

Before Tejinder Singh Dhindsa, J.

RAJINDER SINGH—Petitioner

versus

STATE OF PUNJAB AND ANOTHER—Respondents

CWP No. 17189 of 2010

July 12, 2013

Constitution of India, 1950-Writ Jurisdiction-Art. 226 - Service Law - Parity of pay scales - Department of Cultural Affairs, Archaeology and Museums Service Rules, 2001 - Punjab Pay Commission Report 1967-68 - Pottery Assistant and Technical Assistant Grade-I placed in identical pay scale - Duties and responsibilities of both posts as well as job content and degree of responsibility assigned similar - Principle of "equal pay for equal work" - Whether applicable - Held, no - No conscious decision by the Competent Authority to equate the two posts- However, parity in pay scale given with post of Gallery Assistant.

Held, that in the absence of any conscious decision having been taken by the competent authority to equate the post of Technical Assistant Grade-I with that of Pottery Assistant, merely on the basis that over a certain period of time both the posts had enjoyed the same pay scale cannot form basis for grant of pay parity and to return a finding as regards such posts to be equated for grant of identical pay scales. As such, the claim raised by the petitioner holding the post of Pottery Assistant claiming identical pay scale admissible to the post of Technical Assistant Grade-I cannot be accepted.

(Para 6)

Further held, that however, there is sufficient basis for admitting the claim raised by the petitioner as regards parity in treatment in the matter of grant of pay scales as have been granted to the post of Gallery Assistant.

(Para 7)

Further held, that the claim raised by the petitioner seeking parity of treatment by citing the instance of Gallery Assistant would be covered in the light of the Division Bench judgment rendered by this Court in Jaswinder Singh's case (supra). Suffice it to notice that in the notification dated 9.5.1991, Annexure P2, even the Pottery Assistants were granted the revised scale of `1500-2640 and the existing incumbents were granted the higher scale of Rs.1800-3200 as a measure personal to them. Such discrimination has already been frowned upon and held to be not sustainable in the light of Division Bench judgment dated 20.10.1997 in Jaswinder Singh's case (supra).

(Para 8)

Further held, that accordingly, the petitioner is held entitled to the same pay scale i.e. `1800-3200 as revised from time to time as had been granted to other members of the same very cadre holding the post of Pottery Assistant. Keeping in view the fact that the petitioner became a member of the cadre of Pottery Assistant w.e.f. 22.12.2009 and the instant writ petition has been preferred in the year 2010, the petitioner is also held entitled to the arrears to be so calculated w.e.f. 22.12.2009. The requisite exercise is carried out within a period of three months from the date of receipt of a certified copy of this order.

(Para 9)

Amar Vivek, Advocate, *for the petitioner.*

Sudcepi Sharma, Deputy Advocate General, Punjab.

TEJINDER SINGH DHINDSA, J.

(1) The petitioner, who is serving on the post of Pottery Assistant under the Department of Cultural Affairs, Archeology and Museum, State of Punjab, has filed the instant writ petition praying for the issuance of a writ of mandamus for the grant of identical pay scale as granted to the post of Technical Assistant Grade-I. A prayer in the alternate has also been raised for grant of parity of treatment in the matter of pay scales with that of the post of Gallery Assistant.

(2) Brief facts of the case are that the petitioner joined service with the respondent-Department on 3.4.1987 having been recruited on the post of Restorer. Petitioner earned promotions to the post of Antiquity Mender

in the year 2000 and further to the post of Pottery Assistant w.e.f. 22.12.2009. Upon promotion as Pottery Assistant, the petitioner was placed in the scale of Rs.10300-34800+3200 G.P.

(3) Learned counsel appearing for the petitioner while making out a case for grant of the same pay scale as admissible to the post of Technical Assistant Grade-I would submit that as per Punjab Pay Commission report for the year 1967-68, the posts of Technical Assistant, Gallery Assistant, Pottery Assistant etc. had all been equated with the post of Assistant 'A' Grade. Upon implementation of the recommendations of the Punjab Pay Commission for the year 1967-68, all such posts were granted the scale of Rs. 250-550. However, vide notification dated 9.5.1991 on the subject of revision of pay scale made effective w.e.f. 1.1.1986, the posts of Gallery Assistant and Pottery Assistant were placed in the scale of '1500-2640, whereas Senior Technical Assistant/Technical Assistant Grade-I were granted the scale of Rs. 1800-3200. As per learned counsel, such anomaly continued to operate even in the subsequent notification dated 11.5.2001 whereby the post of Technical Assistant Grade-I was placed in the higher pay scale of Rs.5800-9200, whereas the post of Pottery Assistant was granted the lower pay scale of Rs.5000-8100. It has been argued that the duties and responsibilities of the incumbents occupying the post of Technical Assistant Grade-I as also Pottery Assistant are almost identical. In this regard, it has been contended that the respondent-Department has formulated guidelines outlining the duties and responsibilities of the incumbents of both the posts and in terms thereof the job content and degree of responsibility assigned is also similar. The principle of 'equal pay for equal work' as such has been pressed for grant of identical pay scales for the post of Pottery Assistant and Technical Assistant Grade-I.

