

STATE OF HIMACHAL PRADESH

v.

SHRI P.D. ATTRI AND OTHERS

FEBRUARY 11, 1999

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Service Law—Redesignation and parity of posts—Himachal Pradesh High Court Officers and Servants (Salaries, Leave, Allowance and Pension) Rules 1971—Punjab and Haryana Establishment (Appointment and Conditions of Service) Rules 1973—Adoption of rules of one State by another State—Redesignation and equation of posts—Senior Translators and Junior Translators of Himachal Pradesh High Court seeking parity in pay scales and redesignation of posts with employees of Punjab and Haryana High Court—Policy and Practice of Himachal Pradesh High Court adopting pay scales with Punjab and Haryana High Court, whether binds the State to follow rules made by the other State—Held, while a State may adopt the pay scales sanctioned for employees in another State from time to time, it is not bound to so follow—Rules of each High Court have to be examined independently—Recommendations of the Chief Justice of the High Court are, however, to be given due deference and utmost consideration by State Government.

Senior Translators and Junior Translators working in the Himachal Pradesh High Court approached the High Court in a writ petition seeking redesignation as Revisers and Translators, and equation of their posts with Superintendents Grade II and Assistants in the Himachal Pradesh Civil Secretariat with effect from 23.1.75. When relevant provisions of the Punjab and Haryana Establishment (Appointment and Conditions of Service) Rules 1973 (P&H Rules) were notified on 23.1.86 with effect from 25.9.85, redesignating and equating the posts, these posts were similarly equated in the Himachal Pradesh High Court by the Chief Justice after obtaining approval of the Governor by notification dated 17.6.87 with effect from 25.9.85. After the decisions of the Punjab and Haryana High Court in *Sunder Sham Kapur v. Hon'ble Chief Justice*, (1987) 4 SLR 460, the P&H Rules were given effect to from 23.1.75 instead of 25.9.85. The respondents represented on that basis to the Chief Justice of the Himachal Pradesh High Court, who recommended their case to the State Government for

A obtaining approval of the Governor. Since no approval was received from the Governor, the respondents filed the writ petition.

B It was conceded before the High Court that since as per policy and practice, the State Government adopted the pay scales sanctioned for the officers and servants of the Punjab and Haryana High Court, the Chief Justice of the Himachal Pradesh High Court had recommended redesignation and equation of posts from 23.1.75, guided by the decision of the Punjab and Haryana High Court in *Sunder Sham Kapur's* case.

C The State, in appeal before this Court, challenged the judgment of the High Court.

D *Sunder Sham Kapur* having been reversed by this Court while holding that the Revisors earlier designated as Translators would be entitled to revised pay scale from 5.8.80 and not from 23.1.75, it was submitted for the respondents that they would be satisfied if they were held entitled to similar pay scale as provided to their counterparts in the Punjab and Haryana High Court with effect from 5.8.80.

Allowing the appeal, this Court

E Held : 1. Rules of each High Court have to be examined independently. There cannot be any such law that Himachal Pradesh High Court has to *suo motu* follow the same rules as applicable to the employees working in the Punjab and Haryana High Court. One State is not bound to follow the rules and regulations applicable to the employees of the other State or if it had adopted the same rules and regulations, it is not bound to follow every change brought in the rules and regulations in the other State. The State of Himachal Pradesh as per "policy and practice" had been adopting the same pay scales for the employees of the High Court as sanctioned from time to time for the employees of the Punjab and Haryana High Court, and it may even now follow to grant pay scales, but no law commands it to do so. [591-H; 592-C]

H *Sunder Sham Kapur v. Hon'ble Chief Justice, (1987) 4 SLR 460 and Punjab and Haryana High Court, Chandigarh through its Registrar v. Sunder Sham Kapoor, [1997] 9 SCC 174, referred to.*

2. The fact remains that when the Chief Justice of the Himachal Pradesh High Court made recommendations to Governor to redesignate/equate the posts, no decision was communicated, which led the respondent to approach the High Court on its judicial side. Recommendations of the Chief Justice of the High Court are to be given due deference and utmost consideration by the State Government. The State Government is to consider the recommendation and communicate a decision at an early date. [593-C; 595-A]

Supreme Court Employees Welfare Association v. Union of India, [1989] 4 SCC 187 and *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal*, JT (1998) 2 SC 1, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2033 of 1996.

