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State of Haryana Vs. Jitender Kumar and Others

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Court : Punjab and Haryana

Decided On : May-14-2013

Appellant : State of Haryana

Respondent : Jitender Kumar and Others

Judgement :

LPA No.1217 of 2012 (O&M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH LPA No.1217 of 2012(O&M) Date of decision:

14. 05.2013 State of Haryana -----Appellant Vs. Jitender Kumar and others ----Respondents CORAM:- HONBLE MR. JUSTICE AJAY KUMAR MITTAL HON'BLE MR. JUSTICE GURMEET SINGH SANDHAWALIA Present:- Ms. Palika Monga, DAG, Haryana for the appellant. Mr. N.C.Kinra, Advocate for respondent Nos. 1 to 14. Ajay Kumar Mittal,J.

1. This appeal has been filed by the State against the order of learned Single Judge dated 22.12.2010 passed in CWP No.22878 of 2010, whereby the writ petition filed by the respondents herein has been allowed in terms of the judgment dated 13.8.2010 rendered in CWP No.12750 of 2009.

2. Briefly, the facts necessary for adjudication of the controversy involved, as narrated in the appeal, may be noticed. The respondents were appointed as Clerks in District Court, Kurukshetra. They are under-graduates. They were appointed to the posts of Clerks at the time when the qualification for the post of

Clerk was Matriculation. On receipt of recommendations of Shetty Commission, the pay scales of Clerks were modified. However, the pay scales of not judicial staff of subordinate courts were revised from ` 3050- LPA No.1217 of 2012 (O&M

4590. - to ` 4000-6000/- in case of graduate Clerks only and the respondents being non-graduates were not allowed the said modified revised scale. They made representations for grant of scale of ` 4000-6000/- which were rejected. Aggrieved thereby, the respondents filed CWP No.22878 of 2010 in this Court. The said writ petition vide order dated 22.12.2010 was allowed by learned Single Judge in terms of order dated 13.8.2010 passed in CWP No.12750 of 2009 - Sarabjit Singh v. State of Punjab and others. Hence the present Letters Patent Appeal by the State of Haryana.

3. Learned counsel for the appellant submitted that the learned Single Judge had allowed the appeal and upheld the claim of the respondents on the ground that the issue raised was covered by the decision of this court dated 13.8.2010 in CWP No.12750 of 2009. It was argued that the judgment in the aforesaid CWP No.12750 of 2009 was reversed by this Court in LPA No.287 of 2011 decided on 25.4.2011, reported as State of Punjab v. Sarabjit Singh and others, 2012(1) SLR 403.wherein it was held that educational qualification could constitute a valid and rational basis for different pay scales to employees working in one cadre.

4. Learned counsel for respondent Nos. 1 to 14, on the other hand, besides supporting the order passed by the learned Single Judge, urged that the higher pay scales were being allowed in the case of Court employees working in Union Territory, Chandigarh and to certain other employees of this Court as well. Reliance was placed on order passed by this Court dated 26.4.2012, Annexure R.5. LPA No.1217 of 2012 (O&M

5. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the contention of learned counsel for respondent Nos.1 to 14.

6. Learned counsel for respondent Nos. 1 to 14 was unable to demonstrate that the issue raised herein was not concluded by the decision of the Division Bench in Sarabjit Singh's case (supra), wherein judgment dated 13.8.2010 in CWP

No.12750 of 2009 passed by learned Single Judge was reversed and it was held that educational qualification could constitute a valid and rational basis for different pay scales to employees working in one cadre. In para 19 of the judgment dated 25.4.2011 passed by the Division Bench in Sarabjit Singh's case (supra), it was recorded as under:-

19. When the principles laid down in the aforesaid judgments are applied to the facts of the present appeals, no manner of doubt is left that the classification made between the graduate Clerks and non-graduate Clerks does not violate Articles 14 and 16 of the Constitution. In Gopi Kishan Sen's case (supra) it has been held by Hon'ble the Supreme Court that a person who has higher qualification is likely to discharge his duties better than a less qualified person. A graduate Clerk would be more efficient than a non-graduate and matriculate Clerk. Moreover, there was no limitation on Shetty Commission to make recommendations of identical pay scale for both graduate and non-graduate Clerks. However, the Shetty Commission preferred to recommend the pay scale of `5000-8100 for graduate Clerks leaving the non-graduate Clerks to keep working in the pay scale of ` 3120-5160.

7. The claim of respondents No.1 to 14 on the basis that LPA No.1217 of 2012 (O&M) 4 similar benefit has been granted to the Court employees working in Union Territory, Chandigarh and employees of this Court could not vest the respondents with any legal right enforceable under the law in the light of Division Bench judgment of this Court in Sarabjit Singh's case (supra). Further, the administrative order passed by this Court on 26.4.2012 by Hon'ble the Acting Chief Justice was in exercise of powers conferred by Articles 229 and 231 of the Constitution of India, which would not confer any right on the respondents who were not covered by the said office order.

8. In view of the above, the appeal is allowed. The judgment dated 22.12.2010 passed by learned Single Judge in CWP No.22878 of 2010 is set aside and consequently, the writ petition filed by the respondents is dismissed. (Ajay Kumar Mittal) Judge May 14, 2013 (Gurmeet Singh Sandhawalia) 'gs' Judge .

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