



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.208 of 2019Date of Decision : 02.01.2024

Narayan Dutt..... **Petitioner****Versus****State of Himachal Pradesh and others**..... **Respondents**

Coram:**The Hon'ble Mr. Justice Bipin Chander Negi, Judge***Whether approved for reporting?¹*

For the petitioner : Mr. Dilip Sharma, Senior Advocate with Mr. Ompal and Mr. Manish Sharma, Advocates.

For the respondents : Mr. Anup Rattan, Advocate General with Mr. Y.P.S. Dhaulta, Additional Advocate General.

Bipin Chander Negi, Judge (oral)

The present petition has been filed by the petitioner, seeking following substantive relief:-

“(i) That the stipulation contained in notification dated 23.3.1989, Annexure A-2 and letter dated 17.12.1991, Annexure A-3, that the pay scale of Rs.1640-2925/- would be admissible to those Shastris only who were working on regular basis on 23.3.1989 may be struck down being in violation of Statutory R&P Rules and consequently petitioner may be held entitled to the pay scale of Rs.1640-2925 as already granted to him with all consequential benefits, and further corresponding revision of pay scale(s) from time to time.”

2. I have heard learned counsel for the parties and have gone through the record.

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

3. The brief facts giving rise to the present petition are that on the recommendations of the Himachal Pradesh Public Service Commission, the petitioner was offered appointment to the post of Shastri on regular basis on 01.09.1989 (Annexure-A). In pursuance to the aforesaid, the petitioner joined in the pay scale of Rs.1640-2925/- on 06.09.1989.

4. At the time when the petitioner had joined service, the Recruitment and Promotion Rules applicable to the post of Shastris were those which were notified on 24.04.1986. A perusal of the same categorically reflects that the essential qualification for the post of Shastri was, "Shastri from a recognized University/Institution".

5. Vide Notification dated 23.03.1989 (Annexure A-2), the pay scale of the post of Shastri were revised w.e.f. 01.01.1986 to Rs.1640-2925/-. The senior scale was to be granted after 08 years and selection scale after 18 years. However, as per the note appended, the scales were given as a personal measure with a stipulation that in future Masters (TGT) be appointed as Language Masters.

6. In this context, it would be appropriate to refer to letter dated 17.12.1991 (Annexure A-3). A perusal of the same specifically reflects that the pay scale of 1640-2925/- would be

admissible to those Shastris who were working regularly till the issuance of Notification dated 23.03.1989 and the scale would be personal to them. The appointees after 23.03.1989 with lesser educational qualification than the Trained Graduate Teachers would be entitled to only the pay scale of 1500-2640/-, whereas those appointees who are appointed post 23.3.1989 and are TGTs would be entitled to the higher pay scale of Rs.1640-2925/-.

7. The grievance of the petitioner emanates from letter dated 04.09.2006 (Annexure A-5), whereby, respondent No.3 had pointed out that pay scale of Rs.1640-2925 granted to the petitioner on his appointment as Shastri was not admissible to him and that the petitioner was entitled to pay scale of Rs.1500-2640. With respect to letter dated 04.09.2006 (Annexure A-5), the petitioner had made a representation (Annexure A-6). The representation so made by the petitioner was rejected on 28.03.2007 vide Annexure A-7. Herein, it was reiterated that only OT i.e. Oriental Teacher (Shastris) who were working on regular basis before 23.03.1989 would be entitled to the pay scale of Rs.1640-2925/-. The same was in consonance with the clarification issued by the respondents-State on 17.12.1991, i.e., Annexure A-3. Yet, another representation made by the petitioner was rejected by the respondents/State on 17.12.2007

vide Annexure A-8. Herein again, a reference was made to the Government clarification dated 17.12.1991 (Annexure A-3).

8. In the aforesaid backdrop, the sole argument raised by the petitioner is that the pay scales in the case at hand have been granted for discharging similar duties, merely on the basis of their date of appointment. The specific contention of learned Senior Counsel is that the Shastris appointed prior to 23.03.1989, irrespective of their educational qualifications, are getting pay scales of Rs.1640-2925, whereas, post 23.03.1989, a lower pay scale is being paid to the Shastris and higher pay scale post 23.03.1989 is being given to Shastris possessing B.Ed. qualifications.

