



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.5455 of 2019

Decided on: 13th April, 2023

Ramesh Chand Verma

.....**Petitioner**

Versus

H.P. Agro Industries Corporation Ltd.
and others

.....**Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr. Bhuvnesh Sharma, Senior
Advocate with Mr. Parav Sharma,
Advocate.

For the Respondents: None for respondents No.1 and 2.

Mr. Y.P.S. Dhaulta, Mr. Rupinder Singh
Thakur and Mr. Navlesh Verma,
Additional Advocates General with
Ms. Seema Sharma, Deputy Advocate
General, for respondents No.3 and 4.

Mr. Manoj Kumar, Marketing Manager
and Ms. Asha Guleria, Legal Assistant,
present in person alongwith record.

Jyotsna Rewal Dua, Judge

CMP(T) No.161 of 2023

Learned Senior Counsel for the petitioner seeks
permission to withdraw the application with liberty to seek
appropriate remedy for claiming the relief of promotion to
the post of General Manager w.e.f. October, 2009 as this

¹ Whether reporters of print and electronic media may be allowed to see the order? Yes.

prayer is not the part and parcel of the writ petition. The application is accordingly dismissed as withdrawn with liberty aforesaid. All rights and contentions of the parties in that regard are left open.

CWPOA No.5455 of 2019

The petitioner, in essence, has staked his claim to the higher pay scale of Rs.13500-16800/- w.e.f. 02.08.2007 alongwith all consequential benefits. He has also prayed for quashing of the minutes of Service Committee Meeting of respondents No.1 and 2-Corporation held on 26.09.2014, whereby his claim for this pay scale was rejected.

2. Facts:-

2(i). The petitioner was appointed as Chemist in the respondent-Corporation in March, 1983. He was promoted to the post of Manager Production on 04.10.1989. The petitioner was further promoted to the post of Production Manager on 06.03.2003 and placed in the pay scale of Rs.10025-15100/-.

2(ii). In terms of the applicable Recruitment & Promotion Rules (in short 'R&P Rules'), the post of Production Manager was a feeder channel post for further promotion to the post of General Manager in the pay scale

of Rs.13500-16800/-. The post of Chief Finance Officer in the pay scale of Rs.10025-15100/- was also a feeder category post for promotion to the post of General Manager.

Thus, there were two feeder categories for promotion to the post of General Manager (Rs.13500-16800/-), viz. (i) post of Production Manager and (ii) post of Chief Finance Officer, both in the pay scale of Rs.10025-15100/-.

2(iii). One Sh. R.S. Sublaik was holding the post of Chief Finance Officer in the pay scale of Rs.10025-15100/-. The respondents granted him higher pay scale of Rs.13500-16800/- w.e.f. 02.08.2007. Sh. R.S. Sublaik (not a party to this petition) statedly received this higher pay scale till his retirement on 31.05.2010 as Chief Finance Officer.

2(iv). The grievance of the petitioner is that on the analogy of the higher pay scale of Rs.13500-16800/- released by the respondents to Sh. R.S. Sublaik-the Chief Finance Officer, the petitioner also represented for grant of same pay scale to him as he was holding the post of Production Manager in the pay scale of Rs.10025-15100/-. The posts of Production Manager and that of Chief Finance Officer enjoyed this same pay scale till 01.08.2007. The respondents recommended the case of the petitioner for grant of higher pay scale, i.e. at par with the one granted to

Sh. R.S. Sublaik, on 13.06.2008 (Annexure A-2) and thereafter on 31.05.2010 (Annexure A-3). However, the Service Committee of the respondent-Corporation illegally turned down the case of the petitioner for grant of higher pay scale of Rs.13500-16800/- to him on 26.09.2014 vide Annexure A-6. Hence, the writ petition was preferred by the petitioner for grant of following substantive relief:-

“(i) That the office order dated 26.9.2014, whereby the higher pay-scale of Rs.13500-16800/- due to the applicant, has been denied may kindly be quashed and set aside and the respondents may further be directed to grant the higher pay-scale of Rs.13500-16800/- to the applicant w.e.f. 2.8.2007 with all consequential benefits.”

3. Submissions:-

Learned Senior Counsel for the petitioner submitted that the posts of Production Manager and Chief Finance Officer were the feeder category posts for promotion to the post of General Manager. Both these feeder category posts were in the same pay scale of Rs.10025-15100/-. The promotional post of General Manager was in the higher pay scale of Rs.13500-16800/-. Once the pay scale of Sh. R.S. Sublaik, occupying the post of Chief Finance Officer, was raised to Rs.13500-16800/-, then, it was incumbent upon the respondents to have granted the same higher pay scale to the petitioner. Non-release of the higher pay scale to the

petitioner was an act of discrimination on part of the respondents. The petitioner could not have been singled out for denying the benefit of higher pay scale released to his counterpart-Sh. R.S. Sublaik, who was holding the feeder post in the parallel channel of promotion to the post of General Manager.

