

A STATE OF HIMACHAL PRADESH AND ANR.  
v.  
TILAK RAJ  
(Civil Appeal No. 9124 of 2014)

B SEPTEMBER 1, 2014

[ANIL R. DAVE AND UDAY UMESH LALIT, JJ.]

*Service Law - Pay - Pay scales - Claim for pay scale as paid to persons belonging to higher cadre - Allowed by High Court - Propriety - Held: Not proper - High Court should not have entertained the petitions where disputed questions of fact were required to be examined - Without examining relevant evidence regarding exact nature of work, working conditions and other relevant factors, normally such exercise should not have been carried out by the High Court under its writ jurisdiction - Relevant exercise was not carried out by the High Court in the instant case.*

*Service Law - Pay - Pay scales - Fixation of - Held: Should be left to an expert body like Pay Commission or other similar body.*

**By virtue of the impugned judgments, the State of Himachal Pradesh was directed to give higher pay scale to the respondents -Laboratory Attendants, who had filed petitions claiming higher pay scale on the ground that in the case of Madan Gopal, the persons who had been similarly situated, had been given higher pay scale.**

**Allowing the appeals, the Court**

**HELD:1.1. The respondents had prayed for pay scale which was being given to persons holding a promotional post (Laboratory Assistant) by contending that the nature of work was similar. However, the posts of Laboratory**

Attendant and Laboratory Assistant are different and therefore, the respondents could not have been paid pay scale which was being paid to the persons belonging to a higher cadre. [Para 21] [604-A-C]

1.2. The High Court should not have entertained the petitions where disputed questions of fact were required to be examined. Without examining relevant evidence regarding exact nature of work, working conditions and other relevant factors, it is not possible to come to a conclusion with regard to similarity in the nature of work done by persons belonging to different cadres and normally such exercise should not be carried out by the High Court under its writ jurisdiction. It is settled law that the work of fixing pay scale is left to an expert body like Pay Commission or other similar body. Moreover, qualifications, experience, etc. are also required to be examined before fixing pay scales. Such an exercise was not carried out in this case by the High Court. [Para 22] [604-G-H; 605-A-B]

*S.C. Chandra v. State of Jharkhand (2007) 8 SCC 279: 2007 (9) SCR 130 - relied on.*

*Madan Gopal v. State of H.P., C.W.P. (T) No. 2346 of 2008; Director General of Police and others v. Mrityunjoy Sarkar and others AIR 1997 SC 249: 1996 (3) SCR 530 - referred to.*

**Case Law Reference:**

C.W.P. (T) No.2346 of 2008 referred to Para 3

1996 (3) SCR 530 Referred to Para 7

2007 (9) SCR 130 Relied on Para 22

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9124 of 2014.

A WITH

C.A. Nos. 9125, 9126, 9127, 9128, 9129, 9131 and 9133-9138 of 2014.

B From the Judgment and Order dated 07.05.2010 in CWP No. 1862 of 2010 of the High Court of H.P. at Shimla.

Pragati Neekhra, Himinder Lal, Vikas Mahajan, Vinod Sharma Bhaskar Y. Kulkarni, for the Appellants.

The Judgment of the Court was delivered by

C **ANIL R. DAVE, J** 1. Leave granted.

D 2. Being aggrieved by the Judgment delivered in C.W.P.No.1862 of 2010 and other judgments by the High Court of Himachal Pradesh at Shimla, these appeals have been filed by the State of Himachal Pradesh. Issues involved in all these appeals are almost same and therefore, all these appeals have been heard together.

E 3. By virtue of the impugned judgments, the State of Himachal Pradesh has been directed to give higher pay scale to the respondents -original petitioners, who had filed petitions claiming higher pay scale on the ground that in the case of *Madan Gopal v. State of H.P.*, C.W.P. (T) No.2346 of 2008, the persons who had been similarly situated, had been given higher pay scale.

