

consumption, it cannot be *prima facie* held that the sample of Haldi powder taken in the instant case, from the present petitioner was adulterated, within the meaning of Section 2(1) (f) of the Act. Besides, the report of the Public Analyst does not reveal that uric acid test, or, any other reliable test was conducted in order to give a definite opinion that the sample of Haldi powder sent for analysis in the present case was insect-infested or on account of presence of insects the same was unfit for human consumption.

(10) For the foregoing reasons, the complaint (Annexure P-1) and consequent proceedings taken thereunder pending in the trial Court at Jalandhar cannot be legally sustained and the same are directed to be quashed and this petition is accordingly allowed.

P.C.G.

Before : Gokal Chand Mital & Amarjeet Chaudhary, JJ.

P. L. GOYAL,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 16386 of 1989.

30th May, 1990.

Constitution of India, 1950—Arts. 14 & 16—Panjab Superior Judicial Service Rules, 1963—Rl. 13—Principle of Equality as enshrined in the Constitution—Applicability of such principle—Rule found arbitrary and unreasonable—Validity of such rule—Rule ultra vires.

Held, that a member of the Subordinate Judicial Service, on promotion to the Superior Judicial Service, has to do judicial work of higher responsibility and no rule will stand the test of reasonableness or rule of equality, if on promotion, the pay scale has to be reduced. In this view of the matter, we will have to test the vires of Rule 13 of the Punjab Superior Judicial Service Rules, 1963 whether in the present context it can stand the test of rule of equality contained in Articles 14 and 16 of the Constitution. Since Rule 13 of the Rules comes in the way of the petitioner in getting at least the same pay scale which he was getting as a member of the Subordinate Judicial Service, we are of the considered opinion that

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Rule 13(1) of the Rules, deserves to be strick down as it violates the rule of equality enshrined in Articles 14 and 16 of the Constitution and we order accordingly.

(Paras 8 & 10)

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) it be declared that a Member of the Subordinate Judicial Service when promoted to the Superior Judicial Service is entitled to a scale higher than Rs. 4100—5300 and that the grant of pay scale of Rs. 3200—4700 or 3900—5000 is arbitrary and unfair;
- (iii) a suitable Writ Direction or Order be issued quashing the order at Annexure 'P-5';
- (iv) it be declared that the petitioner and other members of Service are entitled to all the consequential benefits which may accrue on the decision of the present writ petition;
- (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;
- (vii) the costs of this writ petition may also be awarded to the petitioner.

J. L. Gupta, Sr. Advocate with Nidhi Gupta, Advocate, S. K. Sood, D.A. Haryana, for the Respondents.

Ashok Bhan, Sr. Advocate with Punit Jindal, Advocate, for Respondent No. 3.

JUDGMENT

Gokal Chand Mital, J.

(1) A member of the Haryana Superior Judicial Service has pointed out the anomaly and thereby hardship caused to him in the pay scale allowed to him with effect from 1st January, 1986 as a result of which his pay scale on promotion from Subordinate

Judicial Service to Superior Judicial Service has been reduced from Rs. 4,100—5,300 to Rs. 3,200—4,700. This is challenged in this writ petition on the anvil of Articles 14 and 16 of the Constitution of India.

(2) P. L. Goyal, as a member of the Haryana Subordinate Judicial Service, was drawing pay in the Selection Grade of Rs. 4,100—5,300 with effect from 1st January, 1986. On 4th May, 1988, he was promoted as Additional District and Sessions Judge. On 3rd May, 1988, that is, as a member of the Subordinate Judicial Service, he was in the pay scale of Rs. 4,100—5,300 and his basic pay was Rs. 4,475 and inclusive of other allowances etc. his total pay was Rs. 4,980.

(3) On promotion to the Superior Judicial Service on 4th May, 1988, he was placed in the scale of Rs. 3,200—4,700 and his basic pay was fixed at Rs. 3,825. It is true that the difference in basic pay was protected as his 'personal pay', but the same was to be adjusted against the annual increments or till he was confirmed in the Superior Judicial Service, whichever was earlier. The decrease in the pay scale and the loss of annual increments is the basis of challenge in the writ petition.

(4) Earlier to the revision of pay scale made on 1st January, 1986, the Selection Grade of Subordinate Judicial Service was less than the pay scale of Superior Judicial Service. The anomaly and discrimination in the pay scales occurred with effect from 1st January 1986, the date with effect from which the pay scales of Subordinate and Superior Judicial Services were revised. The pay scale of the member of the Superior Judicial Service was being equated with the senior scale of I.A.S. by virtue of Rule 13 of the Punjab Superior Judicial Service Rules, 1963 (hereinafter called the Rules), as applicable to the State of Haryana and since the senior pay scale of I.A.S. happened to be lower than the Selection Grade of Subordinate Judicial Service in the State of Haryana, the petitioner was placed in a lower time scale. The senior scale allowed to I.A.S. with effect from 1st January, 1986 is as under :—

(1) Grade of Rs. 3,200—4,700.

(2) Grade of Rs. 3,950—5,000 (After 9 years of service).

Rule 13(1) of the Rules is as under:—

“13(1) *Pay of members of Service :*

The scale of pay of the members of the Service other than those placed in Selection Grades, shall be senior scale of

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the I.A.S. as allowed from time to time and their pay in the aforesaid scale shall be fixed in accordance with the rules and instructions that have been issued or may hereinafter issued by the Government of India with regard to fixation of pay in the senior scale of the Indian Administrative Service.”

(5) In view of the above rule and the revision made in the senior scale of I.A.S. with effect from 1st January, 1986, the pay of the petitioner, on promotion to the Superior Judicial Service, was fixed in the grade of Rs. 3,200—4,700. That is why this writ petition.

