

Rajinder Sharma and Naresh Kumar Vs. State of H.P. and ors.

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Court : Himachal Pradesh

Decided On : Jun-20-2008

Reported in : 2008(3)ShimLC73

Judge : Rajiv Sharma, J.

Appellant : Rajinder Sharma and Naresh Kumar

Respondent : State of H.P. and ors.

Disposition : Petition allowed

Judgement :

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in both these petitions, the same are being disposed of by a common judgment.

CWP No. 1097/2004

2. The Court will examine the facts of this case in detail to avoid repetition of facts while adjudicating upon these writ petitions.

The brief facts necessary for the disposal of the writ petition are that the petitioner was appointed as Lecturer (Chemistry) in the respondent-college on 14th September, 1991. He was granted the senior scale with effect from 14th

September, 1996 in the pre-revised scales. He was granted the senior scale of Rs. 10,000-15,200 vide office order dated 8th June, 2000 with effect from 27th July, 1998. He was granted the selection grade with effect from 27.7.2003 vide office order dated 22.2.2006 during the pendency of this petition.

3. Mr. Rajnish Maniktala, Advocate had strenuously argued that his clients are entitled to get the senior scale with effect from 1.1.1996 instead of 27.7.1998. His further contention is that his clients are entitled to get selection grade immediately after the completion of five years with effect from 14.9.2001 in the pay scale of Rs. 12,000-18,300. He also contended that his clients are entitled to two increments since they are in possession of Degree of Ph.D.

4. Mr. Rajinder Dogra, Additional Advocate General had submitted that the petitioners have rightly been granted the senior scale with effect from 27.7.1998 and their selection grade is also in accordance with law i.e. with effect from 27.7.2003. He had also supported the issuance of letters dated 6.8.2002 and 20.6.2005 whereby the grant-in-aid has been frozen.

5. Mr. K.D. Sood, Advocate appearing on behalf of the Management had argued that the Management is only liable to pay 5% of the total expenditure incurred towards the release of the senior scale as well as the selection grade payable to the petitioners.

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

7. The petitioner was appointed as a Lecturer in the subject of Chemistry on 14.9.1991. He had completed five years of service on 14.9.1996. He was in fact granted the senior scale with effect from 14.9.1996 (vide Annexure P-1) in the pre-revised pay scale. It is not in dispute that the State of Himachal Pradesh and the Himachal Pradesh University had adopted the recommendations of the University Grants Commission which were also incorporated in the Pay Commission Report. The University Grants Commission recommendations' and the pay scales had been paid to all the employees, including the teachers serving in the Government Colleges and University with effect from 1.1.1996. In fact, the Central Government

as per communication dated 27th July, 1998 (Annexure P-2) had agreed to give financial assistance to the extent of 80% and the remaining 20% was to be borne by the State Government for a period with effect from 1.1.1996 to 31.3.2000. It will also be apt at this stage to take note of letter dated 27th July, 1998 (Annexure P-3). Sub-para (iii) of para 1 of letter dated 27.7.1998 (Annexure P-3) reads thus:

(iii) Career Advancement:

(a) Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D., five years for those with M. Phil, and six years for others as a Lecturer, and for eligibility to move into the Grade of Lecturer (Selection Grade)/Reader, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.

(b) For movement into grades of Reader and above, the minimum eligibility criterion would be Ph.D. Those teachers without Ph.D. can go up to the level of Lecturer (Selection Grade).

(c) A Reader with a minimum of eight years of service will be eligible for consideration for appointment as a Professor.

(d) For every upward movement, a selection process would be evolved, for which appropriate guidelines would be laid down by the UGC in consultation with the Government.