Learned Additional Advocate General defended the denial of higher pay scale to the petitioner. It was submitted that the posts of Production Manager and Chief Finance Officer were governed by separate set of R&P Rules. The eligibility/educational criteria and other relevant parameters for recruitment/promotion to these two feeder channels were governed by different set of rules. The petitioner cannot claim parity with the pay scale attached to the post of Chief Finance Officer. Learned Additional Advocate General also submitted that even otherwise, the petitioner cannot make a claim for negative parity. The higher pay scale of Rs.13500-16800/- released to Sh. R.S. Sublaik w.e.f. 02.08.2007 was withdrawn by the respondents vide office letter dated 28.08.2010. The pay scale of the post of Chief Finance Officer was brought down from Rs.13500-16800/- to Rs.10025-15100/- w.e.f. 28.08.2010. Hence, with effect from 28.08.2010, the claim

of the petitioner for the grant of higher pay scale does not survive.

4. Conclusions:-

Heard learned counsel for the parties and gone through the material available on record. For the following reasons, the relief prayed for by the petitioner cannot be granted to him:-

4(i). Legal Position:-

While deciding **Civil Appeal No.3892 of 2022 (State of Madhya Pradesh and others Versus Seema Sharma)** on 12.05.2022, Hon'ble Apex Court, following the ratio of law laid down in **(2009) 13 SCC 635 (State of Madhya Pradesh & Ors. vs. Ramesh Chandra Bajpai)**, held that doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced in every way. Mere similarity of designation or similarity in quantum of work was not determinative of equality in the matter of pay scales. The Court has to consider all relevant factors such as the mode of recruitment, qualifications for the post, nature of work, value of work, responsibilities involved and various other factors. It was also held that fixation of pay scales is a matter of policy. The Courts can interfere only in exceptional cases, where there is

discrimination between two sets of employees appointed by the same authority in the same manner where the eligibility criteria is also the same and the duties are also identical in every aspect.

An earlier decision rendered on 07.04.2022 by the Hon'ble Apex Court in **Civil Appeal No.2661/2015 (State of Uttarakhand vs. Sudhir Budakoti & Others)** was reiterated, which held that mere differential treatment on its own cannot be termed as an "anathema to Article 14 of the Constitution". When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one. The object of classification is meant for providing benefits to an identified group of persons, who form a class of their own. When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. There is no way the Courts could act like appellate authorities especially when a classification is introduced by way of a policy decision clearly identifying the group of beneficiaries by analysing the relevant materials. When two identified groups are not equal, certainly they

cannot be treated as a homogeneous group. A reasonable classification would not injure the equality enshrined under Article 14 when there exists an intelligible differentia between two groups having a rational relation to the object. ◇

An interference would only be called for on the Court being convinced that the classification causes inequality among similarly placed persons. The role of the Court being restrictive, generally the task is best left to the concerned authorities. When a classification is made on the recommendation made by a body of experts constituted for the purpose, Courts will have to be more wary of entering into the said arena as its interference would amount to substituting its views, a process which is best avoided.

It will also be relevant to refer to a decision dated 22.02.2023, rendered by the Hon'ble Apex Court in ***Civil Appeal No.8329 of 2011 (Union of India Versus Indian Navy Civilian Design Officers Association and another)***, wherein it was held that the doctrine "equal pay for equal work" is not an abstract doctrine. Equal pay must be for equal work of equal value. The equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is

generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the

Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service. It was also held in the aforesaid judgment that the powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.

4(ii). In the backdrop of above legal position, the facts of the case may now be examined. It is an admitted position that Production Manager and Chief Finance Officer are two separate category of posts in the respondent-Corporation. These two categories of posts are governed by separate set of R&P Rules. In terms of these rules, the educational criteria and age requirement for the two sets of posts are all different. The promotion/recruitment to the posts of Production Manager and Chief Finance Officer is also governed by separate and distinct criteria. Therefore, just because at one point of time, both these posts were in the same pay scale of Rs.10025-15100/- would not mean that these posts are required to be maintained in the same pay scale for all times to come. Grant of higher pay scale to the

post of Chief Finance Officer would not *ipso-facto* mean that the post of Production Manager is also required to be maintained in the same pay scale. The nature of duties assigned to the incumbents holding these two categories of posts are also different. Thus, when two categories of posts, governed by separate R&P Rules, different modes of recruitment, different qualifications and different job profiles, it is then not necessary that they are to enjoy the same pay scales only on the ground that their further channel of promotion is same, i.e. the post of General Manager.

Point is answered accordingly against the petitioner.

4(iii). Insofar as the claim of the petitioner in respect of release of higher pay scale to Sh. R.S. Sublaik, the holder of the post of Chief Finance Officer, is concerned, apart from the discussion in paras 4(i) and 4(ii) above, suffice to observe that the respondents vide office letter dated 28.08.2010 have again scaled down the pay scale of the post of Chief Finance Officer from Rs.13500-16800/- (enjoyed by the incumbent namely Sh. R.S. Sublaik w.e.f. 02.08.2007 till his retirement on 31.05.2010) to Rs.10025-15100/-. Hence, with effect from 28.08.2010, the claim of

the petitioner to the higher scale of Rs.13500-16800/- on the analogy of the higher pay scale having been released to the post of Chief Finance Officer, does not survive. It is also well settled that there cannot be any equality in the matter of illegality. [Refer **SLP(C) No.27633/2017 (Sunil Kumar Soni Versus State of Rajasthan and others)**, decided on 28.03.2023].

5. In view of the above, I find no merit in the claim made by the petitioner. The present petition is accordingly dismissed alongwith pending miscellaneous application(s), if any.

April 13, 2023
Mukesh

Jyotsna Rewal Dua
Judge

High Court