

# The Indian Law Reports

Before M. R. Agnihotri, J.

MANMOHAN SINGH,—Petitioner.

*versus*

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 375 of 1989.

8th October, 1990.

*Constitution of India, 1950—Arts 16, 226 & 227—Equivalence of pay-scales—Pay-scale of Additional Chief Electoral Officer at par with Engineer-in-Chief—Later pay-scale of Engineer-in-Chief revised upward—Additional Chief Electoral Officer is entitled to revised scale—When two posts in different departments carry same pay-scale, their duties and responsibilities should be treated at par.*

**Held**, that with regard to the importance and responsibilities attached to the post of Additional Chief Electoral Officer, Haryana, it is a well-known fact that this is the solitary post of highly technical nature, the duties and responsibilities of which could not be considered in any way less important or inferior to those of the Engineer-in-Chief. Otherwise also, the unrevised pay scale of the post of the Engineer-in-Chief was revised, not by name or to be personal to the incumbent of this post, but pay scales of all such posts had been revised to the same higher scale by virtue of notification with reference to the existing pay scales. Therefore, non-grant of the same pay scale to the petitioner alone would be an act of invidious discrimination, violating Article 16 of the Constitution. (Para 6)

**Held**, further, that if two posts in different departments carry the same pay scale, their duties and responsibilities have to be treated at par and equal for all intents and purposes. (Para 9)

*Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable Writ Direction or Order be issued, directing the respondents:—*

- (i) to produce the complete records of the case;
- (ii) the order at Annexure 'P-6' be quashed;
- (iii) a writ of mandamus be issued directing the respondents to fix the petitioner's pay in the scale of Rs. 7,300—7,600 with effect from 5th December, 1986;

- (iv) consequential benefits in the nature of arrears of salary and revision of pension and other retiral benefits may also be granted;
- (v) this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case;
- (vi) the petitioner be exempted from filing the originals of Annexures P-1 to P-7;
- (vii) the petitioner be exempted from serving advance notice of the writ petition on the respondents;
- (viii) it is further prayed that the petitioner be granted interest on the arrears found due from the date of accrual to the date of release;
- (ix) the costs of this writ petition may also be awarded to the petitioner.

J. L. Gupta, Sr. Advocate with Vikrant Sharma, Advocate, for the Petitioner.

S. V. Rathee, Advocate, for A.G., Haryana.

#### JUDGMENT

M. R. Agnihotri, J.

(1) The petitioner in this writ petition is retired Additional Chief Electoral Officer of Haryana who has invoked the writ jurisdiction of this Court for the issuance of a writ of *mandamus* directing the State of Haryana to fix his pay in the scale of Rs. 7,300—7,600 with effect from 5th December, 1986, and to grant to him consequential benefits by way of arrears of salary and allowances, with retiring benefits of enhanced pension, gratuity, etc. to which benefits the petitioner would have been entitled had the necessary relief been granted to him before 31st December, 1987—the date of his superannuation from service.

(2) Briefly stated, the petitioner was originally in the pay scale of Rs. 2,200—2,400 with special pay of Rs. 200 having the rank of Joint Chief Electoral Officer. This pay scale was revised to Rs. 2,500—2,750, without any special pay, which was also granted to him with effect from 5th December, 1986. On 29th April, 1987, the Government of Haryana revised the pay scales of various services with effect from 1st January, 1986, from Rs. 2,500—2,750 to

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Rs. 5,900—6,700. This pay scale was automatically released to the petitioner also, because before the pay revision, he too was in the pay scale of Rs. 2,500—2,750 but with special pay. Similarly, the pay scale of the Engineers-in-Chief of Haryana P.W.D. which, earlier to the pay revision, was Rs. 2,500—2,750, plus Rs. 250 as special pay, was also revised, though to Rs. 7,300—100—7,600 (without special pay), that is, much more than the revised pay scale of the petitioner which was Rs. 5,900—6,700.

(3) Feeling aggrieved of this disparity in the pay revision, he submitted a representation to the Secretary, Anomalies Committee, Haryana, respondent No. 3, on 20th October, 1987. But the same was summarily rejected by the respondents in December, 1987. This action, according to the petitioner, is arbitrary and discriminatory, inasmuch as when the unrevised pay scale of the posts of Additional Chief Electoral Officer was well as the Engineers-in-Chief of Haryana was Rs. 2,500—2,750 plus special pay, and this pay scale was revised to Rs. 7,300—7,600 in the case of Engineers-in-Chief, the non-grant of this very revised pay scale to the petitioner was violative of Article 16 of the Constitution of India.

(4) In the written statement filed by the respondents, factual position has almost been admitted but the impugned action is sought to be justified on the ground that as the pre-revised grade of Rs. 2,500—2,750 was sanctioned to the petitioner on 5th December, 1986, the revised grade of Rs. 5,900—6,700 was also allowed to the petitioner with effect from the same date, that is, 5th December, 1986. It was further pleaded that the nature of duties and responsibilities of the post of Engineer-in-Chief were wholly different than those of the Additional Chief Electoral Officer, although both the posts were in the same pre-revised scale of pay.

(5) The petitioner has also filed a replication with the permission of the Court on 18th June, 1990, in which the position has been clarified, that while revising the pay scales of the posts from Rs. 2,500—2,750 to Rs. 5,900—6,700, there was no reference to any particular post and instead pay scales of all the posts were revised. Therefore, the post of Engineer-in-Chief was in no way superior to the Additional Chief Electoral Officer.

