

Before Kanwaljit Singh Ahluwalia, J.

R.K. VERMA AND OTHERS,—Petitioner

versus

STATE OF HARYANA AND ANOTHER,—Respondents

CWP No. 8082 of 2001

1st December, 2010

Constitution of India, 1950—Art.226—Promotion of Masters/Mistresses to posts of Headmasters/Headmistresses—No revision in pay scale on promotion—Cadre of Masters/Mistresses is Class III post whereas cadre of Headmasters/Headmistresses is Class II post—Placement on promotional post in same pay scale—Amounts to an anomaly—Removal of anomaly—Whether from date when anomaly arose or a date fixed by Government—Petitioners held entitled to grant of revised pay scale with effect from date when anomaly arose, however, restricting arrears of pay to 38 months from filing of writ petitions.

Held that the promotion of the petitioners from Class III to Class II from the post of Masters/Mistresses to Headmasters/Headmistresses indeed was a promotion and, therefore, their placement on the promotional post in the same pay scale amounted to an anomaly. Once this Court has held that the placement of the petitioners on promotion in the same pay scale amounted to anomaly, this Court has necessarily to ponder over as to from which date such anomaly should be removed. Whether this anomaly should be removed from 1st January, 1996 when the same arose or removal of such anomaly which effect from 1st August, 2000 is justifiable. In view of the ratio of law laid down by the Full Bench of this Court in **Rajbir Singh and other versus Haryana State Electricity Board and others**, 2009 (3) SCT 543, prayer made by the petitioners in these two writ petitions is accepted ; order Annexure P-3 to the extent it grants revised pay scale to Headmasters/Headmistresses with effect from 1st August, 2000, is quashed and direction is issued to the respondents to grant revised pay scale to the petitioners with effect from 1st January, 1996, the date when the anomaly arose.

(Paras 13 & 15)

Ram Kumar Malik, Senior Advocate with Gaurav Deep Goel, Advocate, for Kohal Sharma, Advocate *for the petitioners.*

Himanshu Raj, Assistant Advocate General, Haryana, *for the respondents.*

KANWALJIT SINGH AHLUWALIA, J.

(1) Numerous Headmasters/Headmistresses teaching in various Government High Schools of the State of Haryana have approached this Court under Article 226 of the Constitution of India. CWP No. 8082 of 2001 has been filed by 69 Headmasters/Headmistresses whereas CWP No. 13897 of 2003 has been preferred by 57 Headmasters/Headmistresses.

(2) The petitioners herein, after rendering 20 years of service were promoted from cadre of Masters/Mistresses to that of Headmasters/Headmistresses. This cadre of Masters/Mistresses constituted feeder cadre to the promotional post of Headmasters/Headmistresses. A Master/Mistress who had rendered 20 years of service, was placed in the time scale of Rs. 6500-10500. After availing promotion as Headmasters/Headmistresses, they were granted same pay scale of Rs. 6500-10500. Grievance made in the writ petitions is that the feeder cadre post and promotional post cannot have the same pay scale and, thus, this glaring defect which has crept in revision of pay scale on 1st January, 1996, constituted an anomaly which is required to be cured. Upon various representation made by the petitioners to the government seeking removal of disparity in pay scale of Masters/Mistresses and Headmasters/Headmistresses, the existing pay scale of Rs. 6500-10500 granted to Headmasters/Headmistresses was revised to Rs. 7500-12000 with effect from 1st August, 2000. In the present writ petitions, petitioners pray that the grant of revised pay scale from the date of revision, i.e., 1st August, 2000 is bad, but instead it should have been granted with effect from 1st January, 1996, the date when the anomaly arose. It is for the redressal of this grievance, these two writ petitions have been filed.

(3) In the context of above, brief facts can be noticed as under.

(4) Cadre of Masters/Mistresses is a Class III post, whereas cadre of Headmasters/Headmistresses is a Class-II post. For promotion to the post of Headmasters/Headmistresses, the qualifications and experience prescribed is as under :—

“Eight years experience as Headmaster of Middle School or Master.”

(5) Haryana Government revised the scales of pay of all the employees with effect from 1st January, 1996. Headmasters/Headmistresses were granted pay scale of Rs. 5500-10500 while the Masters were granted pay scale of Rs. 6500-9000. Those Masters/Mistresses who had completed 20 years of service, were placed in the time scale of Rs. 6500-10500. It is matter of fact that the petitioners were promoted as Headmasters/Headmistresses after they had rendered 20 years of service as Masters/Mistresses. Therefore, when they were promoted on or before 1st January, 1996, no benefit in pay scale accrued to them as pay scale of Headmasters/Headmistresses was also Rs. 6500-10500. On a hue and cry made by the cadre of Headmasters/Headmistresses, Government granted scale of Rs. 7500-12000 to Headmasters/Headmistresses to be effective from 1st August, 2000.

