

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**CWPOA No.6207 of 2019****Decided on: 16th September, 2026**

Amar Singh Jaswal

....Petitioner

versus

State of H.P. and others

...Respondents

*Coram****Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.******Whether approved for reporting?¹ Yes.*****For the petitioner: Mr. Tara Singh Chauhan, Senior
Advocate with Ms. Abhidha
Bhardwaj, Advocate.****For the respondents: Mr. Hemant Kumar Verma,
Deputy Advocate General.**

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has prayed for
the following substantive relief:-

- "1. *That the respondents may be directed to extend the benefit grant of pay scale of Rs.12000-15500 on promotion as Superintendent of Police (Wireless) w.e.f. 05.02.2002 and also grant of pay scale of Rs 14300-18150 w.e.f. 01.01.2007 on completion of 14 years in Master Pay Scale under Assured Career Progression Scheme along with interest @ 18% p.a. on amount of arrears payable to the applicant from the date of accrual till date of full and final payment;"*

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Deputy Superintendent of Police (in short 'Dy.SP') (Wireless) on 04.09.1992 in the pay scale of Rs.2200-4000. Later on, he was placed to the post of Additional Superintendent of Police (Wireless) on 30.05.1998 in the pay scale of Rs.7220-11560. The petitioner was granted four-tier scale of Rs.10025-15100 on completion of four years service with effect from 01.01.1997 vide office order dated 18.04.2002. Thereafter, on completion of nine years of service, vide order dated 25.05.2002 (Annexure A-5), the petitioner as per Notification dated 06.03.2002 (Annexure A-4) was granted the pay scale of Rs.12000-15500 with effect from 01.01.2002.

3. The petitioner was promoted to the post of Superintendent of Police (Wireless) on 05.02.2002, but he was granted the pay scale of Rs.10025-15100. On his promotion to the post of Superintendent of Police (Wireless), the petitioner was entitled to the revised pay scale of Rs.12000-15500, since he was already getting the pay scale of Rs.12000-15500, as per Notifications dated 01.09.1998 (Annexure A-3) and 06.03.2002 (Annexure A-4) to the category of Additional Superintendent of Police/Dy.S.P. (Wireless) Himachal Pradesh Police Services. It has been averred that the case of the petitioner for protection of pay

scale was taken up with the higher authorities, but instead of considering his case in right perspective, the authorities equated the same with selection grade of IPS and directed pay fixation in revised pay scale of Rs.10025-15100 instead of Rs.12000-15500. Thus, the pay of the petitioner was not fixed in the revised pay scale of Rs.12000-15500 and further he was not even granted the pay scale of Rs.14300-18150 with effect from 01.01.2007 on completion of 14 years of master pay scale under Assured Career Progression Scheme (in short 'ACPS'). The petitioner retired from service as Superintendent of Police (Wireless) on 28.02.2009 and even after his retirement, he continuously made representations to the respondents to grant him the aforesaid benefits and one of the representation made by him dated 23.02.2011 (Annexure A-8), has been placed on record. Respondent No.1, vide communication dated 09.09.2011 (Annexure A-9), rejected the claim of the petitioner mentioning that the post of Superintendent of Police (Wireless) exists in the single structure of pay scale and not created in the Senior Time Scale of IPS, and, therefore, four-tier pay scale structure and ACPS is not applicable to the said post. The petitioner again made a representation dated 23.08.2012 (Annexure A-10) reiterating his demand as made by him earlier and the same came to be rejected. The petitioner sought the information under the

Right to Information Act regarding order/Notification disallowing him four-tier pay scale of the structure to the post existing in a single structure of pay scale by submitting an application on 31.07.2014 and the said information was not supplied to him for the reason that there are no such order/Notification issued by the Finance Department. The petitioner has also placed on record the information received by him under the Right to Information Act dated 20.08.2024 (Annexure A-18), which shows that the person who was promoted after him as Superintendent of Police (Wireless) was granted the pay scale of Rs. 12000-15500, but he was not granted the said protection after his promotion to the post of Superintendent of Police (Wireless) (page 101).