From the Judgment and Order dated 21.5.92 of the Himachal Pradesh High Court in C.W.P. No. 43 of 1990.

B. Dutta, N.K. Sharma for the Appellant.

A Mariarputham for M/s. Arputham, Aruna & Co. for the Respondents.

The Judgment of the Court was delivered by

D.P. WADHWA, J. State of Himachal Pradesh in this appeal has challenged the judgment dated May 21, 1992 of the Division Bench of the High Court of Himachal Pradesh (hereinafter referred to as the 'High Court') allowing the writ petition filed by certain categories of employees of the High Court seeking parity in pay scale from a particular date and redesignation of their posts with the employees of the Punjab & Haryana High Court. High Court by the impugned judgment directed the State Government "to accord and convey the approval for the redesignation and equation of the posts of senior Translators and Junior Translators with Revisers and Translators and equate them with the posts of Superintendents Grade-II and Assistants in the Himachal Pradesh Civil Secretariat from 23.1.1975 within two months from today and on receiving this approval, the second respondent will take the consequential steps within one month thereafter and grant such other and further reliefs to the petitioners

A that may flow out of the same".

B In coming to this decision, High Court was guided by the decision of
the Punjab & Haryana High Court in the *Sunder Sham Kapur & Ors. v. Hon'ble Chief Justice & Ors.*, (1987) 4 SLR 460. On the basis of this
C judgment, Chief Justice Punjab & Haryana High Court had directed that
the petitioners therein were entitled to the benefit of redesignation and
equation of the posts of Senior Translators and Junior Translators from
23.1.1975. It was conceded before the High Court that since as per policy
and practice, the State Government was adopting the pay-scales sanctioned
D for the officers and servants of the Punjab & Haryana High Court and
accordingly the Chief Justice of the High Court had similarly recom-
mended for the redesignation and equation of the posts in question from
23.1.1975. The aforesaid judgment of the Punjab & Haryana High Court
in *Sunder Sham Kapur's* case (supra) has been reversed by this Court in
Punjab & Haryana High Court, Chandigarh through its Registrar v. Sunder
Sham Kapoor & Ors., [1997] 9 SCC 174. This Court said that Revisors
earlier designated as Translators would be entitled to revised pay-scale
E from 5.8.1980 as per the order dated 17.11.1987 and not from 23.1.1975. At
the beginning of arguments, it was submitted before us by the respondents
that they would be satisfied if this Court ordered that the respondents in
the present case working in the High Court would be held entitled to
similar pay-scale as provided to their counterparts in the Punjab &
Haryana High Court w.e.f. 5.8.1980. We do not, however, think it is as
simple as that.

F The respondents before us are employees working in the estab-
lishment of the High Court as Senior Translators and Junior Translators.
They are governed by the Himachal Pradesh High Court Officers and
Servants (Salaries, Leave, Allowance and Pension) Rules, 1971 (for short,
the Rules). Similar posts in the establishment of the Punjab & Haryana
G High Court are governed by Punjab & Haryana High Court Establishment
(Appointment and Conditions of Service) Rules, 1973. Relevant provisions
of these Rules of Punjab and Haryana High Court were given effect in that
High Court w.e.f. 25.9.1985 as per notification dated 23.1.1986 after receiv-
ing approval of the President of India under clause (2) of Article 229 read
with Article 231 of the Constitution. As a result, posts of Senior Translators
H were redesignated as Revisors and equated with the posts of 'Superinten-

dent Grade-II in the Establishment of the Punjab Civil Secretariat. Similarly posts of Junior Translators were redesignated as Translators and equated with the posts of Assistant in the Establishment of the Punjab Civil Secretariat. Consequent upon the redesignation of these posts in Punjab & Haryana High Court, these posts were similarly redesignated/equated in the High Court by the Chief Justice after obtaining approval from the Governor of the State. That was by notification dated 17.6.1987. Respondents were given their new designations and scale of pay from 25.9.1985.

