

Before Sanjay Kumar, J.

BALDEV SINGH AND OTHERS—Petitioner(s)

versus

STATE OF HARYANA AND OTHERS—Respondent(s)

CWP 26887 of 2017

January 27, 2020

Constitution of India, 1950—Art. 39(d)—Parity of pay scales—Financial constraints—Accounts clerks in Haryana Power Generation Corporation Ltd. (HPGCL) seek pay scale of Account Clerks (Rs.9300-34800+GP Rs.3200) in the Irrigation Department of Haryana Government w.e.f. 01.01.2006—Corporation approved the proposal in its Board meeting on 04.11.2009 subject to concurrence by Haryana Bureau of Public Enterprises — State government conveyed rejection of the proposal—Again, the Board in its meeting on 17.08.2012 decided to grant the parity subject to concurrence by Haryana Bureau of Public Enterprises—Bureau on 26.03.2013 opined there was no anomaly in pay scales of Account Clerks in the Corporation but approved grant of the pay scales with immediate effect — It was given effect to by the Corporation on 13.05.2013—Some Accounts clerks challenged the decision restricting the relief to them by filing writ petitions—Petitions were allowed by this Court holding the Bureau had no right to interfere in decision making process of the Corporation—Consequently, the revised pay scales were given to the Account Clerks from 17.08.2012—Petitioners sought the revised pay scales with retrospective effect — Held, Article 39(d) has no application to the case— It figures in the Directive Principles of State Policy for equal pay for equal work for both men and women which are not justiciable—Once the employers are distinct and separate the question of applying the principle of equal pay for equal work to employees of two different organizations would not arise ordinarily—Since the Corporation has in its own wisdom chosen to implement such parity, and the only question that remains for consideration is the date from which such benefit is to be extended—Financial constraints would not be germane at this stage to decide the date of giving benefit of revised pay scales to Account Clerks since the Corporation has itself taken a decision to extend the benefit in terms of the Board’s decision on 04.11.2009-Only reason for not giving effect to the decision was its rejection by the Bureau, which, as per settled position, has no role in decision making by the

Corporation—There is no reason for denying the benefit of pay revision to the petitioners at least from that date—Accordingly, the Corporation was directed to implement its decision to bring about parity in pay scales from 04.11.2009.

Held that, before advertng to the merits of the petitioners' claim, it may be noted that Article 39(d) of the Constitution, which was pressed into service by the petitioners, has no application whatsoever to the case. Apart from the fact that the said Article figures in Chapter 4, viz., Directive Principles of State Policy, which are not justiciable, the said provision requires the State to direct its policy towards securing equal pay for equal work for both men and women. In the case on hand, the petitioners are in the service of the HPGCL and seek parity with Accounts Clerks in the service of a State department. Once the employers are distinct and separate, the question of applying the principle of equal pay for equal work to employees of two different organizations would not arise ordinarily. That being said, it may be noted that the HPGCL, in its own wisdom, chose to effect and implement such parity and the only issue that remains for consideration is the date from which such benefit should be extended to the Accounts Clerks in the service of the HPGCL.

(Para 15)

Further held that, at this stage it may be noted that the financial constraints, if any, faced by the HPGCL would not be germane at this stage to decide the date from which Accounts Clerks should be given benefit in terms of the decisions of the Board of the HPGCL itself. Having taken such a decision, it is not open to the HPGCL to now seek to restrict the same on the ground that it is facing huge financial losses. As long as it avails the services of the petitioners and given the admitted stand that it chose to bring about parity of pay scales, be it for whatever reason, the HPGCL cannot fight shy of giving effect to its own decision on monetary considerations. Significantly, the pay scales of Section Officers in the HPGCL were revised to bring them on par with the pay scales of Section Officers in State service w.e.f. 01.01.2006 as proposed in the year 2009 and the same was given effect to by the Board of the HPGCL, *vide* its decision in the 93rd meeting held on 21.10.2013.