(6) The sum and substance of the grievance is that promotion from the feeder cadre to the higher cadre in same scale amounted to an anomaly, and therefore, the same should have been removed from the date this anomaly had occurred. Therefore, the petitioners pray that Annexure P-3 be quashed to the extent it made revised scale effective from 1st August, 2000. The petitioners seek mandamus that Government should grant the revised pay scale with effect from 1st January, 1996.

(7) I have heard Counsel for the parties.

(8) Shri Malik, Senior Advocate, appearing for the petitioners has reiterated as to what has been noticed above, and has urged that there must be difference of pay scale between the feeder cadre and the promotional post. Counsel contended that where a post is hierarchically inferior to the other post, the highest post must be assigned a higher pay scale. According to him, if an employee in the feeder cadre is assigned the same pay scale which is granted to a promotional post, it amounts to anomaly and if an anomaly is to be removed, it should be removed from the date it occurred.

Counsel stated that once the Government realized that the pay scales of feeder cadre of Masters/Mistresses and the promotional post of Headmasters/Headmistresses were placed in the same pay scale and it ultimately came forward to remove this anomaly, then it should have been cured from 1st January, 1996 and not from 1st August, 2000.

(9) To controvert the argument advanced by Counsel for the petitioners, Shri Himanshu Raj, Assistant Advocate General, Haryana, relied upon the policy instructions dated 20th April, 2001 wherein the State Government has defined the anomaly and had noticed the following eventualities to constitute an anomaly :—

“7. The third contention of the learned counsel for the applicants is that the pay scale assigned to the post of Junior Analyst cannot be considered to be an anomaly so as to call for judicial intervention. In this behalf, learned counsel for the applicants, in order to assist this Court on the parameters of the term “anomaly” again referred to the policy instruction dated 20th April, 2001, wherein the State Government described the following eventualities to constitute an anomaly :—

- “(a) When the pay scales are revised by the Government through a general pay revision notification for all its employees and the revised scales are not prescribed in respect of some posts/departments on account of inadvertent omission.*
- (b) When the functional pay scale prescribed for a promotion post is lower than the functional pay scale of the feeder post.*
- (c) Where there is a loss of pay in the case of an employee on account of revision of pay scales.*
- (d) Where, on promotion, an employee draws lower emoluments than what he was drawing prior to his promotion.*
- (e) Where the pay of a senior employee gets fixed at a lower stage as a consequence of pay revision qua a similarly situated junior employee.”*

(10) Relying upon the guidelines, issued by the Government, in the matter involving pay revision and issue of pay anomaly, Counsel has submitted that provision of same pay scale for the feeder cadre post and the promotional post may not constitute an anomaly as promotion in the identical pay scale will cause no financial loss to an employee but enhances his status. It was submitted that his pay will be fixed at the next stage of promotion. Counsel for the State further relied upon judgment of the Apex Court rendered in the matter of **Secretary Finance Department versus West Bengal Registration Service Association (1)**, wherein it was held as under :—

“...it is well-settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected to him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also

referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and court's interference is absolutely necessary to undo the injustice."

(11) Relying upon the above stated observations of the Apex Court, Counsel for the State has stated that it is not for the Court to evaluate the duties and responsibilities of a post and to adjudicate upon the suitability of pay scale assigned to a particular post.

(12) Shri Malik, to repel the argument advanced by Counsel for the State, has placed reliance upon **Sunder Lal Jain versus State of Haryana & others (2)** wherein a Division Bench of this Court held that grant of same pay scale to the lower post and promotional post constitutes anomaly. Considering somewhat similar facts in the aforesaid case, the Division Bench had to say as under :—

“6. ... it is totally unreasonable to place a junior post and higher post in the same pay scale. A Division Bench of this Court in *Har Kishan and another versus State of Punjab and another*, 1987 (5) SLR 539, held that ‘when a lower post is equated with regard to pay scale with the promotional post, it was a clear anomaly and was highly irrational.’ Another Division Bench of this Court in *P.L. Goyal versus State of Haryana and others*, 1990 (5) SLR 108, held that ‘reducing the pay scale on promotion would be violative of Articles 14 and 16 of the Constitution of India.’”