(6) The matter was considered on the Administrative side by the High Court and the High Court found the anomaly and the discrimination meted out to the members of the Superior Judicial Service *vis-a-vis* the Selection Grade of the Subordinate Judicial Service, and recommended to the State Government to fix the pay of the members of the Superior Judicial Service in the grade of Rs. 4,500—5,700. The State Government declined the recommendation of the High Court without giving any justifiable reasons. Again in reply to the writ petition, the stand of the High Court is that discrimination has been meted out to the petitioner and other members of the Superior Judicial Service in Haryana and it is again suggested that they should be allowed the grade of Rs. 4,500—5,700.

(7) The stand of the State Government is on the basis of Rule 13 quoted above. However, there is no answer to the discrimination caused to the petitioner because while as a member of the Subordinate Judicial Service he was placed in the scale of Rs. 4,100—5,300 whereas on promotion he has been placed in a lower scale of Rs. 3,200—4,700. There is obviously anomaly in this and it not only causes hardship to the petitioner, it does not stand the test of Articles 14 and 16 of the Constitution of India and the reduction in the pay scale will have to be quashed to bring the members of the Superior Judicial Service at least at par with the Selection Grade of the Subordinate Judicial Service, of course, with necessary direction to the State Government to re-fix the pay scale of the members of the Superior Judicial Service so that the discrimination and hardship caused to them is removed.

(8) It cannot be disputed “that a member of the Subordinate Judicial Service, on promotion to the Superior Judicial Service, has

to do judicial work of higher responsibility and no rule will stand the test of reasonableness or rule of equality, if on promotion, the pay scale has to be reduced. In this view of the matter, we will have to test the vires of Rule 13 of the Rules whether in the present context it can stand the test of rule of equality contained in Articles 14 and 16 of the Constitution.

(9) A person, who is junior to the petitioner in the Subordinate who is senior to the petitioner but was ignored for promotion to the Superior Judicial Service because of his service record, would continue to get the grade of Rs. 4,100—5,300 with annual increments to reach the highest limit of the time scale; whereas the petitioner, on promotion, though his pay which he was getting as a member of the Subordinate Judicial Service has been protected would be denied the annual increments till in the lower time scale the protected pay gets adjusted. This is on the face of it unreasonable, arbitrary and does not stand the test of rule of equality.

(10) Since Rule 13 of the Rules comes in the way of the petitioner in getting at least the same pay scale which he was getting as a member of the Subordinate Judicial Service, we are of the considered opinion that Rule 13 (1) of the Rules, deserves to be struck down as it violates the rule of equality enshrined in Articles 14 and 16 of the Constitution and we order accordingly.

(11) An I.A.S. officer in 5th or 6th year of service has been allowed senior scale of Rs. 3,200—4,700 and Selection Grade of Rs. 4,800—5,700; super-time scale of Rs. 5,900—6,700; above super-time scale of Rs. 7,300—7,600 and fixed salary of Rs. 3,000 with effect from 1st January, 1986. A member of the Superior Judicial Service gets promoted to this post normally after 15 years of service. Keeping that in view, this Court on administrative side had suggested to the State Government to fix the pay of the members of the Haryana Superior Judicial Service in the scale of Rs. 4,500—5,700, which appears to us to be reasonable.

(12) In the State of Punjab, the pay scale of a member of the Superior Judicial Service goes up to Rs. 5,600 with effect from 1st January, 1986; whereas in the State of Haryana the pay scale of similar officer goes up to Rs. 4,700. The Supreme Court had also indicated in the case of *B. S. Yadav* that the service rules of the Judicial Officers in the States of Haryana and Punjab should be same since they are under the same High Court but the two Governments have not been able to sit together to remove the

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disparity and the anomalies in the Service Rules of the two States. This also shows that the members of the Superior Judicial Service with regard to pay scales are being treated differently in the State of Haryana in view of Rule 13 (1) of the Rules.

(13) For the reasons recorded above, we allow the writ petition and declare Rule 13 (1) of the Rules to be *ultra vires* Articles 14 and 16 of the Constitution of India and direct that the petitioner and other similarly situated members of the Haryana Superior Judicial Service shall continue to get the pay scale of Rs. 4,100—5,300 which they were getting immediately before being promoted to the Superior Judicial Service. This Court can only remove the discrimination and this is the only way open to us to do so. Accordingly, we issue a writ of *mandamus* that the petitioner would continue to get the pay scale of Rs. 4,100—5,300 even on promotion made on 4th May, 1988 and his arrears in accordance with this judgment and order he paid within a reasonable time, not later than four months from the receipt of this order. Similarly situated other members of the Haryana Superior Judicial Service would also get the benefit of this judgment and similar order and directions are issued in their behalf as well. The petitioner will have his costs which are quantified at Rs. 1,000.

(14) As regards providing proper pay scale and to frame the necessary rules in that behalf, we direct the State Government to do so as early as possible and it will be reasonable for the State Government to create the grade of Rs. 4,500—5,700 for the members of the Haryana Superior Judicial Service as suggested by this Court on the administrative side and since a direction is now being issued on the judicial side, we have no doubt that this time the Government would consider the matter favourably without delay.

S.C.K.

Before : J. V. Gupta, C.J. & R. S. Mongia, JJ.

MALIK CHAND,—Petitioner.

versus

RAM SARUP GUPTA,—Respondent.

Civil Revision No. 2012 of 1987

26th July, 1990.

Haryana Urban (Control of Rent and Eviction) Act, 1973 as amended by Haryana Act No. 14 of 1976—S. 4(2)(a)—Determination of fair rent—Effect of Act 14 of 1976 on such determination, stated—Meaning of the words 'New tenant'.