(Para 18)

Further held that, in this regard, this Court cannot ignore the irrefutable fact that the HPGCL itself had resolved as long back as on 04.11.2009 to bring about parity between the Accounts Clerks in its

service with Accounts Clerks in State service. The only reason why the said Resolution dated 04.11.2009 was not given effect was the rejection thereof by the Haryana Bureau of Public Enterprises in 2010. However, as it is now settled that the Haryana Bureau of Public Enterprises had no role to play whatsoever in such decision-making by the HPGCL, there is no reason why the petitioners should be denied the benefit of pay revision at least from that date. Pertinent to note, even in the year 2012, the proposal put up by the HPGCL, *vide* its letter dated 03.09.2012 addressed to the Government, was that such parity should be implemented with effect from 01.01.2006. The HPGCL now seeks to conveniently ignore that fact and also its earlier decision dated 04.11.2009 and seeks to revise the date of giving effect to such proposal by bringing it forward to 17.08.2012. However, as already stated *supra*, when the later decision of the Board was subjected to the very same approval process before the Haryana Bureau of Public Enterprises, the same was set at naught by this Court. In such circumstances, there is no reason why the earlier decision of the Board should be discredited, notwithstanding the fact that the same was not subjected to challenge at any point of time. Be it noted that there is no material available on record to show that such rejection was ever made known to the petitioners, whereby they can now be accused of delay and laches.

(Para 19)

Puneet Bali, Senior Advocate with
Satyam Aneja, Advocate
for the *petitioners*.

D.S. Nalwa, A.A.G., Haryana.

SANJAY KUMAR, J.

(1) The petitioners are Accounts Clerks in the service of the Haryana Power Generation Corporation Limited (HPGCL), the second respondent. They are aggrieved by the Order dated 18.9.2017 (Annexure P- 15 passed by the HPGCL, whereby the date of their eligibility for grant of the pay scale of Rs.5000-7450, thereafter revised to Rs.9300-34800 + GP Rs.3200, was fixed as 17.08.2012. It is their case that they would be entitled to such pay scale w.e.f. 01.01.2006. They also lay a challenge to the Office Order dated 31.10.2017 (Annexure P-16) passed by the HPGCL extending the aforesaid pay scale to them w.e.f. 17.08.2012 and directing recovery of the excess amounts paid to them due to the earlier notional fixation of their pay

w.e.f. 01.01.2006. A consequential direction is sought to the HPGCL to revise the petitioners' pay scale on par with the pay scale of Accounts Clerks in the Irrigation Department of the Haryana Government, w.e.f. 01.01.2006 or from the date of their joining, as was approved by the Board of Directors of the HPGCL.

(2) By order dated 28.11.2017 passed in this writ petition, this Court directed that recoveries should not be effected from the petitioners. CM-5729-CWP-2018 was thereafter filed by the petitioners alleging disobedience to this order.

(3) The petitioners entered the service of the HPGCL as Accounts Clerks in the year 2008 on the pay scale of Rs.4000-6000. At that point of time, the pay scale of Accounts Clerks in the Irrigation Department of the Government of Haryana was Rs.5000-7850. The same was revised to Rs.9300-34800 + GP Rs.3200 w.e.f. 01.01.2006, on account of the Sixth Pay Commission's recommendation. According to the petitioners, the qualifications as well as the work and responsibilities of Accounts Clerks in both the organizations were identical. Owing to the disparity in the pay scales, as set out *supra*, a Memorandum was put up before the Board of Directors of the HPGCL in the year 2009 to remove the anomaly.

(4) This Memorandum was considered by the Board of Directors of the HPGCL in its 76th meeting held on 04.11.2009. The relevant proposal in this Memorandum reads as under:

'The Pay scales of Accounts Clerk (from the date of appointment) and Section Officers (from 01 Jan. 06) be raised at par with that of State Govt. Further, the posts of Accounts Clerks, Junior Accountants and Accountants be merged and Accounts Clerk on completion of satisfactory service of 2 years should be designated as Junior Accountant and the Junior Accountant on completion of 3 years satisfactory service should be designated as Accountant without any financial upgradation.'

(5) The Board of Directors approved the aforesaid proposal subject to the following amendment:

'The time scale for Accounts Officer would be increased to five years or twelve years of regular satisfactory service instead of two years or nine years respectively.'

(6) The Board further resolved that the proposal would be effective prospectively.

