

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.18554 of 2008 (O&M)**

DATE OF DECISION: SEPTEMBER 16, 2015

UNION TERRITORY, CHANDIGARH

...PETITIONER

VERSUS

KESAR SINGH & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.  
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

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PRESENT: MR. SHEKHER VERMA, ADVOCATE FOR THE PETITIONER.  
MR. D.R.SHARMA, ADVOCATE FOR THE RESPONDENT NO.1.

**M. JEYAPPAUL, J.**

**CM-11968-CWP-2015**

1. Heard.

2. The legal representatives of the deceased 13<sup>th</sup> respondent-  
Amrik Singh are impleaded as necessary party to the writ petition.  
Amended memo of parties filed by the respondent is taken on record.

3. Application is ordered accordingly.

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4. Aggrieved by the orders passed by the learned Central  
Administrative Tribunal, Chandigarh Bench (for short 'Tribunal'), Union  
Territory, Chandigarh has preferred the present writ petition.

5. The private respondents are serving as Senior Laboratory  
Attendants in the School Cadre of U.T. Chandigarh. On 21.4.1988, the  
Government of India switched over to the Central Pay Scale in respect of

U.T. Chandigarh employees. Respondents No.1 to 15 were ordered to be fixed in the pay scale of ₹950-1400 as per Central pay structure, as they exercised their option to have the Central Pay Scale.

6. The private respondents aggrieved by the low pay scale fixed without taking into account the Central Pay Scale granted to the similarly situated Laboratory Attendants in other Union Territories under the control of the Central Government filed O.A. No.576-CH of 1989 before the Tribunal. They made a claim that they were entitled to the pay scale of ₹1200-2040 and ₹1350-2200 w.e.f. 1.1.1986. Unfortunately, no reply was filed in the above O.A. either by the Union of India or by U.T. Chandigarh. Learned Tribunal while deciding the claim of the respondents herein on merit accepted their claim vide order dated 24.11.1995 and consequently, directed the Union of India and Chandigarh Administration to consider the claim of the private respondents herein and fix their pay scale at ₹1200-2040 and ₹1350-2200 w.e.f. 1.1.1986 with all consequential benefits.

7. The petitioners preferred SLP (Civil) No.13611 of 1996 before the Hon'ble Supreme Court against the aforesaid order passed by the Tribunal on 24.11.1995. During the pendency of the SLP before the Hon'ble Supreme Court, there was one development which required special reference here. The writ petitioners in fact implemented the order passed by learned Tribunal and as a consequence, the respondents were placed in the Central Pay Scale of ₹1200-2040 w.e.f. 1.1.1986, of course, subject to the outcome of the Special Leave Petition preferred by them. Thereafter, the Special Leave Petition was taken up on 12.12.1997 and the Hon'ble

Supreme Court passed the following order:-

*“On 05.12.1997 this Court made the following order:*

*While considering the question whether the grant of pay scales as ordered by the High Court w.e.f. 01.01.1986 should be with effect from the date when the order imposed from the Tribunal was made i.e. 24.11.95 or from the date when the respondent approached the Tribunal in 1989. It was brought to our notice by learned counsel for the respondent that all the arrears have been paid w.e.f. 01.01.86 to the respondents who are totally 80 in number out of about 35,000 employees. Ms.Jaiswal, learned counsel for the petitioner wants to ascertain the position and seek appropriate instructions.*

*List the matter next week.*

*It is now brought to our notice that the claimants/respondents have received payments pursuant to the orders of the Tribunal. Learned counsel for the respondents after getting instructions from his clients, has stated the respondents will not put forth any claim for recovery pursuant to orders under appeal. Accordingly, the SLP is disposed of with the following observation that the payments already made will not be recovered. Likewise, the claimants-respondents shall not make any further claim pursuant to the order under appeal.”*

8. There is yet another fact which also will have to be referred to

herein. On 13.1.1992, the Government of India who is the competent Authority, in exercise of its powers under Article 390 of the Constitution of India formulated Service Rules for the employees of the Chandigarh Administration applicable w.e.f. 1.4.1991. The service conditions of the employees of Chandigarh Administration were made equivalent to their counterparts in the State of Punjab. The Conditions of Service of Union Territory of Chandigarh Administration Employees Rules, 1966 and orders for which provision had been made in Rule 2 were repealed. Proviso to the above "Repeal and Saving" states that "such repeal shall not affect the previous operation of the said Rules or orders or anything done or any action taken therein".

9. The Union Territory of Chandigarh Administration made revision of pay scales vide its communication dated 5.5.1999 pursuant to the recommendation of the 4<sup>th</sup> Punjab Pay Commission. In the above communication, it was explained that in case of a Government servant drawing Central Pay Scale on the 1<sup>st</sup> of January, 1996, the pay of the Government servant shall be fixed on the basis of the emoluments as on 31.12.1985 notionally, in terms of The Chandigarh Administration Civil Services (Revised Pay) Rules, 1991 and thereafter, on the basis of the emoluments as on 31.12.1995. The aforesaid revision of pay scales was challenged by the respondents by filing O.A. No.974-CH-1999 contending that they cannot be compelled to opt for Punjab pay scale when they were already granted Central Pay Scale of ₹1200-2040.