Subsequently, Notification dated 23.1.1986 issued by the Punjab & Haryana High Court was superseded by another Notification dated 8.10.1987 whereby Punjab & Haryana High Court Establishment (Appointment and Service Conditions) Rules, 1973 were given effect from 23.1.1975 instead of 25.9.1985. This was done there because of the decision of the Punjab & Haryana High Court in the case of *Sunder Sham Kapur's* case (supra) as above mentioned. However, on that basis respondents represented to the Chief Justice of the High Court to allow them similar benefits from 23.1.1975. Their case was recommended by the Chief Justice to the State Government for obtaining approval of the Governor of the State for redesignation/equation of the posts of Senior Translators and Junior Translators from 23.1.1975 instead of 25.9.1985. Since no approval was received from the Governor of the State as recommended by the Chief Justice of the High Court, the respondents filed writ petition in the High Court under Article 226 of the Constitution for redressal of their grievance. By the impugned judgment High Court agreed with their stand.

Case of the respondents is not based on any Constitutional or any other legal provisions when they claim parity with the posts similarly designated in the Punjab & Haryana High Court and their pay-scales from the same date. They do not allege any violation of any Constitutional provision or any other provision of law. They say it is so because of "accepted policy and common practice" which according to them are undisputed. We do not think we can import such vague principles while interpreting the provisions of law. India is a union of States. Each State has its own individualistic way of governance under the Constitution. One State is not bound to follow the rules and regulations applicable to the employees of the other State or if it had adopted the same rules and regulations, it is not bound to follow every change brought in the rules and regulations in

A the other State. The question then arises before us is if the State of Himachal Pradesh has to follow every change brought in the States of Punjab & Haryana in regard to the rules and regulations applicable to the employees in the States of Punjab & Haryana. The answer has to be in negative. No argument is needed for that as anyone having basic knowledge of the Constitution would not argue otherwise. True, the State as per "policy and practice" had been adopting the same pay-scales for the employees of the High Court as sanctioned from time to time for the employees of the Punjab & Haryana High Court and it may even now follow to grant pay-scales but is certainly not bound to follow. No law commands it to do so.

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The State of Punjab was reorganised into States of Punjab, Haryana and Himachal Pradesh, to begin with, was a Union Territory and was given the status of full statehood in 1970. Since employees of the composite States of Punjab were taken in various Departments of the State of Himachal Pradesh in order to safeguard the seniority, pay-scales etc., the State of Himachal Pradesh followed the Punjab pattern of pay-scales. After attaining the status of full statehood, High Court of Himachal Pradesh formulated its own rules and regulations for its employees. It adopted the pattern of Punjab & Haryana High Court rules of their employees. When Punjab & Haryana High Court gave effect to certain portion of its Rules from 25.9.1985 by notification dated 23.1.1986 as a result of which redesignation of the posts of Senior Translators and Junior Translators were equated to the posts in Punjab Civil Secretariat, the Himachal Pradesh High Court similar effect was given to in its rules for its employees. When the Punjab & Haryana High Court gave effect to those rules from 23.1.1975, the State Government did not agree to the recommendations of the Chief Justice of the Himachal Pradesh High Court to follow the same suit. It is true that till now, Himachal Pradesh High Court has been following the rules applicable to the employees of the Punjab & Haryana High Court and it may go on following those rules as may be amended by the Punjab & Haryana High Court from time to time, but certainly it is not bound to so follow. No law commands the State Government to follow the rules applicable to the employees of the Punjab & Haryana High Court to the employees of the Himachal Pradesh High Court. That being the position, it is not necessary for us to examine different qualifications for appointment to the posts of Senior Translators and Junior Translators that