4. The petitioner feeling aggrieved by the inaction on the part of the respondents in not granting/extending him the benefit of pay scale of Rs. 12000-15500 on promotion as Superintendent of Police (Wireless) with effect from 05.02.2002 and also not granting him the pay scale of Rs.14300-18150 with effect from 01.01.2007 on completion of 14 years of master pay scale has approached this Court, *inter alia*, on the grounds that the action on the part of the respondents is illegal, arbitrary, unjustified, discriminatory and unconstitutional. It has also been averred that non-grant of the benefit as granted to his junior is violative of Articles 14 and 16 of

the Constitution of India. It has also been averred that non-extending equal benefit to all persons alike is patently illegal, arbitrary and unconstitutional and has thus prayed for a direction to the respondents to extend him the benefit of grant of pay scale of Rs.12000-15500 on promotion as Superintendent of Police (Wireless) and also grant him the pay scale of Rs.14300-18150 on completion of 14 years in the master pay scale under ACPS.

5. The respondents filed reply to the petition and averred in preliminary submissions that the State Government has exclusive jurisdiction to legislate or issue an executive instructions on the State subjects relating to public services as per Entry 41 of the State List of Schedule-VII of the Constitution of India. The State Government can decide the pay scale etc., which is also one of the service conditions prescribed in the R&P Rules notified under Article 309 of the Constitution of India. It has further been averred that the Court should not interfere in the grant of pay scale or pay fixation or parity, unless the decision is patently illegal. The Hon'ble Apex Court has held that the pay scale, nomenclature of post and recruitment are policy decision of Government and they should be decided by the Government or the expert body. The plea of the petitioner to grant him the higher pay scale by setting up a parity is not tenable in view of the directions of this Court, wherein it has been held that

in order to claim parity, the petitioner has to indicate that their functions/responsibilities and duties are similar and accordingly, the plea of the petitioner to grant him higher pay scale is not tenable and deserves to be rejected.

6. On merits, it has been averred that as per the Rules, on completion of 4 years of service, the petitioner was granted revised pay scale of Rs.10025-15100 with effect from 01.01.1997. Similarly, on completion of 9 years of service, he was granted the revised pay scale of Rs.12000-15500 with effect from 01.01.2002. However, the pay scale of Rs.12000-15500 was not to be taken as base while granting the pay scale on promotion as Superintendent of Police (Wireless). The pay scale of Rs.3000-4500 has not been revised to Rs.12000-15500, but it has been converted to Rs.10025-15100. The corresponding pay scale of Rs.10025-15100 was corresponding to Rs.3000-4500 and not Rs.3000-4375. The petitioner was entitled to the pay scale of Rs.10025-15100 while working as Superintendent of Police (Wireless) and he was in receipt of pay scale of Rs.12000-15500 under 4/9/14 time scale of pay in the lower post. The petitioner was not entitled to the pay scale of Rs.14300-18150, which is admissible after rendering 14 years of service in the lower cadre, as he was promoted to the post of Superintendent of Police (Wireless) before completion of 14 years of service in the lower

post, and, therefore, the plea of the petitioner is not tenable. The Finance Department, in its advice conveyed vide diary No.560 dated 28.06.2006, stated that for the purpose of fixation of pay under FR 22 on promotion to the higher post, the time scale of feeder post and the promotional post is relevant, and not the placement scale. Therefore, irrespective of the fact that the incumbent is drawing pay in the placement scale of the feeder post, the pay is required to be fixed in the pay scale of the promotion post with reference of time scale of feeder category post. The post of Superintendent of Police (Wireless) was created in the Wireless Organization, for which R&P Rules were framed/notified under Article 309 of the Constitution. The promotional post was created in the pay scale of Rs.3000-4500 (pre-revised), which has since been revised to Rs.10025-15100 with effect from 01.01.1996, and as such, the petitioner, on his promotion to the post of Superintendent of Police (Wireless), is not entitled to the pay scale of Rs.12000-15500. The claim of the petitioner for grant of pay scale of Rs.12000-15500 and benefit under ACPS is not covered under the Rules and thus, prayed for dismissal of the petition.

7. The petitioner had filed an application for placing on record the additional documents, bearing CMP-T No.282 of 2023,

which was allowed on 18.09.2025, and documents were ordered to be taken on record.