(7) The aforesaid Board Resolution was however not implemented. *Ergo*, some of the Accounts Clerks again submitted a representation in this regard leading to another Memorandum being submitted by the Managing Director to the Board of Directors of the HPGCL. This Memorandum was dated 07.08.2012. Insofar as the subject issue is concerned, the Memorandum stated as under:

'4. The Accounts Clerk working in the Irrigation Department Haryana with the same qualification i.e. B.Com. or its equivalent have been allowed the pay scale of Rs. 5000-7450 (further revised to Rs. 9300-34800 + GP Rs. 3200/- due to revision of pay scale w.e.f. 01.01.2006) (Annexure-3). Hence, Accounts Clerk working in HPGCL are getting less pay scale than the Accounts Clerk working in the Irrigation Department, Haryana with the same qualification.

5. Accounts Clerks working in HPGCL are representing time and again that they may be allowed pay scale of Rs. 5000-7450 (further revised to Rs.9300-34800 + GP 3200/- w.e.f. 01.01.2006) as is being allowed to Accounts Clerk working in Irrigation Department, Haryana (Annexure-4).'

(8) The proposal put up before the Board of Directors of the HPGCL, in its 88th meeting held on 17.8.2012, was in the following terms:

'11. The Board of Directors may kindly consider the proposal for the grant of pay scale of Rs. 5000-7450 (further revised to Rs.9300-34800 +GP3200) due to general revision of pay scale w.e.f. 01.01.2006) to the Accounts Clerk working in HPGCL to bring their pay scale at par with the Accounts Clerk working in State Govt. (Irrigation Deptt.)'

(9) The Board of Directors considered this proposal and approved it as set out in the Memorandum, subject to the approval of the Haryana Bureau of Public Enterprises. Thereupon, the Managing Director of the HPGCL addressed letter dated 03.09.2012 to the Additional Chief Secretary, Government of Haryana, requesting that the matter should be taken up with the State Government/Haryana Bureau of Public Enterprises so that the pay scale of Rs.9300-34800 + GP Rs.3200 could be extended to Accounts Clerks working in the

HPGCL on par with Accounts Clerks working in the Irrigation Department w.e.f. 01.01.2006. Thereupon, the Haryana Bureau of Public Enterprises, at its meeting held on 26.03.2013, opined that there was no anomaly in the pay scales of Accounts Clerks in the HPGCL, keeping in view the nature of the work and responsibilities attached to the post, but approved grant of the pay scale of Rs.9300-34800 + GP Rs.3200 to Accounts Clerks in the HPGCL, instead of Rs.5200-20200 + GP Rs.2400, with immediate effect. The State Government endorsed its approval of this decision, *vide* its letter dated 23.04.2013 addressed to the HPGCL. The same was given effect to by the HPGCL, *vide* office order dated 13.05.2013.

(10) Aggrieved by this turn of events, some of the Accounts Clerks of HPGCL filed CWP-23816-2013 and CWP-24965-2013 before this Court. These writ petitions were allowed by a learned Judge, *vide* common order dated 23.04.2015. A copy of the said order is placed on record. Perusal thereof reflects that the learned Judge mainly considered the issue as to whether the State Government/Haryana Bureau of Public Enterprises had any role to play in the affairs of the HPGCL. Relying upon the Division Bench judgment of this Court in LPA-383-2014, titled ***Uttar Haryana Bijli Vitran Nigam Ltd. and another*** versus ***Pawan Kumar and others***, the learned Judge allowed the writ petitions holding that neither the State nor its Bureau of Public Enterprises had any right to interfere in the decision-making processes of the HPGCL. The learned Judge accordingly quashed the impugned orders whereby the relief granted by the HPGCL was restricted.

(11) As a result, on 07.12.2015, the Secretary, HPGCL, amended the Office Order dated 13.05.2013 and extended the pay scale of Rs.5000-7450 (further revised to Rs.9300-34800 + GP Rs.3200 in the general revision of pay scales w.e.f. 01.01.2006) to Accounts Clerks w.e.f. 17.08.2012, i.e., as per the decision of the Board of Directors, HPGCL, during the meeting held on 17.08.2012. The petitioners thereupon initiated contempt proceedings in COCP-2493-2015 and COCP-1489-2016 alleging deliberate violation of the order dated 23.04.2015 passed in CWP-23816-2013 and CWP-24965-2013. However, by order dated 30.05.2017 passed therein, liberty was granted to the petitioners to file an application in the writ petitions and seek a clarification as to from which date the revised pay scales were to be given effect.