(4) Per contra, learned State counsel would refer to the joint reply filed on behalf of respondents 1 and 2 to state that the Department of Cultural Affairs, Archeology and Museums Service Rules were notified in the year 2001 in terms of which Technical Assistant Grade-I is a higher post i.e. Category 'B', whereas that of Pottery Assistant is a lower post Category 'C'. Learned State counsel would contend that the qualification, duties and responsibilities of both the posts are entirely different and even

the nature of job is not similar. Accordingly, it has been argued that the principle of 'equal pay for equal work' cannot be invoked insofar as granting the same pay scale to the post of Pottery Assistant as admissible to that of Technical Assistant Grade-I.

(5) The principles relating to grant of higher scale of pay on the basis of 'equal pay for equal work' are well settled. The evaluation of duties and responsibilities of different posts, determination of pay scales are complex executive functions to be carried out by expert bodies. Granting parity in pay scales would depend upon a number of relevant para-meters in the nature of comparative job evaluation, educational qualifications, mode and method of recruitment, degree and responsibility of the duties to be discharged, experience etc. A writ Court would approach such issues with restraint and would interfere only if the decision of the State Government is patently irrational and unjust.

(6) In the absence of any conscious decision having been taken by the competent authority to equate the post of Technical Assistant Grade-I with that of Pottery Assistant, merely on the basis that over a certain period of time both the posts had enjoyed the same pay scale cannot form basis for grant of pay parity and to return a finding as regards such posts to be equated for grant of identical pay scales. As such, the claim raised by the petitioner holding the post of Pottery Assistant claiming identical pay scale admissible to the post of Technical Assistant Grade-I cannot be accepted.

(7) However, there is sufficient basis for admitting the claim raised by the petitioner as regards parity in treatment in the matter of grant of pay scales as have been granted to the post of Gallery Assistant. In this regard, placed on record at Annexure P2 is a notification dated 9.5.1991 issued by the State of Punjab, Department of Finance, whereby the Gallery Assistants as also Pottery Assistants were granted the revised scale of Rs.1500-2640. However, vide such notification, the existing incumbents of the post of Gallery Assistants were granted a higher scale of Rs.1800-3200 as a measure personal to them. This led to the filing of Civil Writ Petition No.4400 of 1997 before this Court by one Jaswinder Singh, Gallery Assistant claiming higher pay scale of Rs.1800-3200 that had been granted

to his own counter-part, be it on a personal measure. Such writ petition was allowed by a Division Bench of this Court vide judgment dated 20.10.1997 rendered in CWP No.4400 of 1997 '(Jaswinder Singh v. The Secretary to Government, Punjab, Cultural Affairs, Archaeology Tourism, Mini Secretariat, Sector 9, Chandigarh & another)' holding that members of the same cadre who are performing the same duties and shouldering the same responsibilities have to be given the identical pay scale.

(8) The claim raised by the petitioner seeking parity of treatment by citing the instance of Gallery Assistant would be covered in the light of the Division Bench judgment rendered by this Court in Jaswinder Singh's case (supra). Suffice it to notice that in the notification dated 9.5.1991, Annexure P2, even the Pottery Assistants were granted the revised scale of Rs.1500-2640 and the existing incumbents were granted the higher scale of Rs.1800-3200 as a measure personal to them. Such discrimination has already been frowned upon and held to be not sustainable in the light of Division Bench judgment dated 20.10.1997 in Jaswinder Singh's case (supra).

(9) Accordingly, the petitioner is held entitled to the same pay scale i.e. Rs.1800-3200 as revised from time to time as had been granted to other members of the same very cadre holding the post of Pottery Assistant. Keeping in view the fact that the petitioner became a member of the cadre of Pottery Assistant w.e.f. 22.12.2009 and the instant writ petition has been preferred in the year 2010, the petitioner is also held entitled to the arrears to be so calculated w.e.f. 22.12.2009. The requisite exercise be carried out within a period of three months from the date of receipt of a certified copy of this order.

(10) Learned counsel for the petitioner himself having given up his claim for interest during the course of arguments, no directions in this regard are being issued.

(11) Petition allowed in the aforesaid terms.