8. It is evident from sub-para (iii) of para 1 of Annexure P-3 that minimum length of service to move into the grade of Lecturer (Senior Scale) is four years for those with Ph.D., five years for those with M. Phil and six years for others as Lecturer and for eligibility to move into the Grade of Lecturer (Selection Grade)/Reader, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years. The existing pay scale at the time of issuance of letter dated 27th July, 1998 of the Lecturers of the senior scale was Rs. 3000-5000, which was revised to Rs. 10,000-15,200. The existing pay scale of Lecturer (Selection Grade)/Reader was Rs. 3700-5700 which stood revised to Rs. 12,000-18,300. The revised scales as per notification dated 27.7.1998 were to be paid on the basis of letter dated 6th

November, 1998 with effect from 1.1.1996 (Annexure P-4). The Himachal Pradesh University has adopted the recommendations of the University Grants Commission as adopted by the Government of Himachal Pradesh Department of Education vide letter dated 7th May, 1999.

9. The petitioner was awarded selection scale of Rs. 10,000-15,200 with effect from 27.7.1998 vide Annexure P-6 dated 8th June, 2000. He along with similarly situate persons made several representations vide Annexures P-9, P-10 and P-12 for the release of senior scale in the revised pay scale with effect from 1.1.1996 instead of 27.7.1998. He also highlighted in his representation that he had completed five years of service on 14.9.2001 after the grant of senior scale.

10. Respondents No. 1 and 2 have filed detailed reply to the writ petition. The case set out by the respondent-State is that the petitioner is only entitled to the revised pay scale of Rs. 10,000-15,200 with effect from 1998 and not with effect from 1996. Respondents No. 1 and 2 have relied upon communication dated 24.3.1999 to deny the revised pay scale to the petitioner with effect from 1.1.1996. The other averment contained in the reply is that the State had frozen the grant-in-aid with effect from 6.8.2002 and the expenses for any incremental expenditure had to be made by the institutions by raising resources at their own level. Respondents No. 3 and 4 in their reply have taken a specific stand that their liability is to the extent of 5% only and the rest of the expenditure has to be borne out by the State Government from the grant-in-aid. Respondents No. 3 and 4 have placed on record the copy of the Himachal Pradesh Aided Colleges (Security of Service of Employees) Act, 1994 (Annexure A-3/5) whereby it is specifically mentioned under Section 6 that the scales of pay and other allowances and privileges of the employees of a College shall be such as may, from time to time, be specified by the State Government. The State has also framed the Himachal Pradesh Non-Government Affiliated Colleges Grant-in-Aid Rules, 1994 (Annexure R-3/6). Rule 8 thereof reads thus:

Quantum of the Grant-in-aid.-(a) The amount of grant-in-aid to be released to a College shall be limited to 95% of the deficit of the estimated income (as detailed under) and the expenditure likely to be incurred on payment of the salary of the

approved staff (Teaching and non-teaching) during one financial year subject to adjustments of over and under payments, in accordance with the norms at which the salary is being paid to the staff in Government Colleges. The requirements of Grant-in-aid in respect of the Colleges for the ensuing year shall be submitted by each College in the form of budget to the Director of Education by 31st October (on a date notified by the Director) of each year, stating numbers of post of Principal, Lecturers (subject-wise), Superintendent, Assistant, Clerks and others and financial implications along with similar statistical data for at least two previous years with reasons to justify each increase and decrease.

11. It is evident from the combined reading of Annexures R-3/5 and R-3/6 that the pay scales of the teachers serving in private affiliated colleges will be the same as payable to their counter-part serving in the Government Colleges. Respondents No. 3 and 4 have also placed on record copy of letter dated 24th February, 2004 (Annexure R-3/8) whereby similarly situate Mr. S.C. Khitha, Lecturer DAV College, Kangra has been granted the selection grade with effect from 14.7.1996 instead of 22.7.1998. Thereafter his pay has been directed to be fixed at Rs. 14,940 on the completion of five years of service in the selection grade of Rs. 12,000-18,300. The petitioner had amended the writ petition by moving CMP No. 1183/2006 after the issuance of office order dated 22.2.2006. It is evident from the office order dated 22.2.2006 that the petitioner has been granted the selection grade of Rs. 12,000-18,300 with effect from 27.7.2003 with a rider that no additional grant-in-aid shall be sanctioned by the Government for the purpose. The Joint Director of Education (Administration) has also sent a communication to the Principal, DAV College, Kangra on 20th June, 2005 giving therein the reference of earlier order dated 6.8.2002 whereby the grant-in-aid had been frozen. The petitioner has placed on record by way of CMP No. 2855/2007 letter dated 16.10.2006 (Annexure A-1). The text of letter dated 16.10.2006 reads thus:

I am directed to say that the matter with regard to pay anomalies to College Lecturers on the UGC pattern has been engaging attention of the Government for sometime past. Moreover, the College Lecturers' Association has also requested to remove the said anomalies.

