

THE STATE OF PUNJAB AND ANR.

v.

DHARAM PAUL AND ORS.

JANUARY 22, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

Stepping up of pay—Industrial Training institutes/Centres in State of Punjab—Instructors—Pay scale of—Earlier all instructors getting same pay scale—Later instructors of 8 trades given different pay scale—Subsequently all instructors given one and same pay scale but instructors of 8 trades allowed to retain the higher pay scale as personal to them—Fixation of salary in revised pay scale—Salary of Instructors getting higher pay scale before revision fixed according to their pre-revised salary—Claim of other instructors for stepping up their pay alleging that salaries of their juniors were fixed at a higher stage—Held, not maintainable.

The present appeal was filed by the State Government of Punjab against the order of the High Court allowing the claim of the Instructors of Industrial Training Institutes/Centres to step up their pay. prior to 1961 all instructors of Industrial Training Institutes/Centres in the State were getting the same pay scale. Thereafter pay scales of instructors of 8 trades were changed. The instructors who were not covered under those 8 trades, unsuccessfully challenged the said classification before the High Court. In 1970 the State Government revised the staffing pattern of instructors in all trades and placed them all in the same pay scale. However, the scale of pay the 181 instructors of 8 trades were getting was allowed as personal to them. In the year 1976 the pay scale in respect of all the instructors was further revised and the pay of individual instructor was fixed in the revised scale depending upon the salary he was drawing in the pre-revised scale.

In 1989 the respondents filed a writ petition in the High Court for a direction to get their pay stepped up alleging that 181 instructors, of 8 grades drawing higher salary were junior to them. The State resisted the claim contending that the respondents having failed in the earlier writ petition, the division in pay scale had become final and when all the instructors were brought under one pay scale the instructors of 8 trades

getting higher salary were allowed to draw the pay scale as personal to them, and therefore when the pay scale was further revised, the pay of the individual instructors was rightly fixed according to the salary they were drawing before the revision. The Single judge of the High Court allowed the writ petition and the letters patent appeal filed by the State Government was dismissed in limine by the Division Bench.

Allowing the appeal, this Court

HELD: The High Court committed an error by directing stepping up of the pay of the respondents on the assumption that the juniors are getting a higher amount. While fixing the pay in the new pay scale as revised in 1976, necessarily the higher pay earlier drawn by 181 instructors belonging to the 8 trades was taken into account and they got a higher sum. In the circumstances the question of stepping up of the pay of respondents does not arise. Those 181 instructors originally may have been junior to these respondents but by virtue of the Government order dated 23rd February, '1962 they having been given higher scale of pay than the respondents and the same benefit having been continued as personal pay to them, in the subsequent revision of the pay scale and the persons similarly placed like respondents having challenged and lost in the earlier Writ Petitions it is not open to them to reopen the matter. [829-G, 830-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2206-2209 of 1996.

From the Judgment and Order dated 19.7.94 & 1.11.94 of the Punjab & Haryana High Court in L.P.A. No. 439/94, C.W.P. No. 13546, 5346 of 1994.

Sanjay Bansal and G.K. Bansal for the Appellants.

P.P. Rao, R.K. Chopra and P.N. Puri for the Respondents.

The Judgment of the Court was delivered by

PATTANAİK, J. Leave granted.

These appeals by the State of Punjab are directed against the judgment of the Division Bench of the Punjab High Court which dismissed the Letters Patent Appeal in limini and confirmed the order of the learned

Single Judge. The question that arises for consideration is whether the respondents are entitled to relief of getting their pay step up and made equal to the pay drawn by other instructors irrespective of the trade in which they are working. The respondents filed Writ Petitions in the High Court of Punjab and Haryana alleging that even though they possess the same qualification and were appointed as instructors and were continuing as such, but with effect from 4.1.1961, pay scales of instructors in respect of 8 trades were changed whereas the respondents' pay scales have not been changed. In the subsequent pay revision even though there has been no distinction but yet those group of persons who were drawing a higher scale of pay on the basis of their trades continue to get the same higher pay even though they are juniors to respondents and, therefore, the respondents should be entitled to get their pay by way of stepping up. The stand of the State, on the other hand, was that it is no doubt true that prior to 1961 all the instructors in Grade II irrespective of their trade were getting same scale of pay but subsequently in respect of instructors of 8 trades the pay scales were changed and respondents were not covered by those 8 trades. Some of the employees similarly situated as the respondents challenged the said classification by filing a Writ Petition which was ultimately dismissed and Letters Patent Appeal against the same was also dismissed and as such the matter became final. In 1970 the State Government revised the staffing pattern for instructors of Industrial Training Institutions/Centres and placed all the instructors in the pay scale of Rs. 160-400. While doing so, in respect of those instructors who were getting higher scale of pay numbering 181 were allowed to enjoy their earlier pay scale as personal to them and all the instructors were designated as instructors and not junior or senior. In the year 1976 the pay scale was further revised to Rs. 225-500 and the pay of individual instructor was fixed in the scale depending upon the salary he was drawing in the pre-existing scale. It is only in the year 1989 the respondents instructors filed the Writ Petition claiming the relief of step up on the allegation that their juniors are getting a higher amount. According to the stand of the State Government in view of the failure on the part of the respondents to assail the correctness of the classification providing different scale of pay made on the basis of their trade, in as much as the Writ Petition as well as the Letters Patent Appeal against the same having been dismissed, it is not open for them to re-open the matter. The further stand is that even when one pay scale was fixed by way of revision for all the instructors but those who were getting a higher scale of pay in pursuance to earlier order were allowed to continue in the said higher scale of pay as personal to them and necessarily in fixing their

