

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no. 13068 of 1993(O&M)
Date of Decision : 02.12.2015

Sat Pal
....Petitioner

Versus

State of Haryana and others
...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

- 1)Whether reporters of local newspapers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present : Mr.D.D.Gupta, Advocate for the petitioner
Mr. Hitesh Pandit, Addl. AG, Haryana

MAHESH GROVER, J.

The petitioner was appointed on 5.7.1977 as T.Mate Welder after his services were requisitioned from the Employment Exchange. He possesses a diploma in the trade but he is a non-matriculate. In the meantime, he superannuated. He claims that he is entitled to a higher pay scale admissible in terms of Annexure P-5, the instructions issued by the State, the relevant of which is extracted herebelow:-

Sr.No.	Name of Post	Existing Pay scale as on 1.1.86	Modified scale of pay w.e.f 1.5.90
40	General recommendation regarding technical posts in various department for which minimum educational qualification prescribed	750-940 775-1025 800-1150 950-1400	1200-2040

is Matric with ITI Certificate/ 950-1500
Polytechnic

Sr.No.	Name of Post	Existing Pay scale as on 1.1.86	Modified scale of pay w.e.f 1.5.90
40(A)	General recommendations regarding the technical posts for which minimum Educational qualifications prescribed is only ITI certificate/ diploma from Polytechnic without insistence of Matric	750-940 775-1025 800-1150 950-1400	950-1400

3. The above shall take effect from 1.5.1990.”

 The petitioner has been treated as a non-matriculate person working on a technical post in terms of clause 40-A of the Rules extracted above and made admissible to pay of Rs.950-1400 whereas persons with matric have been granted pay scale of 1200-2040.

 The petitioner was issued a show cause notice Annexure P-8 to state that he is not entitled to 950-1400 and why his pay should not be reduced to 750-940 w.e.f 1.1.1986. It is at this stage that the petitioner approached this Court questioning the show cause notice which was admitted with an interim order in his favour as a consequence of which he continues to get a pay scale of 950-1400.

 The petitioner places reliance on a judgment rendered by this Court in case bearing CWP no. 18754 of 1991 decided on 18.1.2010 titled as Gurdev Singh and others vs. State of Haryana and others wherein almost identical

situation the writ petitioner therein was held entitled to pay structure of 1200-

2040.

The judgment proceeds on the premise that the mode of recruitment being an acknowledged one and there being no prescription of the qualification being a matriculate which found mentions in the rules enforced subsequently a person could not be denied the higher pay scale on this ground. While granting writ petitioner the benefit the Court had placed reliance on several judgments of this Court including CWP no. 15171 of 1991 decided on 4.12.1991 wherein following observations were made:-

“ Notice of motion was issued. Return has been filed.

Counsel heard.

The petitioners made the grievance that distinction in the pay scale could not be made on the grounds of higher or technical qualifications. According to the learned counsel, this tentamounts of discrimination between the employees in the same cadre. We however find that in view of paragraph 6 of the return, this stand is not justified. The stand is taken in the return is that the scale of Rs. 1200-2040 is granted only to these employees who are working against such technical posts for which minimum educational qualifications prescribed is matric with I.T.I certificates. In our opinion, the payment of higher scale for technical qualifications including the technical training, is perfectly justified and is

permissible and cannot be questioned on the vice of discrimination.

The petition is therefore, dismissed.”

Similarly, the judgment rendered in Labh Singh and others vs.

State of Haryana and others reported as 1995(1) RCJ 345 was also relied upon.

The relevant observations made in this regard are extracted herebelow:-

“ 7. Learned Deputy Advocate General has not been able to show as to how the Executive Engineer has made recruitment on the posts of T.Mates without there being any qualification. In fact the stand taken by the respondents stands belied by the fact that in the standing order issued by the department qualification for the post of T. Mates has been prescribed as I.T.I pass in respective trade or three years experience in the trade concerned. These qualifications have been enumerated in Annexure D contained in Technical Memo No. 6/88 containing rules and instructions for running and upkeep of vehicles and other machinery working in Public Works Department (Building & Roads), Haryana. This document has been published under the authority of the Govt. of Haryana and, therefore, there is no reason to believe that these are not the prescribed qualifications. To me it is clear that by virtue of Annexure D, appended to the Technical Memo No. 6/88, the department has prescribed the qualifications for appointment on the post of T.Mates and precisely

for this reason the Executive Engineer had incorporated these qualifications in the various notifications sent by it to the Employment Exchange. It is thus clear that each of the petitioner had been recruited with the qualification of I.T.I and some of qualification of Matric with I.T.I.

8. In the result, the writ petitions are allowed. The notices issued by the respondents seeking revision of the pay of the petitioners are declared illegal and are hereby quashed. The respondents are restrained from revising the pay scale of the petitioners. Costs made easy.”

Likewise in case titled as **Raj Karan vs. State of Haryana** 2003(1)

RSJ 119 the Division Bench of this Court held as below:-

“ 9. After hearing the learned counsel for the parties and having given our thoughtful consideration to the entire controversy, we find that the present petition deserved to succeed. It is the admitted position between the parties that there were no minimum educational qualifications prescribed for the post, when the petitioner was appointed to the same. Still further, there is no dispute that the petitioner did possess the qualifications of Matriculation with I.T.I certificate and it was only on the basis of the aforesaid qualifications that the petitioner was actually appointed as a Technical Mate on

work charge basis originally on April 1, 1978. Subsequently, the services of the petitioner were regularized on the aforesaid post w.e.f. January 1, 1987. Under these circumstances, when the petitioner was granted the scale of Rs. 1200-2040 w.e.f. May 1, 1990, in accordance with the policy decision, then the said benefit now cannot be withdrawn merely because there were no statutory rules, laying down any educational qualification for Technical Mate.”

Another judgment noticed in the Gurdev Singh's case (supra) is of the Hon'ble Supreme Court titled as **B.N.Saxena vs. NewDelhi Municipal Committee and others** reported as (1990) 4 SCC 205 wherein following observations were made:-

“ 7. The second limb of the rule was evidently to benefit all those persons who have gained sufficient experience as Senior and Junior Draftsmen without possession any qualification. Experience gained for a considerable length of time is itself a qualification (see the observation in State of U.P. Vs. J.P. Chaurasia). It would be unreasonable to hold that in addition to this considerable experience, one must also have the diploma qualification prescribed under the first part. It could not have been the intention of the rule making authority that persons who were designated as Senior

Draftsmen without any diploma qualification should acquire such qualification for further promotion. Such a view would not be consistent and coherent with the revised rule and its object. We have no doubt that the second limb of the revised rule is independent of the rest. The High Court seems to have erred in this aspect of the matter.”

For the aforesaid reasons, I am of the opinion that the writ petition needs to be disposed of in the same terms, particularly when the petitioner who has been working on a technical post was performing the same functions as those who were having a matriculation with ITI which would entitle him to parity of pay with his counter parts. Writ petition is disposed of in the same terms as CWP no. 15171 of 1991 decided on 4.12.1991.

December 02, 2015
rekha

(MAHESH GROVER)
JUDGE