The first anomaly relates to grant of Senior Scale Selection Grade to those Lecturers who were due for awarding these Scales w.e.f. 1.1.1996 whereas granted the said scale only w.e.f. 27.7.1998. The cases of such Lecturers who were due for this scale prior to 27.7.1998 but actually were given the benefit w.e.f. 27.7.1998 are required to be granted this benefit from the actual date of their entitlement for such scale.

Second anomaly relates to award of Selection Grade after completion of certain length of service on which the UGC has advised that the Lecturers with Ph.D. Degree may be placed in the Selection Grade after 9 years service without insisting on five years of service in the Senior Scale for which a clarification issued vide UGC letter No. F.2-11/2001 (PS) Dated 22nd July, 2002. Therefore, this aspect is also required to be examined in the light of these clarifications of the UGC.

Now, after careful consideration of the matter, it has been decided that the above pay anomalies can be removed in accordance with the UGC guidelines by reviewing the DPC already convened to grant these scales.

It is accordingly requested that you may kindly examine the matter in the light of the above decision clarifications and send the cases of anomalies of each College Lecturers for consideration along with their complete bio-data so that the DPC convened earlier is reviewed accordingly.

12. The position which emerges from the above enumerated facts is that the petitioner had completed five years of service in the year 1996. He has been granted the Senior Scale but in pre-revised scales. He has been granted the Selection Grade in revised pay scales of Rs. 10,000-15,200 with effect from 27.7.1998. It is evident from the communication dated 27.7.1998 (sub-para (iii) of para 1) that the incumbent who had completed five years of service was to be granted the Selection Grade. The petitioner was also entitled to be granted the Senior Scale with effect from 14.9.1996 immediately after he had put in five years of service. The action of respondents No. 1 and 2 to grant him the Senior Scale with effect from 27.7.1998 instead of 14.9.1996 is arbitrary. In a similar situation, one Sh. S.C. Khitha, who had also approached this Court by way of writ petition

No. CWP No. 2001/2003 had been granted the Selection Grade with effect from the due date i.e. 14.7.1996 instead of 22.7.1998. In his case the Director of Education vide letter dated 25th February, 2004 directed to fix his pay in the pay scale of Rs. 12,000-18,300. There is no distinction in the case of the petitioner vis-a-vis Sh. S.C. Khitha except that in case of Sh. S.C. Khitha, he has been granted the Selection Grade with effect from 14.7.1996 instead of 1998. Since the Court has held that the petitioner was entitled to senior scale with effect from 14.9.1996, he was entitled to selection grade immediately after completion of five years i.e. 14.9.2001. The petitioner though has been granted the selection grade of Rs. 12,000-18,300 but with effect from 27.7.2003. There is a rider as noticed above to the effect that no additional grant-in-aid will be sanctioned by the Government for the purpose of release of selection grade of Rs. 12,000-18,300. This rider has been put by the State on the basis of letter dated 6th August, 2002 which was reiterated in letter dated 20.6.2005 whereby it was also mentioned that the selection grade will be paid with effect from 27.7.1998. The petitioner is entitled to get his salary, other allowances and privileges at par with the teachers serving in the Government Colleges. The petitioner was fully eligible initially after completion of five years of service to get the senior scale in the revised pay scale and thereafter to get the selection grade after putting in five years service in senior scale. The petitioner's rights flow from Annexure R-3/5 read with Annexure R-3/6. The petitioner has acquired vested rights to get his salary on the basis of Annexures R-3/5 and R-3/6. Consequently, respondents No. 1 and 2 could not freeze the grant-in-aid by issuing letter dated 6th August, 2002. The condition of service of Lecturers serving in the private aided colleges are governed under the Himachal Pradesh Aided Colleges (Security of Service of Employees) Act, 1994 read with the Himachal Pradesh Non-Government Affiliated Colleges Grant-in-Aid Rules, 1994. Once the State Government has undertaken to defray the expenditure towards the salary as per the norms by which the salary is being paid to the staff in Government Colleges, Annexure R-1 dated 6th August, 2002 could not be issued. Respondents also could not deny the petitioner and similarly situate persons the senior scale with effect from the due date.