pay in the revised scale the amount they were drawing prior to revision has to be taken into account and thus question of stepping up of the respondents' pay does not arise. The learned Single Judge allowed the Writ Petition No. 10506 of 1989 which judgment was upheld in Letters Patent Appeal out of which Special Leave Petition No. 4855 of 1995 arises. In the two other cases the earlier judgment of the said Court has merely been followed.

The learned counsel for the appellant submitted that the so-called division amongst the instructors giving a higher scale in respect of 8 trades and a lower scale in respect of the rest by virtue of Government's Order dated 23rd February, 1962, has become final and notwithstanding the fixation of one scale of pay for all instructors in 1970, instructors of the 8 trades who were getting a higher scale of pay have been allowed to enjoy the same as personal to them and, therefore, the High Court was in error to direct the appellant to step up the pay of the respondents. Mr. Rao, learned senior counsel appearing for the respondents, on the other hand, contended that the so-called bifurcation of the instructors as junior and senior is nothing but a misnomer as educational qualification of all instructors is the same and they had been recruited through the same process. The learned counsel further urged that since on their representation the Government ultimately abolished the distinction and brought all of them in one scale in the year 1976, there would be no justification for fixing the pay of the junior people at a higher slab than the respondents and, therefore, the High Court rightly directed for stepping up of the pay.

Having heard learned counsel for the parties and on examining the materials on record we are of the considered opinion that the High Court committed an error by directing stepping up of the pay of the respondents on the assumption that the juniors are getting a higher amount. It is un-disputed that the instructors originally were getting on scale of pay, namely, 80-200 prior to 1961, but by virtue of the Government's Order dated 23rd February, 1962 the said pay scale of Rs. 80-200 was revised to Rs. 160-330 only in respect of the instructors in the 8 trades. The aforesaid pay revision in respect of the instructors belonging to the 8 trades was challenged unsuccessfully by the rest of the instructors belonging to other trades and the Writ Petition (Civil) No. 3038/69 was dismissed as well as the Letters Patent Appeal No. 654/1970 against the same was dismissed by judgment dated 24th January, 1972. While the state Government in

September 1970 put all the instructors in one pay scale of Rs. 160-400 but so far as 181 instructors who had got a higher scale of pay in pursuance to the Government order dated, 23rd February, 1962 were allowed to enjoy their scale as personal to them. This being the admitted position, in 1976 the pay scale was further revised to Rs. 225-500 in respect of all the instructors but while fixing the pay in the revised scale necessarily, the higher pay drawn by those 181 instructors belonging to the 8 trades, was taken into account and they got a higher sum. In these circumstances the question of stepping up of the pay of respondents does not arise. Those 181 instructors originally may have been junior to these respondents, but by virtue of the Government order dated 23rd February, 1962 they having been given higher scale of pay than the respondents and the same benefit having been continued as a personal pay to them, in the subsequent revision of the pay scale and the persons similarly placed like respondents having challenged and lost in the earlier Writ Petitions it is not open to them to reopen the matter. In this view of the matter we have no hesitation to come to the conclusion that the learned Single Judge without adverting to the relevant facts granted the relief of stepping up on the ground that the qualification to the post of instructors, being the same and they being governed by same service conditions a junior person cannot get a higher sum. The Division Bench committed error in limini dismissing the Letters Patent Appeal. We accordingly set aside the judgments of the learned Single Judge as well as the judgment of the Division Bench and allow these appeals and consequently the Writ Petitions filed by the respondents stand dismissed. But in the circumstances, there will be no order as to costs.

Appeals allowed.

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