8. The respondents had also filed reply to the *ibid* application.

9. I have heard the learned counsel for the parties and also perused the record carefully.

10. Mr. Tara Singh Chauhan, learned Senior Counsel duly assisted by Ms. Abhidha Bhardwaj, Advocate for the petitioner has vehemently argued that as per the noting placed on record, the claim of the petitioner to grant him the pay scale of Rs.12000-15500 was proposed at one point of time, keeping in view the fact that the person junior to him was granted the said pay scale. Further, irrespective of the fact that his junior has been granted the higher scale, since the petitioner was already drawing the pay scale of Rs.12000-15500 prior to his promotion to the post of Superintendent of Police (Wireless) as Addl./Dy.S.P. (Wireless), the respondents were under obligation to protect his pay. The petitioner was entitled to get the pay scale of Rs.14300-18150 after completion of 14 years service with effect from 01.01.2007.

11. On the other hand, Mr. Hemant Kumar Verma, learned Deputy Advocate General has placed reliance upon the judgments passed by the Hon'ble Supreme Court in ***Union of India and***

others vs. Ashoke Kumar Banerjee, (1998) 5 SCC 242, **State of Haryana and another vs. Partap Singh and others**, (2006) 10 SCC 251 and **State of Punjab and others vs. Jagjit Singh and others** (2017) 1 SCC 148 to contend that a person, even if is getting the higher pay scale, is not entitled for the protection of the same on his promotion and the petitioner cannot claim negative parity with the pay scale as granted to his junior.

12. On the other hand, learned senior counsel for the petitioner has placed reliance upon the judgment passed by the Division Bench of this Court in CWP No.842 of 2017, titled, **State of Himachal Pradesh and others vs. Sardari Lal and another** alongwith connected matters and by a coordinate Bench of this Court in CWP No.1240 of 2023, titled, **Dhani Ram Verma vs. State of Himachal Pradesh and another**.

13. I have given my thoughtful consideration to the submissions made at the Bar by the learned counsel on both sides and also the judgments cited at the Bar.

14. The undisputed facts which emerge from the pleadings are that the petitioner was appointed as Deputy Superintendent of Police (Wireless) on 04.09.1992 in the pay scale of Rs.2200-4000 and thereafter on his placement as Additional Superintendent of Police (Wireless) on 30.05.1998, he was granted the pay scale of

Rs.7220-11650. On completion of four years service, he was granted the pay scale of Rs.10025-15100 with effect from 01.01.1997 and thereafter, on completion of nine years service, he was granted the pay scale of Rs.12000-15500 with effect from 01.01.2002 as per Notification dated 06.03.2002 (Annexure A-4) vide order dated 25.05.2002 (Annexure A-5). However, when he was promoted to the post of Superintendent of Police (Wireless), he was placed in the pay scale of Rs.10025-15100. On the contrary, the person, who was junior to the petitioner and was appointed as Deputy Superintendent of Police (Wireless) on 21.10.1999 was granted the pay scale of Rs.7880-13500 and on his placement as Additional Superintendent of Police (Wireless) on 14.05.2003, he was granted the pay scale of Rs.7880-13500. After completion of four years service, he was granted the pay scale of Rs.10025-15100 with effect from 01.01.2004 and on completion of nine years service, he was granted the pay scale of Rs.12000-15500 with effect from 01.01.2009. On his promotion to the post of Superintendent of Police (Wireless) on 28.02.2009, he was also placed in the pay scale of Rs.10025-15100 (corresponding scale in revised pay scale of Rs.15600-39000+Rs.6600), but his pay in the pay scale of Rs.12000-15500 was protected and he was granted the same placement scale as availed by him as Dy.S.P. (Wireless). Thereafter,

on grant of four-tier pay scale, he was fixed at Rs.30880 in the pay band of Rs.15600-39100+Rs.7600 Grade Pay.

15. From the aforesaid facts, it is crystal clear that the person, who was junior to the petitioner, was protected with the pay scale of Rs.12000-15500 and the petitioner, who got retired from service on 28.02.2009, his pay scale was not protected and he was denied the said benefit, which is arbitrary and discriminatory.