9. Per contra, learned Additional Advocate General has argued that the State of Himachal Pradesh generally follows the pattern of Punjab Government for the purpose of pay scales. According to learned Additional Advocate General, petitioner has been given pay scale as his counterparts in Punjab. Other than the aforesaid, learned Additional Advocate General has argued that their act of granting higher pay scale is permissible as they have prescribed a higher pay scale for a higher qualification.

10. From a perusal of the entire attending facts and circumstances of the case at hand, it is clearly evident that the

petitioner is discharging similar duties as his counterparts who have been appointed prior to 23.03.1989. From a perusal of Annexure A-3, clarification dated 17.12.1991, it is evident that irrespective to educational qualification, the pay scale of Rs.1640-2925 has been accorded to all individuals appointed prior to the said date as measure personal to them. Meaning thereby that, whether a person has a B.Ed. qualification or does not have B.Ed. qualification, they were all granted similar pay scale. Thereafter from 23.03.1989 onwards for grant of higher pay scale of Rs.1640-2925 an appointee in order to claim the said scale must have a B.Ed. qualification. Hence, a pay scale has been granted merely on the basis of date of appointment.

11. The explanation offered by the respondents-State, based on following the Punjab pattern as granted to their counterparts in Punjab cannot be justified to grant two pay scales merely on the basis of different date of appointment. Other than the aforesaid, grant of higher pay scale based on educational qualification would have been justified if persons appointed prior to 23.03.1989 would also have been granted higher pay scale based on educational qualification. However, in the case in hand, prior to 23.03.1989 individuals who do not have a higher educational qualification, i.e., B.Ed., have been granted a higher pay scale.

Therefore, in the case at hand, the petitioner must succeed on the principle of “equal pay for equal work”. As has been stated supra, no tangible explanation has been offered by the respondents to justify the date of appointment becoming relevant for fixing different pay scales for discharging similar work in the same cadre.

12. In this respect, it would be appropriate to refer to judgment dated 02.07.2013, passed in LPA No.148 of 2013, titled **State of HP and another vs. Kulbir Singh Rana and others**. The relevant extract of the same is being reproduced herein below:-

“2 The learned Single Judge, besides applying the judgment of this Court, in the case of similarly placed persons has also recorded as of fact that the petitioners are admittedly similarly situated and discharging similar duties, but have been placed in different pay scale merely on the basis of their date of appointment. In other words, the respondents ought to succeed even on the principle of equal pay for equal work. No tangible explanation is offered as to how the date of appointment would become relevant for fixing different pay scales of employees discharging the same work in the same Department. Hence, the appeal is dismissed.”

13. A perusal of Notification dated 23.3.1989 (Annexure A-2) reflects that pay scale of Rs.1640-2925 has been granted as a measure personal to the present incumbents and in future Masters (TGT) be appointed as Language Masters. The aforesaid Notification nowhere specifies that a higher pay scale has to be granted to an incumbent appointed after 23.3.1989 with

a B.Ed Degree. It only contains a direction to appoint incumbents to the post of Shastri in future with Masters (TGT). It is only vide clarification dated 17.12.1991 i.e. (Annexure A-3) that it has been made clear that the pay scale of Rs.1640-2925/- would be granted only to those who possess the educational qualification of TGT. Others who do not possess the TGT qualification would be entitled to lower pay scale i.e. Rs.1500-2640/- after 23.3.1989.

14. For the foregoing reasons, clarification dated 17.12.1991 (Annexure A-3) is quashed. As a consequence whereof, office order dated 4.9.2006 (Annexure A-5), rejection(s) of representation dated 28.3.2007 (Annexure A-7) and dated 17.12.2007 (Annexure A-8), which are based on clarification dated 17.12.1991 are quashed and set aside. Accordingly, the petitioner is held entitled to pay scale of Rs.1640-2925/- with all consequential benefits subsequent thereto.

15. In view of above, the instant petition is disposed of in the aforesaid terms, so also the pending application(s), if any.

January 02, 2024 (KS)

**(Bipin Chander Negi)
Judge**