F 4. The aforesaid submission was accepted by the High Court and all the petitions filed by the present respondents had been allowed mainly on the ground that similarly situated persons, namely Madan Gopal and others had been given higher pay scale by the High Court.

G 5. The learned counsel appearing for the appellant-State has submitted that the impugned judgments are not just and proper for the reason that the High Court was not properly informed about the facts in the above mentioned petitions filed before the court and the case of Madan Gopal, on the basis of which the High Court had allowed all the petitions.

H 6. So as to understand the issue involved in these appeals,

it is necessary to know the facts involved in the case of Madan Gopal vs. State of H.P. A

7. Civil Suit No.191 of 1986 had been filed in the court of sub-Judge First Class, Hoshiarpur by Shri Gurdev, a Laboratory Attendant, making an averment to the effect that the nature of work performed by him was similar to that of the work done by the matriculate Laboratory Attendant and therefore, he should be paid salary which was being paid to other persons doing similar work on the principle of 'equal pay for equal work' laid down by this Court in the case of *Director General of Police and others v. Mrityunjoy Sarkar and others*, AIR 1997 SC 249. B C

8. It had been contended in the said suit, viz. *Gurdev v. The State of Punjab*, that the plaintiff was a matriculate and was given pay scale of Rs.75-105, whereas other persons doing similar work were put in the pay scale of Rs.100-106 (the said pay-scales had been subsequently revised). It was the case of the plaintiff that though he was a matriculate, he was given appointment as a Laboratory Attendant in the department of Industrial Training and Technical Education by the Government of Punjab. Other Laboratory Attendants were being given pay scale of Rs.100-106, though their qualification and the qualification of the plaintiff were the same. The case of the defendant-Government in the said case was that the plaintiff, though a matriculate, was recruited for a non-matriculate post and therefore, he was paid less salary than what was being paid to the matriculate Laboratory Attendants. D E F

9. Ultimately, the said suit had been decreed on the ground that the plaintiff, though a matriculate, was recruited to a non-matriculate post but was doing work which was done by other matriculate Laboratory Attendants and therefore, on the principle of 'equal pay for equal work' the plaintiff ought to have been given pay scale which was given to matriculate Laboratory Attendants. G

10. First appeal filed against the aforestated judgment H

A delivered in Civil Suit No.191 of 1986 had been dismissed and even the Second Appeal had also been dismissed on 18th December, 1989

B 11. On the basis of the above judgment, several Laboratory Attendants had filed petitions and they had also succeeded. One such petition was filed by Shri Madan Gopal. His petition, CWP(T) No.2346 of 2008 was also allowed, believing that the facts of his case and the facts of the plaintiff, who had filed the aforesaid suit were similar.

C 12. The learned counsel for the State has submitted that the facts in the case of Shri Gurdev vs. The State of Punjab and the facts involved in the present appeals are quite different.

D 13. Shri Gurdev was appointed by the Government of Punjab and though he was a matriculate, he was recruited to a post which was meant for a non matriculate. Upon examination of the facts, the court had come to a conclusion that the nature of work done by the said plaintiff and other matriculate Laboratory Attendants was same and therefore, Shri Gurdev E had succeeded in the suit.

F 14. It has been further submitted that most of the respondents in the instant case were appointed as Laboratory Attendants with a qualification of standard 8th pass in the pay scale of Rs.750-1350 (revised). There is another post in the Education Department of Laboratory Attendant having different nature of work in the pay scale of Rs.810-1440 (revised). In the department wherein the respondents are working, there is a promotional post of Laboratory Assistant, which carries pay scale of Rs.950-1800 (revised).

G 15. The respondents in the instant case had claimed in the High Court that instead of Rs.750-1350 (revised) pay scale, they should be put in the pay scale of Rs.950-1800 (revised), which is a pay scale given to Laboratory Assistants, which is a H promotional post.