16. The respondents while filing reply to the petition have taken a plea that irrespective of the fact that the incumbent is drawing pay in the placement scale of feeder post, which is higher than the pay scale of the promotional post, the pay is required to be fixed in the promotional post and thus the petitioner was not entitled for protection of his pay scale. However, the said plea cannot be accepted for the simple reason that under the service jurisprudence, in case the person is getting higher emoluments on the lower post, after promotion to the higher post with higher responsibilities and functions, is entitled for protection of pay scale, more especially, when in the case of a junior, namely, Shri Rajesh Verma, he has been granted the protection of his pay scale, and that fact has not been denied by the respondents while filing reply to the petition. Even while filing reply to the application, whereby the petitioner had prayed for placing on record the documents, the

respondents have candidly admitted that Shri Rajesh Verma was promoted to the rank of Superintendent of Police (Wireless) on 28.02.2009 in the pre-revised scale of Rs.10025-15100, which pay scale was revised to Rs.15600-39100+6600 Grade Pay before completion of 14 years of service in the entry grade of Rs.15600-39100+5400 Grade Pay and his pay was protected which was granted to him in the pay scale of Rs.12000-15000/-. Before his promotion, he had also availed the benefit of 4 years and 9 years service on 01.01.2004 and 01.01.2009, respectively and higher scale on completion of 14 years of service was granted to him as he got promotion as Superintendent of Police (Wireless) before completing 14 years of service. In the case of the petitioner too, the petitioner was promoted to the post of Superintendent of Police (Wireless) before completing 14 years of service in the entry grade, and thus, the said pay scale could not have been denied to him, more especially, when the junior person Shri Rajesh Verma was also promoted to the rank of Superintendent of Police (Wireless) on 28.02.2009, on which date the petitioner was retired from the post of Superintendent of Police (Wireless). The Division Bench of this Court in ***Sardari Lal's*** case (supra) has held that at the time of promotion, an employee cannot be fixed at a lower scale than the one already drawn if the promotional post involves higher

responsibility. In the case of the petitioner, after his promotion to the post of Superintendent of Police (Wireless), the duties discharged by him was of higher responsibility and thus, he was entitled for protection of his pay scales on the post of Addl./Dy.S.P. (Wireless) drawn by him.

17. Learned Deputy Advocate General while placing reliance upon the aforesaid judgments has vehemently argued that the petitioner is neither entitled for pay protection nor can claim negative parity. Firstly, so far the judgments, which have been cited by the learned Deputy Advocate General, are concerned, those are not applicable to the facts of the present case, more especially, when in the present case, the petitioner is not equating his pay scale with the pay scale of other categories in other Departments and claiming higher benefits. He has only prayed to protect his pay scale and grant higher pay scale after completion of requisite number of years. No doubt, it is by now settled in a catena of judgments of the Hon'ble Supreme Court that pay fixation, promotion or other service conditions is the prerogative of the executive or the expert bodies such like Pay Commission and it does not fall within the realm of the Court. However, if the person being junior is granted more emoluments than the senior, then in that case, the Court cannot act as a mute spectator and in such like matters, the Court

can definitely step in to remove disparity and can issue appropriate directions.

18. In ***Ashoke Kumar Banerjee's*** case (supra), the Supreme Court has held that since the respondent had already received the benefit of the FR on completion of 15 years, he is not entitled to the same benefit again after promotion. In the present case, the petitioner is not claiming the benefit of FR. He has only prayed to protect his pay which he was getting while working as Addl./Dy. S.P. (Wireless) in the pay scale of Rs.12000-15500 as per Notification dated 06.03.2002 (Annexure A-4) and thus, the aforementioned judgment is not applicable to the facts of the present case.

19. In ***Partap Singh's*** case (supra), the Supreme Court has held that an employee already getting higher pay scale of the next higher post on promotion cannot get another fixation. However, in the case at hand, the petitioner is not claiming another fixation, but he is seeking protection of his pay scale which he was already receiving as Addl. Superintendent of Police (Wireless) and thus, the aforesaid judgment is not applicable to the facts of the present case.

20. In ***Jagjit Singh's*** case (supra), it has been held that equal pay for equal work would be applicable to all the temporary

employees since they were randomly deputed to discharge duties and responsibilities which at some point of time were assigned to regular employees. In the case at hand the petitioner who has also discharged the same duties and responsibilities as discharged by his junior as Superintendent of Police (Wireless) has been denied the protection of his pay and thus, the judgment favours the petitioner. He is also held entitled to protection of his pay at par with his junior.