In Civil Writ Petition 10534 of 1991 (Mani Ram and others versus State of Haryana and others) 1993 (1) SCT 419 (P&H) decided by me on September 20, 1993, it was held that “it was legitimate aspiration of every citizen to be better placed, both, in status and pay on promotion and if this is to be frustrated, it will obviously damper the growth of the man which is a natural desire of everyone.”

If there is no increase in the emoluments of a citizen on his promotion, no one would ever work with zeal and dedication nor would he ever like to acquire better experience and more qualifications. This would result into complete stagnation. The action of the respondents in equating the promotional posts with that of inferior posts in the matter of pay scale would obviously result in restricting the natural aspiration of human being to go higher and higher in his service graph and would, thus, be wholly arbitrary.”

(13) Relying upon **Sunder Lal Jain's** case (*supra*), it can be safely said that the promotion of the petitioners from Class-III to Class-II from the post of Masters/Mistresses to Headmasters/Headmistresses indeed was a promotion and, therefore, their placement on the promotional post in the same pay scale amounted to an anomaly. Once this court has held that the placement of the petitioners on promotion in the same pay scale amounted to anomaly, this Court has necessarily to ponder over as to from which date such anomaly should be removed. Whether this anomaly should be removed from 1st January, 1996 when the same arose or removal of such anomaly with effect from 1st August, 2000 is justifiable. Shri Malik, Counsel for the petitioners, has relied upon **The Punjab State Co-operative Agricultural Development Bank Ltd. versus Punjab State Co-operative Agricultural Development Bank Pensioners Association and Others**, (3) to contend that the benefits of revised pay scale are to be given to the employee from the date when the anomaly arose. The Division Bench held as under :—

“In **Joginder Singh Saini's** case *supra*, which has also been relied upon by the learned Single Judge while deciding the writ petition, this Court held that having accepted the factum of anomaly and having taken a decision to remove the same, the Government cannot arbitrarily fix the date with effect from which the benefit of revised pay scale is to be given to the petitioners.”

(14) The controversy now stands resolved by an authoritative pronouncement of a Full Bench of this Court in **Rajbir Singh and others versus Haryana State Electricity Board and others**, (4) wherein it was held as under :—

“9. *Irrespective of our aforesaid determination (on a perusal of the judgments relied upon by the learned counsel for the petitioners), we have no hesitation to uphold the submission advanced by the learned counsel for the petitioners, so as to conclude, that in case of an anomaly, which had arisen during the revision of pay scales, the correction thereof, to be with effect from the date when the anomaly had arisen. In other words, if a pay scale wherein the anomaly had arisen was released from 1st January, 1986, it is bound to be corrected from 1st January, 1986, and not with effect from the date when the anomaly was discovered, or*

(3) 2009 (3) S.L.R. 635

(4) 2009 (3) S.C.T. 543

prospectively with effect from a date of the choice of the employer. Even the learned counsel for the respondents acknowledges the correctness of the aforesaid proposition. The basis of our conclusion recorded hereinabove arises out of a simple premise. Once it is acknowledged that a mistake has been committed, whereby an anomaly has arisen, the mistake has to be remedied in such a manner, that the aggrieved party does not have any adverse effect of the mistake/anomaly. This would be possible if an anomaly in pay scales is corrected retrospectively with effect from the date when the anomalous pay scale was introduced. On the other hand, if the mistake/anomaly is corrected from a future date, the concerned individual will have to suffer the effect of the anomaly, from the date it had arisen, till the date it was remedied. The late determination would be iniquitous and unacceptable in law as it would not be able to stand the test of Article 14 of the Constitution of India, which postulates equality before the law and equal protection of the laws."

(15) In view of the ratio of law laid down by the Full Bench of this Court, prayer made by the petitioners in these two writ petitions is accepted ; order Annexure P-3, to the extent it grants revised pay scale to Headmasters/Headmistresses with effect from 1st August, 2000, is quashed and direction is issued to the respondents to grant revised pay scale of Rs. 7500-12000 to the petitioners with effect from 1st January 1996, the date when the anomaly arose. However, it is made clear that the respondents shall remove the anomaly, and fix the pay of the petitioners notionally with effect from 1st January, 1996, on which date it arose. However, the arrears of pay are restricted to 38 months from filing of the writ petition. CWP No. 8082 of 2001 was filed on 25th May, 2001 whereas CWP No. 13897 of 2003 was filed on 1st September, 2003. The petitioners have retired by now, their terminal benefits shall be also disbursed within six months.

(16) The writ petitions are disposed of in the above terms with no order as to costs.