may exist between Punjab & Haryana High Court and the Himachal Pradesh High Court and also as to the mode of their recruitment/place-
 ment in the service. Moreover, any change in the pay-scales following
 Punjab & Haryana High Court can set in motion chain reaction for other
 employees which may give rise to multiplicity of litigation among various
 categories of employees. Rules of each High Court have to be examined
 independently. There cannot be any such law that Himachal Pradesh High
 Court has to *suo motu* follow the same rules as applicable to the employees
 working in the Punjab & Haryana High Court.

But then the fact remains that when the Chief Justice of the
 Himachal Pradesh High Court made recommendations to the Governor to
 redesignate/equate the posts of Senior Translators and Junior Translators
 in the Himachal Pradesh High Court to those in the Punjab & Haryana
 High Court, no decision was communicated which led the respondent to
 approach the High Court on its judicial side. Recommendations of the
 Chief Justice of the High Court are to be given due deference and utmost
 consideration by the State Government. It certainly cannot sleep over the
 recommendations. Things have now certainly changed after the decision of
 this Court *Sunder Sham Kapoor's* case [1997] 9 SCC 174 where Revisors
 in the Punjab & Haryana High Court are to be given benefit of pay-scale
 of Superintendent (Grade-II) from 5.8.1980 from which date the respon-
 dents are agreeable to the benefits granted to them. We may again observe
 and commend to the State Governments, the following observations of this
 Court in *Supreme Court Employees Welfare Association v. Union of India*,
 [1989] 4 SCC 187 para 57 :

"57. So far as the Supreme Court and the High Courts are con-
 cerned, the Chief Justice of India and the Chief Justice of the
 concerned High Court, are empowered to frame rules subject to
 this that when the rules are framed by the Chief Justice of India
 or by the Chief Justice of the High Court relating to salaries,
 allowances, leave or pensions, the approval of the President of
 India or the Governor, as the case may be, is required. It is
 apparent that the Chief Justice of India and the Chief Justice of
 the High Court have been placed at a higher level in regard to the
 framing of rules containing the conditions of service. It is true that
 the president of India cannot be compelled to grant approval to

A the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the President of India and the Chief Justice of India."

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C This Court again in *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal & Anr.*, JT (1998) 2 SC 1 restated what a State Government is expected to do when recommendations are made by "Chief Justice of the High Court in following words :

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"Since, under the Constitution, Chief Justice has also the power to make rules regulating the conditions of service of the officers and servants of the High Court, it is obvious that he can also prescribe the scale of salary payable for a particular post. This would also include the power to revise the scale of pay. Since such a rule would involve finances, it has been provided in the Constitution that it will require the approval of the Governor which, in other words, means the State Government. This Court in *State of Andhra Pradesh & Anr. v. T. Gopalakrishnan Murthi & Ors.*, AIR (1976) SC 123 = [1976] 1 SCR 1008, had expressed the hope that "one should accept in the fitness of things and in view of the spirit of Article 229 that the approval, ordinarily and generally, would be accorded." This was reiterated by this Court in *Supreme Court Employees Welfare Association v. Union of India*, JT (1989) 3 SC 188 = AIR (1990) SC 334 = [1989] 3 SCR 488 = [1989] 4 SCC 187. We again reiterate the hope and feel that once the Chief Justice, in the interest of High Court administration, has taken a progressive step specially to ameliorate the service conditions of the officers and staff working under him, the State Government would hardly raise any objection to the sanction of creation of posts or fixation of salary payable for that post or the recommendation for revision of scale of pay if the scale of pay of the equivalent post in the Government has been revised."

Recommendations of the Chief Justice of the Himachal Pradesh High Court should be considered by the State Government having regard to the observations made above and decision taken at an early date. A

With the observations aforesaid, this appeal is, however, allowed and impugned judgment is set aside. Parties shall bear their own costs.

U.R.

Appeal allowed. B