(2017) 1 SCT 378

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 12424 of 2004

Mohinder Pal		APPELLANT
	Vs	
Punjab State Cooperative Supply and Marketing Federation Limited		RESPONDENT

Date of Decision: Sept. 9, 2016

Acts Referred:

- Constitution of India, 1950 - Article 14, Article 39(d)

Citation: (2017) 1 SCT 378

Hon'ble Judges: Daya Chaudhary, J.

Bench: Single Bench

Advocate: Vikas Singh, Advocate, for the Respondents; Amit Sharma, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

Daya Chaudhary, J. - The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to grant the petitioner pay scale of Rs. 1200-2100 w.e.f.01.11.1992, which was revised to Rs. 1200-2130 w.e.f.01.01.1993 and Rs. 4020-6200 w.e.f.01.01.1996 along with all consequential benefits.

2. Briefly, the facts of the case as made out in the present writ petition are that the petitioner joined the Punjab State Cooperative Supply and Marketing Federation Limited (hereinafter called as "Markfed") on 04.11.1985 and he continued to work on temporary basis for a considerable long period. He filed CWP No.11069 of 1995 for regularisation of his services in accordance with resolution dated 15.12.1992. The said writ petition was allowed vide judgment dated 20.08.1996 and it was ordered to give the benefit of regularisation of the services to the petitioner w.e.f.01.11.1992. In compliance of said

judgment dated 20.08.1996, a letter of appointment was issued on 11.03.1997, whereby, the services of the petitioner were regularised w.e.f.01.11.1992. The petitioner was placed in the pay scale of Rs. 950-1800 with initial start of Rs. 1000/-. The petitioner made a representation to the respondents stating therein that he was wrongly placed in the aforesaid pay scale whereas his pay scale should have been Rs. 1200-2130. When the aforesaid pay scale was not granted, the petitioner filed CWP No.4787 of 1998, which was disposed of vide order dated 02.04.1998. When the relief was not granted, the petitioner filed COCP No.688 of 1998, which was also disposed of vide order dated 09.08.1999. Thereafter, the petitioner filed CWP No.3385 of 2001, which was dismissed as withdrawn with liberty to file a fresh in terms of order dated 23.03.2004. Accordingly, the present writ petition has been filed for direction to respondents to grant pay scale of Rs. 1200-2100 w.e.f.01.11.1992 and thereafter, revised from time to time along with all consequential benefits.

3. Learned counsel for the petitioner submits that the pay scale of the post of Gate Clerks in the Markfed Cotton Ginning and Pressing Factories is Rs. 1200-2100 w.e.f.01.11.1992, was revised from time to time. Learned counsel further submits that the other similarly situated persons, who are working as Gate Clerks in various Cotton Ginning and Pressing Factories of the Markfed are also getting the same pay scale but the petitioner has been discriminated as he is being paid pay scale of Rs. 950-1800 w.e.f.01.11.1992, revised from time to time. Learned counsel also submits that the action of the respondents is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. The respondents have made false averments in the affidavit filed before this Court in COCP No.688 of 1998 that the appointments were made in the pay scale of Rs. 950-1800 whereas the same is contrary to terms and conditions of the appointment letter. It is also the argument of learned counsel for the petitioner that the case of the petitioner is squarely covered by the decision rendered by Hon''ble the Apex Court in **P.Savita and others v. Union of India and others, 1985(3) SLR 29** wherein higher pay scale was denied to the persons junior in the seniority list.

4. Learned counsel for the respondents has raised a preliminary objection that earlier writ petition filed by the petitioner was dismissed as withdrawn on 23.03.2004 and no fresh cause of action has arisen to him to approach this Court for the same relief. Learned counsel further submits that the Markfed is a cooperative society registered under the provisions of the Punjab Cooperative Societies Act, 1961 and being a non-statutory body, the writ petition is not maintainable. Learned counsel also submits that the petitioner was working as daily paid Clerk and was appointed as regular Gate Clerk in the pay scale of Rs. 950-1800 with initial start of Rs. 1000/- w.e.f.01.11.1992. The petitioner cannot claim higher pay scale as it was specifically mentioned in the appointment letter. After appointment, the petitioner was removed from service and the same was challenged by way of raising an industrial dispute. Thereafter, he filed CWP No.11069 of 1995 wherein direction was issued to give benefit of regularisation of service w.e.f.01.11.1992. In pursuance of said direction, the petitioner was offered appointment on regular basis. It

has been denied by learned counsel for the respondents that the employee working on the post of Gate Clerk was entitled for pay scale of Rs. 1200-2100 as decided in the meeting of Board of Directors, Markfed, held on 26.02.1992 by approving designation and scale to Clerks/Junior Assistants. The pay scale of Clerk as well as Gate Clerk was adopted as Rs. 950-1800 with initial start of Rs. 1000/-. Said adoption of the scale was further approved by the Registrar, Cooperative Societies, Punjab on 20.09.1993. Learned counsel also submits that one similarly situated, namely, Raghbir Singh, Senior Assistant, who was earlier working as Clerk was placed in the pay scale of Rs. 1200-2100 but subsequently, it was withdrawn vide order dated 31.08.2016. At the end, learned counsel for the respondents submits that the petitioner is not entitled for the higher pay scale as prayed and the present writ petition is liable to be dismissed.

5. Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the documents available on the file.

6. The facts with regard to appointment, filing of CWP Nos.4787 of 1998, 3385 of 2001 and COCP No.688 of 1998 are not disputed. The petitioner is claiming pay scale of Rs. 1200-2100 w.e.f.01.11.1992, revised from time to time as has been granted to other similarly situated persons, namely, Gamdoor Singh, Surjit Singh, Joginder Singh, Rakesh Vijay, Subhash Chander and Kuldip Chand, working as Gate Clerks in various Cotton Ginning and Pressing Factories of Markfed. It has also been argued by learned counsel for the petitioner that the action of the respondents is discriminatory and violative of Articles 14 and 16 of the Constitution of India. It was also admitted in the affidavit filed in COCP No.688 of 1998 that the pay scale of post of Gate Clerk had been given whereas virtually, the same was not granted. During arguments, it has been brought to the notice of this Court that one Raghbir Singh was granted pay scale of Rs. 1200- 2100 w.e.f.27.08.1993 vide order dated 04.09.2008 whereas learned counsel for the respondents has shown order dated 31.08.2016 for withdrawal of said pay scale.

7. In the letter dated 20.09.1993 (Annexure P-11), it has been mentioned that the proposal and resolution passed by the Board of Directors of the Markfed has been approved by the Registrar, Cooperative Societies, Punjab to downgrade 58 posts of Junior Assistants out of 116 posts in the pay scale of Rs. 1200-2100 to that of Clerks in the pay scale of Rs. 950-1800 (with initial start of Rs. 1000/-) and 146 posts of Field Assistants/Salesmen in the pay scale of Rs. 1200-2100 to that of salesman in the pay scale of Rs. 950- 1800 (with initial start of Rs. 1000/-). There is also reference of letter dated 01.03.1993 wherein it has been mentioned that the Punjab Government while releasing the pay scale of their employees w.e.f. 01.01.1986, had created three categories of posts in various Departments i.e., Clerks, Sr. Clerks and Junior Assistants. Clerks have been allowed the pay scale of Rs. 950-1800 (with initial start of Rs. 1000/-) and 40% of Clerks with minimum of 5 years service has been designated as Sr. Clerks and they have been placed in the pay scale of Rs. 1200-2100/-. Again 40% of the Clerks, who are having minimum 10 years of service, have been designated as Junior Assistants in the pay scale of Rs. 1500-2640. It was approved by the Board of Directors of the

Markfed in the meeting held on 26.02.1992. It is also mentioned in the affidavit of Sh. Sunil Gupta, Establishment Officer (Plants), Markfed, Sector-35B, Chandigarh dated 23.12.2015 that one Raghbir Singh, Clerk, was appointed on 89 days basis in the pay scale of Rs. 950-1800 vide order dated 23.08.1993. His services were regularised vide order dated 23.07.2007 w.e.f.18.01.1995 in the above said pay scale. The pay scale of Rs. 1200-2100 was ordered to be paid to him vide order dated 04.09.2008. Said order was not implemented as an objection was raised by the Audit Department and then he was appointed in the pay scale of Rs. 950- 1800 and he could not be granted pay scale of Rs. 1200-2100.

8. In the appointment letter dated 30.11.1993 issued to one Ranbir Singh, the pay scale has been mentioned as Rs. 1200-2130 w.e.f.31.05.1993.

9. On perusal of the documents as discussed above including affidavit dated 23.12.2015, it appears that the stand of the respondents is contradictory as the pay scale for the post of Gate Clerk/Clerk is Rs. 1200- 2100 w.e.f.01.11.1992, which was revised to Rs. 1200-2130 w.e.f.01.01.1993 and further revised to Rs. 4020-6200 w.e.f.01.01.1996. The said pay scale was granted to similarly situated Raghbir Singh but subsequently, the same has been withdrawn on raising objection by the Audit Department. It appears that the stand/action of the respondents is not consistent.

10. Accordingly, the present writ petition is disposed of with a direction to the respondents to re-consider the case of the petitioner for grant of pay scale as claimed in this petition after taking into consideration the above discussion as well as the documents available on record including the pay scale granted to other similarly situated persons. The necessary exercise be done after giving opportunity of hearing to the petitioner as well as by passing a speaking order within a period of three months from the date of receipt of certified copy of this order.

11. In case, the petitioner is found to be entitled for the relief as prayed in the present petition, the same be released to him and in case, the petitioner is still aggrieved by any action of the respondents, he is at liberty to avail the appropriate remedy.