21. The Hon'ble Supreme Court has held that in case a junior person is getting the higher emoluments or pay scale on account of some additional qualification, the senior can be denied the said benefit and pay scale. However, in the present case, it is not the case of the respondents that the junior to the petitioner, who was promoted later than him, was having additional qualification and, therefore, he was granted the higher pay scale.

22. Learned Deputy Advocate General has further placed reliance upon the judgment passed by a Division Bench of this Court in LPA No.188 of 2022, titled, ***Ravi Kumar Vaid vs. State of Himachal Pradesh and others*** and contended that as per the aforesaid judgment, Article 14 of the Constitution of India cannot be pressed into service and the petitioner cannot claim negative equality. However, the said judgment is not applicable to the facts of the present case, for the reason that it is not the case of the

respondents that the junior was wrongly granted the said benefit. It is relevant to mention here that the pay of the junior of the petitioner, namely Shri Rajesh Verma, was protected on his promotion to the post of Superintendent of Police (Wireless), being his promotion in the lower pay scale. In the case of the petitioner too, he was also promoted to the lower pay scale and thus, he was also entitled for protection of pay scale being received by him as Addl./Dy.S.P (Wireless). The respondents being a welfare State, cannot apply different yardsticks for the purpose of extending the benefits to its employees, that too, in the same Department and also on promotion to the same post and thus, the argument raised by the learned Deputy Advocate General that the petitioner cannot claim negative parity is not attracted to the facts of the present case and the same is rejected.

23. Once the petitioner was promoted to the post of Superintendent of Police (Wireless), which post was having duties and responsibilities of greater importance than those attached to the post of Addl./Dy.S.P. (Wireless), which has not been disputed by the respondents, he was entitled to the protection of his pay scale which he was drawing as Addl./Dy.S.P. (Wireless). Thus, the action on the part of the respondents to give him lesser pay scale after his promotion is illegal, arbitrary and unconstitutional. Further, once the

respondents have not disputed that junior to the petitioner was allowed the same scale as drawn by the petitioner as Dy.S.P. (Wireless) after his promotion to the post of Superintendent of Police (Wireless) as held by the petitioner, the action is discriminatory and offends Articles 14 and 16 of the Constitution of India.

24. The petitioner has been denied pay scale of Rs.14300-18150 (pre-revised) on the ground that he was promoted to the post of Superintendent of Police (Wireless) before completing 14 years service in the entry grade. However, keeping in view the fact that the petitioner has not been granted any financial benefit after his promotion as Superintendent of Police (Wireless) and further his junior who was though promoted as Superintendent of Police (Wireless), but his promotion was treated as placement for the purpose of allowing him the benefit under ACPS after completion of 14 years of service, the petitioner also deserves to grant the benefit of ACPS after completion of 14 years of service in the pay scale of Rs.14300-18150 (pre-revised) as per Notification dated 06.03.2002 (Annexure A-4).

25. The petitioner though has claimed the benefit of the grant of pay scale of Rs.12000–16500 on promotion as Superintendent of Police (Wireless) with effect from 05.02.2002 and

thereafter grant of pay scale of Rs.14300–18150 with effect from 01.01.2007 on completion of 14 years of master pay scale under ACPS, but since he has approached this Court only in the year 2015, he is entitled to get said benefits only three years prior to the date of filing of the present petition, in view of the law laid down by the Hon'ble Supreme Court in **Union of India and others vs. Tarsem Singh** (2008) 8 SCC 648. The relevant para of the judgment reads as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of

laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

26. Consequently, the present petition is allowed and the respondents are directed to grant the pay scale of Rs.12000–15500 (pre-revised) to the petitioner on his promotion to the post of Superintendent of Police (Wireless) with effect from 05.02.2002 and thereafter grant him the pay scale of Rs.14300–18150 (pre-revised) with effect from 01.01.2007 on completion of 14 years under the Assured Career Progression Scheme with all consequential benefits except the monetary benefits which shall be paid to him only from three years prior to the date of institution of the present petition. In case the respondents do not make the payment of the arrears to the petitioner within three months from today, he shall be paid the interest at the rate of 6% per annum from today till actual payment. There shall be no order as to costs. Pending applications, if any, also stand disposed of.

16th September, 2026
(naveen)

(**Jiya Lal Bhardwaj**)
Judge