13. Mr. Rajnish Maniktala, Advocate has also drawn the attention of the Court to various documents placed on record whereby similarly situate persons serving in

the Government Colleges, who were denied the senior scale with effect from 1.1.1996 but were subsequently paid the same from the date. It is evident from the contents of letter dated 16.10.2006 (Annexure A-1) that the State Government was also seized of the matter from which date the senior scale was to be granted. It is specifically mentioned in this communication that the cases of such Lecturers who were due for senior scale prior to 27.7.1998 but were actually given the benefit with effect from 27.7.1998 were required to be granted this benefit from the actual date of their entitlement for such scale. This is the first anomaly pointed out in this letter. The second anomaly pointed out in this letter is that the Lecturers with Ph.D. Degree may be placed in the Selection Grade after nine years service without insisting on five years of service in the senior scale for which a clarification was issued vide UGC letter No. F.2-11/2001 (PS) dated 22nd July, 2002. The Joint Secretary Education had directed the Director of Higher Education to decide the pay anomalies in accordance with the UGC guidelines by reviewing the DPC to grant these scales. The Director of Higher Education was directed to examine the matter and to send the cases of anomalies of each College Lecturers for consideration alongwith their complete bio-data for the purpose of convening of DPC. This letter dated 16th October, 2006 also strengthens the case of the petitioner. This letter will supersede the letter dated 20.6.2005. In view of this letter dated 16th October, 2006 also the petitioner is entitled to get the senior scale with effect from 14.9.1996 in the revised pay scale of Rs. 10,000-15,200 with two increments since he is in possession of Ph. D. Degree. The petitioner thereafter was to be placed in the selection grade with effect from 14.9.2001 after putting in five years of service in the senior scale as per letter dated 27.7.1998. The petitioner is entitled to this relief on the basis of the facts existing before 16th October, 2006. However, as per letter dated 16th October, 2006, the petitioner is entitled to be granted the selection grade immediately after putting in nine years i.e. 2000. The respondents cannot take advantage of letter dated 24.3.1999 as mentioned in their reply. This letter rather supports the contention of the petitioner that the pay scales are to be revised with effect from 1.1.1996.

CWP No. 1103/2004:

14. In this case also, the petitioner was appointed as a Lecturer in the subject of Chemistry on 30.8.1991 and was granted senior scale with effect from 30.8.1996 in the pre-revised pay scale. He was granted the senior scale in the revised pay scale with effect from 27.7.1998. He was granted the selection grade with effect from 27.7.2003. In view of the findings recorded by this Court in CWP No. 1097/2004, the petitioner in this petition is also held entitled to the same relief.

15. Consequently, both the writ petitions are allowed. The respondents are directed to grant senior scale to the petitioners with effect from 14.9.1996 i.e. Rs. 10,000-15,200 and to grant them selection grade with effect from 14.9.2001 in the pay scale of Rs. 12,000-18,300 and fix their pay at Rs. 14,940 with effect from 14.9.2001. The respondents shall also release to the petitioner two increments on the basis of their qualification of Ph.D. The respondents are further directed to consider the case of the petitioners for the release of selection grade with effect from 2000 on the basis of letter dated 16th October, 2006 as well. The respondents are directed to undertake this exercise within a period of three weeks. Before parting with the judgment it is clarified that the State will defray the expenditure to the extent of 95% towards the release of senior scale and selection grade. There shall be no order as to costs.