(6) Having heard the learned counsel for the parties and having gone through their pleadings, I am of the considered view that the

petitioner has been able to make out a clear case of discrimination on the part of the respondents. To start with, the unrevised scale of pay of Rs. 2,500—2,750 got merged into the revised pay scale of Rs. 5,900—6,700. When later on, special pay of Rs. 200 p.m. was also allowed to the incumbent of this post, there remained no element of disparity between the posts of Additional Chief Electoral Officer and the Engineer-in-Chief. With regard to the importance and responsibilities attached to the post of Additional Chief Electoral Officer, Haryana, it is a well-known fact that this is the solitary post of highly technical nature, the duties and responsibilities of which could not be considered in any way less important or inferior to those of the Engineer-in-Chief. Otherwise also, the unrevised pay scale of the post of the Engineer-in-Chief was revised, not by name or to be personal to the incumbent of this post, but pay scales of all such posts had been revised to the same higher scale by virtue of notification dated 29th April, 1987, with reference to the existing pay scales. Therefore, non-grant of the same pay scale of Rs. 7,300—7,600 to the petitioner alone would be an act of invidious discrimination, violating Article 16 of the Constitution.

(7) It is well-settled by Hon'ble the Supreme Court of India that normally the Courts should not interfere in the matter of revision of pay scales but the decision of revising the pay scale of one post and the refusal of the State Government to revise the pay scale of another post is always subject to judicial review of the High Courts, to be tested on the ground of discrimination and arbitrariness. In the present case, while revising the pay scales of various posts, special pay attached to the post of Engineer-in-Chief was taken into consideration as a relevant factor whereas the same yard-stick was not applied in the case of the petitioner, even though both the posts of Engineer-in-Chief and Additional Chief Electoral Officer were in the same pre-revised scale of pay, with special pay attached thereto. Moreover, the case of the petitioner was never placed before the Pay Revision Committee or the Anomalies Committee and the respondent No. 1 at his own level took a decision to decline the request of the petitioner of forwarding his grievance, without disclosing any reason.

(8) Taking into consideration the factual position averred by the petitioner and the reply of the respondents, it is evident that the posts of Engineers-in-Chief and the Additional Chief Electoral

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Officer were equal in rank and status with same responsibilities. The incumbents of both these posts were heads of their respective departments and performed supervisory and technical duties at the highest departmental level in their respective spheres. Therefore, while revising the pay scale of the posts carrying the pre-revised scale of Rs. 2,500—2,750 with special pay, it was incumbent on the Pay Revision Committee and thereafter the State Government and the Anomalies Committee, to consider the post of the petitioner in the capacity of Additional Chief Electoral Officer, Haryana-cum-Ex-Officio Joint Secretary, having special pay of Rs. 200 p.m. It was a necessary and relevant consideration that the post held by the petitioner was upgraded from Joint Chief Electoral Officer to Additional Chief Electoral Officer in the scale of Rs. 2,500—2,750, with Rs. 200 p.m. as Special Pay, with effect from 5th December, 1986. Resultantly, the petitioner was also designated as Ex-Officio Joint Secretary to Government, Haryana, on 17th April, 1987.

(9) Further, in the State of Haryana, Special Pay of Rs. 200 p.m. is attached to the post of Deputy Secretary, and of Rs. 250 p.m. is attached to the post of Joint Secretary. Since the petitioner was Ex-Officio Joint Secretary, he was entitled to Special Pay of Rs. 250 p.m. as was admissible to other Joint Secretaries. The mere fact that while releasing the order instead of Rs. 250 Special Pay, Rs. 200 was mentioned, could not *ipso facto* deprive the petitioner of claiming the pay revision in the same scale of pay. This mistake on the part of the State Government could not be allowed to haunt the petitioner at the time of pay revision also. Viewing it from another angle, the equivalence of the duties and responsibilities of different posts is to be determined with reference to the pay scales of those posts as is evident from the Note below Rule 2—60 of the Punjab Civil Services Rules, Volume I, Part I (as applicable in Haryana), which reads as under :—

“Identical time-scales, one governed by the Civil Service Regulations and the other by these rules can be treated as identical for the purpose of the Pay Chapter of these Rules. When two posts are on identical time-scales, it is reasonable to hold that the duties and responsibilities of the posts are not very different in nature, irrespective of the fact whether the pay of the posts is governed by the Civil Service Regulations or these rules. Duty

rendered in one of them may, therefore, be allowed to count towards increment in the other."

Therefore, if two posts in different departments carry the same pay scale, their duties and responsibilities have to be treated at par and equal for all intents and purposes.

(10) Consequently, I allow this petition and by issuing a writ of *mandamus*, direct the respondents to release to the petitioner the revised pay scale of Rs. 7,300—7,600 with effect from 5th December, 1986, and to pay to him the arrears of salary and other allowances, on the basis thereof. The result of pay-fixation shall also be reflected in the increase in pension, gratuity and other retirement benefits to which the petitioner would have been entitled, had his pay scale been revised to Rs. 7,300—7,600 with effect from 5th December, 1986, before the date of his superannuation, that is, 31st December, 1987. Since the petitioner has already retired from service, the arrears of the aforesaid dues shall be paid to him with interest at the rate of twelve per cent per annum from the date of accrual till the date of actual payment. The petitioner shall also be entitled to the costs of this writ petition, which are quantified as Rs. 1,000.

R.N.R.

Before M. R. Agnihotri & N. K. Sodhi. JJ.

A. P. SUTHAR,—Petitioner.

*versus*

THE ASSOCIATED CEMENT COMPANIES LTD., BOMBAY AND ANOTHER.—Respondents.

Civil Writ Petition No. 4845 of 1989.

20th March, 1991.

Constitution of India, 1950—Art. 12—Companies Act, 1956—Expression 'other authorities'—Ambit of—Company registered under the Companies Act—Central & State Government holding small percentage of its shares—Board of Directors of Company mainly private individuals—Company carrying on industry mentioned in Schedule—Such Company—Whether per se an instrumentality or agency of the State.