16. It is a fact that all the respondents were not matriculate at the time they had been appointed and it is crystal clear that in the State of Himachal Pradesh post of Laboratory Attendant and post of Laboratory Assistant are different. Nature of work done by the persons in these two different cadres is different. Even qualifications required for appointment to both the posts are different. Qualification required for being appointed to the post of Laboratory Attendant was passing of Standard eight at the relevant time and the post of the Laboratory Assistant is a promotional post requiring higher educational qualification.

17. In the circumstances, it has been submitted by the learned counsel that the respondents are not entitled to higher scale of pay and the High Court was in error while allowing their petitions on the ground that in the case of *Madan Gopal vs. State of H.P.* the petitioner of the said case had been given higher pay scale.

18. The learned counsel has successfully distinguished facts in the case of *Shri Gurdev vs. The State of Punjab* on the basis of which the case of *Madan Gopal vs. State of H.P.* had been decided. In the circumstances, the impugned judgments should be quashed and set aside and the appeals should be allowed.

19. On the other hand the learned counsel appearing for the respondents has supported the reasons given by the High Court in the impugned judgments and has submitted that the respondents have been rightly awarded higher pay scale by the High Court and therefore, the appeals should be dismissed.

20. We have heard the learned counsel and have also perused the judgment delivered in Civil Suit No.191 of 1986 by the sub Judge First Class, Hoshiarpur and the impugned judgments.

21. In our opinion, facts in the present cases are absolutely different. The qualifications of the respondents before this Court

A and Shri Gurdev, who had filed the aforesaid suit are different. It is clear that the respondents had prayed for pay scale which was being given to persons holding a promotional post by contending that the nature of work was similar. It is pertinent to note that pay scale of Laboratory Attendants in different departments are different and the qualifications of the respondents are also different. As Laboratory Attendants, the respondents were in the pay scale of Rs.750-1350 (revised) whereas upon getting promotion to the post of Laboratory Assistant, they would be getting pay scale of Rs.950-1800 (revised). It is, thus, clear that the posts of Laboratory Attendant and Laboratory Assistant are different and therefore, the respondents could not have been paid pay scale which was being paid to the persons belonging to a higher cadre.

22. It is also clear that disputed question of facts were involved in the petitions because according to the respondents, who were petitioners before the High Court, nature of work done by them was similar to that of the work of other Laboratory Attendants or Laboratory Assistants. Without looking at the nature of work done by persons working in different cadres in different departments, one cannot jump to a conclusion that all these persons were doing similar type of work simply because in a civil suit, one particular person had succeeded after adducing evidence. There is nothing on record to show that the High Court had examined the nature of work done by the respondents and other persons who were getting higher pay scale. The High Court had also not considered the fact that qualifications required for appointment to both the posts were different. In our opinion, the High Court should not have entertained all these petitions where disputed questions of fact were required to be examined. Without examining relevant evidence regarding exact nature of work, working conditions and other relevant factors, it is not possible to come to a conclusion with regard to similarity in the nature of work done by persons belonging to different cadres and normally such exercise should not be carried out by the High Court under its

writ jurisdiction. It is settled law that the work of fixing pay scale is left to an expert body like Pay Commission or other similar body, as held by this Court in several cases, including the case of *S.C. Chandra v. State of Jharkhand* (2007) 8 SCC 279. Moreover, qualifications, experience, etc. are also required to be examined before fixing pay scales. Such an exercise was not carried out in this case by the High Court.

23. For the aforesaid reasons, we are of the view that the respondents could not have been awarded higher pay scale simply because Shri Gurdev had succeeded in a civil suit filed by him. The impugned judgments, therefore, deserve to be quashed and set aside. We, however, clarify that if the respondents are aggrieved by the salary which is paid to them, it is open to them to approach an appropriate forum for redressal of their grievances.

24 The appeals are allowed with no order as to costs.

Bibhuti Bhushan Bose

Appeals allowed.