(12) The petitioners then filed CM-8380-CWP-2017 in CWP-23816-2013 seeking a clarification. By order dated 17.08.2017, the said

application was disposed of, clarifying that the restriction imposed by the Government of Haryana had been quashed and permitting the Board of Directors of the HPGCL to take a decision as to the date from which the pay scales of the petitioners were to be revised. Pursuant to the aforesaid order, the Board of Directors of the HPGCL considered the issue in its 111th meeting held on 18.09.2017 and decided that the date of eligibility for grant of the pay scale of Rs.5000-7450 (revised to Rs.9300-34800 + GP Rs.3200 due to general revision of pay scales w.e.f. 01.01.2006) to Accounts Clerks working in the HPGCL should be 17.08.2012, i.e., the date that the Board of Directors decided so at its meeting held on 17.08.2012, and further ratifying the decision taken on 07.12.2015. The Board further resolved that no notional fixation of pay was admissible and decided to adjust the excess payments drawn by the Accounts Clerks, on account of notional fixation w.e.f. 01.01.2006 or the date of joining, against the arrears to be given to them on account of the implementation of the 7th Pay Commission's recommendations. The Board directed that the balance amount, if any, should be adjusted in 15 equal monthly instalments against the current earnings of the concerned employees. Office Order dated 31.10.2007 was accordingly issued by the HPGCL giving effect to the aforesaid decision of the Board.

(13) It is in this factual milieu that the petitioners assail the action of the HPGCL in limiting their entitlement to the revised pay scales and seek such benefit with retrospective effect. They contend that the action of the HPGCL in denying them parity in all respects with Accounts Clerks in the Irrigation Department of the State is violative of Article 39(d) of the Constitution of India.

(14) In its written statement, the HPGCL accepted that the proposal for revision of the pay scale of Accounts Clerks was initially approved in the year 2009. The reasons as to why it was not implemented were elaborated upon and the same shall be dealt with separately hereinafter. The HPGCL stated that its Board of Directors, in the later meeting held on 17.08.2012, approved the same proposal subject to concurrence by the Haryana Bureau of Public Enterprises. Conceding the developments thereafter, as set out by the petitioners and detailed *supra*, the HPGCL contended that its Board of Directors took a decision on 18.09.2017 to grant the revised pay scales only from 17.08.2012. The HPGCL claimed that as this Court left it open to it to decide the date from which the revised pay scales were to be extended, its action in giving effect to the decision only from 17.08.2012 was legal and valid. It claimed that grant of pay scales to the petitioners

from an earlier date would entail a significant financial burden and as it was suffering huge losses since the financial year 2004-05, it would not be possible for it to grant any retrospective benefits to the petitioners. It therefore justified its action in fixing the date for pay revision as 17.08.2012 and its further action in recovering the excess payments made to the petitioners pursuant to the earlier notional fixation w.e.f. 01.01.2006.

(15) Before advertng to the merits of the petitioners' claim, it may be noted that Article 39(d) of the Constitution, which was pressed into service by the petitioners, has no application whatsoever to the case. Apart from the fact that the said Article figures in Chapter 4, viz., Directive Principles of State Policy, which are not justiciable, the said provision requires the State to direct its policy towards securing equal pay for equal work for both men and women. In the case on hand, the petitioners are in the service of the HPGCL and seek parity with Accounts Clerks in the service of a State department. Once the employers are distinct and separate, the question of applying the principle of equal pay for equal work to employees of two different organizations would not arise ordinarily. That being said, it may be noted that the HPGCL, in its own wisdom, chose to effect and implement such parity and the only issue that remains for consideration is the date from which such benefit should be extended to the Accounts Clerks in the service of the HPGCL.

(16) Be it noted that though the petitioners claim that such revision of pay scales should be given effect from 01.01.2006 on par with the revision of pay scales of Accounts Clerks in the service of the State, the posts of Accounts Clerks in the HPGCL were sanctioned only in the year 2007 at the time of restructuring of non-technical posts. The petitioners admittedly entered the service of the HPGCL as Accounts Clerks only in the year 2008. The question of their seeking the benefit of pay revision from a date prior to the existence of the posts in the HPGCL therefore does not arise. The petitioners, at best, would be entitled to seek such parity only from the date of their appointment in the year 2008.

