagjit Singh and others(Supra).*** The relevant portion of the aforesaid judgment is reproduced as under:-

> *"55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.*
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> *56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-*
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> *"Article 7*
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> *The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*
>
> *(a) Remuneration which provides all workers, as a minimum, with:*
>
> *(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
>
> *(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
>
> *(b) Safe and healthy working conditions;*
>
> *(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
>
> *(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."*

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on regular or temporary basis.

57. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary

> *employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest grade, in the regular pay- scale), extended to regular employees, holding the same post".*

13. The argument which has been raised by the learned counsel for the respondent-Federation that it was on humanitarian grounds and granting of benefit to the employees who were declared as surplus to continue on the same post till the time when actually they were retrenched and therefore, they cannot claim the benefit of 5th Pay Commission is concerned, the same *prima facie* appears to be misconceived.

14. The challenge in the present petition is also to the instructions (Annexure P-3) issued by the Government which is not only applicable to the present respondent-Federation but it is applicable to all the public sector undertakings/instrumentalities of the State and therefore, it will have a huge financial impact upon the State exchequer. However, at the same time the settled law and the rights of employees also cannot be sacrificed only because of the aforesaid reason of paucity of funds and impact on the State exchequer. A balance has to be maintained in this regard.

15. During the course of arguments, the learned counsel for the respondents-Federation has referred to a judgment of a Co-ordinate Bench of this Court in ***Nafe Singh Vs. Haryana State Federation of Consumers Coop. Wholesale Stores Ltd. 2016(2) SCT 35*** to contend that in a similar situation relief was not granted to some of the employees on the ground that they were declared as surplus. The aforesaid judgment also pertains to the same Organization which is the present respondent. However, a perusal of the aforesaid judgment would show that although relief was not granted but in

that case the claim of the petitioner was that the junior has been granted the benefit of pay scale but the petitioner of that case was not granted the benefit because he was declared as surplus and a Co-ordinate Bench of this Court observed that no case for grant of revision of pay scale as per the recommendation of the 5th Pay Commission is made out. In this way, the aforesaid petition was dismissed because of the fact that the benefit was not granted to the petitioner of that case because of the existence of the aforesaid instructions dated 12.10.1998. However, it appears that the aforesaid instructions were never under challenge in the aforesaid judgment. Therefore, it cannot be said that there was any declaration of law made in the aforesaid judgment but it was a judgment *in personam.*

16. After hearing the learned counsel for the parties and giving thoughtful consideration to the subject matter of the present case, this Court is of the considered view that the instructions dated 12.10.1998 (Annexure P-3) issued by the Government of Haryana need to be re-considered by the State of Haryana especially in view of the fact that it has an effect not only upon present respondents but also on the many other public sector undertakings /instrumentalities of the State.

17. In view of the above, it is directed that the Chief Secretary of the State of Haryana shall consider the aforesaid issue in its totality and afresh by associating all the affected stake-holders/public sector undertakings /instrumentalities of the State and shall take a conscious decision on the basis of the well established principles of law and also in the light of the judgment of the Hon'ble Supreme Court in ***HMITC Vs. G.S. Uppal and others (Supra)***, ***State of Punjab and others Versus Jagjit Singh and others (Supra),*** and

other such judgments pertaining to equal pay for equal work. The Chief Secretary may also take assistance from the concerned Legal Remembrancer or from the learned Advocate General, Haryana especially on the proposition of law and thereafter to pass a well-reasoned speaking order within a period of six months from today.

18. In view of the above, the present writ petition is disposed of .

19. Copy of this order be sent to the Chief Secretary, Haryana for compliance.

(JASGURPREET SINGH PURI)
JUDGE

08.04.2024
rakesh

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