(17) It is however an admitted fact that the Board of Directors of the HPGCL considered this issue in the year 2009 itself and by its Resolution dated 04.11.2009, the Board accepted the recommendation to bring about parity of pay scales of Accounts Clerks in its service with the pay scales of Accounts Clerks in State service. It appears that this approval of the proposal by the Board was sent to the Haryana

Bureau of Public Enterprises for its concurrence but the State Government addressed letter dated 02.04.2010 conveying the rejection of the proposal of the HPGCL, as approved by its Board of Directors. No doubt, the said rejection was never subjected to challenge and the matter lay over till its consideration again in the year 2012. However, it may be noted that when the Board of the HPGCL in its meeting held on 17.08.2012 approved the proposal to bring about parity once again, it was yet again subjected to the approval of the Haryana Bureau of Public Enterprises, resulting in the restriction thereof as per the decision of the said body. The matter then came before this Court and by the common order dated 23.04.2015 passed in CWP-23816-2013 and CWP-24965-2013, this Court held that the Haryana Bureau of Public Enterprises had no role to play in the matter and set aside its decision to restrict the benefit to be conferred upon the Accounts Clerks in HPGCL.

(18) At this stage it may be noted that the financial constraints, if any, faced by the HPGCL would not be germane at this stage to decide the date from which Accounts Clerks should be given benefit in terms of the decisions of the Board of the HPGCL itself. Having taken such a decision, it is not open to the HPGCL to now seek to restrict the same on the ground that it is facing huge financial losses. As long as it avails the services of the petitioners and given the admitted stand that it chose to bring about parity of pay scales, be it for whatever reason, the HPGCL cannot fight shy of giving effect to its own decision on monetary considerations. Significantly, the pay scales of Section Officers in the HPGCL were revised to bring them on par with the pay scales of Section Officers in State service w.e.f. 01.01.2006 as proposed in the year 2009 and the same was given effect to by the Board of the HPGCL, *vide* its decision in the 93rd meeting held on 21.10.2013.

(19) In this regard, this Court cannot ignore the irrefutable fact that the HPGCL itself had resolved as long back as on 04.11.2009 to bring about parity between the Accounts Clerks in its service with Accounts Clerks in State service. The only reason why the said Resolution dated 04.11.2009 was not given effect was the rejection thereof by the Haryana Bureau of Public Enterprises in 2010. However, as it is now settled that the Haryana Bureau of Public Enterprises had no role to play whatsoever in such decision-making by the HPGCL, there is no reason why the petitioners should be denied the benefit of pay revision at least from that date. Pertinent to note, even in the year

2012, the proposal put up by the HPGCL, *vide* its letter dated 03.09.2012 addressed to the Government, was that such parity should be implemented with effect from 01.01.2006. The HPGCL now seeks to conveniently ignore that fact and also its earlier decision dated 04.11.2009 and seeks to revise the date of giving effect to such proposal by bringing it forward to 17.08.2012. However, as already stated *supra*, when the later decision of the Board was subjected to the very same approval process before the Haryana Bureau of Public Enterprises, the same was set at naught by this Court. In such circumstances, there is no reason why the earlier decision of the Board should be discredited, notwithstanding the fact that the same was not subjected to challenge at any point of time. Be it noted that there is no material available on record to show that such rejection was ever made known to the petitioners, whereby they can now be accused of delay and laches.

(20) The HPGCL is accordingly directed to implement its decision to bring about parity of pay scales of its Accounts Clerks with the Accounts Clerks in the Irrigation Department of the State w.e.f. 04.11.2009, being the date of its initial decision to do so. The arrears of such revised pay shall be worked out and disbursed to the petitioners. As it is stated that the HPGCL effected recoveries after the passing of the impugned orders and also gave effect to its later decision to implement such parity from 17.08.2012, the HPGCL shall undertake the exercise of working out the actual dues payable to the petitioners and other Accounts Clerks in its service in terms of this order and take steps to release the balance amounts due to them. In the light of the aforesaid direction to undertake this exercise, no orders are required to be passed at this stage in CM-5729-CWP-2018 filed by the petitioners seeking initiation of contempt proceedings in relation to the order dated 28.11.2017 passed by this Court vis-à-vis the proposed recovery. The exercise, as directed above, shall be completed expeditiously and in any event, not later than eight weeks from the date of receipt of a copy of this order.

(21) The writ petition is allowed to the extent indicated above. CM-5729-CWP-2018 is closed. Pending miscellaneous applications, if any, shall also stand closed. There shall be no order as to costs.

Tribhuvan Dahiya