10. During the pendency of the aforesaid O.A., the writ petitioners

herein produced the order dated 28.2.2002 passed by the Government of India revising the pay scales of the respondents as well on Central pay pattern. As the grievance of the respondents that they had been compelled to opt for Punjab pay scale had been adequately addressed in the above order by granting Central Pay Scale, the above O.A. No.974-CH-1999 was disposed of by the learned Tribunal on 9.5.2002 with liberty to the respondents to challenge the order dated 28.2.2002, if they were not satisfied.

11. The pay scale of the respondents who were serving as Laboratory Attendants had been shown as ₹950-1400 (Matric pass) and ₹750-940 (8<sup>th</sup> pass) w.e.f. 1.1.1986 and ₹3050-4590 w.e.f. 1.1.1996. The respondents though satisfied with the decision taken by the writ petitioner to continue Central Pay Scale for the respondents filed O.A. No.1199-CH-2002 before the Tribunal challenging the order dated 28.2.2002, as it did not reflect the pay scale granted to the Laboratory Attendants in other Union Territories. O.A. No.1199-CH of 2002 was ultimately allowed by learned Tribunal on 17.12.2007 and the impugned orders dated 28.2.2002 and 26.9.2002, were quashed and consequently, the petitioners were directed to place the respondents in the pay scale of ₹1200-2040 w.e.f. 1.1.1986 and ₹4000-6000 w.e.f. 1.1.1996 with all consequential benefits of arrears of pay. The U.T. Administration has assailed in the present writ petition the above order passed by learned Tribunal on 17.12.2007.

12. Learned counsel appearing for the writ petitioner-U.T. Administration drew the attention of this Court to the judgement passed by

the Hon'ble Supreme Court on 12.12.1997 in SLP No.13611 of 1996 and submitted that the respondents have completely given up their further claim pursuant to the order passed by the learned Tribunal in O.A. No.576-CH-1989 and that, therefore, they are not entitled to claim Central pay. Learned counsel appearing for the respondents vehemently submitted that the order passed by the Hon'ble Supreme Court in SLP No.13611 of 1996 has been completely misread by the Union Territory, Chandigarh. It is his submission that the order passed by the Tribunal in O.A. No.576-CH-1989 and the order passed by the U.T., Chandigarh Administration following the directions in that order have set at rest the controversy as to whether the respondents were entitled to Central pay.

13. On a thorough perusal of the order passed by the Hon'ble Supreme Court in SLP No.13611 of 1996 on 12.12.1997, we find that only a limited issue was taken up for consideration before the Hon'ble Supreme Court. The Hon'ble Supreme Court took up the only issue as to from which date the grant of Central Pay Scale as ordered by the Tribunal would be effective. The Hon'ble Supreme Court was concerned with the claim for recovery of the arrears of Central pay fixed by the writ petitioner as per the decision of the Tribunal. The Hon'ble Supreme Court was informed that the respondents had received payments pursuant to the orders of the Tribunal. Under such context, it was observed by the Hon'ble Supreme Court that the arrears of pay as determined by the writ petitioner pursuant to the directions issued by the Tribunal having been already paid to the respondents, no claim shall be made with respect thereto by the respondents pursuant to the order

under appeal.

14. As rightly pointed out by the learned counsel for the private respondents, the writ petitioners have thoroughly misunderstood the import of the order passed by the Hon'ble Supreme Court in the above SLP. It is too far fetched an imagination that the respondents had given up their claim for grant of Central pay. In fact, the Central Government had issued Instructions dated 28.2.2002 directing the payment of Central pay to the respondents long after the SLP was disposed of. If the respondents had abandoned their claim for Central pay before the Hon'ble Supreme Court on 12.12.1997, there would have been no occasion for the Government of India to accord Central pay to the respondents by virtue of the order dated 24.8.2002. In our considered view, the issue as regards pay scale applicable to the respondents is no longer *res integra* in view of the above special facts and circumstances.

15. It was contended by learned counsel appearing for the writ petitioners that the respondents being employees of the U.T. Chandigarh are bound by the Constitution of Service of Union Territory of Chandigarh, Employees Rules, 1992 notified by the Central Government on 13.1.1992. In other words, it is submitted that the Conditions of Service of Union Territory Chandigarh Administration Employees Rules, 1966 and the orders for which provision has been made with respect thereto stand repealed and as a consequence, the respondents are entitled to pay scale only in terms of the Conditions of Service in Punjab Civil Services. Learned counsel appearing for the respondents contended that the above Rule was not

brought to the notice of the Hon'ble Supreme Court at that point of time. It is his submission that the said Rule was given a go-by while granting Central Pay Scale to the respondents under the communication dated 28.2.2002.

16. The Constitution of Service of Union Territory of Chandigarh Employees Rules, 1992 was notified on 13.1.1992. The above Rule was in vogue when the SLP was decided by the Hon'ble Supreme Court. It was not contended before the Hon'ble Supreme Court in the above SLP that the respondents were not entitled to claim Central Pay Scale as the Rule framed on 13.1.1992 applied uniformly to its employees the conditions of service as applicable to Punjab Civil Services. Further, the consistent plea made by the respondents had been positively considered by the writ petitioner resulting in grant of Central Pay Scale as per the order passed by the Central Government on 28.2.2002. Even otherwise, Proviso to Rule 3 of the Constitution of Service of Union Territory Chandigarh Employees Rules, 1992 makes it clear that the order passed or anything done or action taken in connection with the conditions of service as contemplated under Rule 2 thereof was not at all repealed.

17. It is totally unfair on the part of U.T. Administration to reopen the issue as to whether Central pay or the Punjab pay structure is to be applied to the respondents. Having given up their plea before the Hon'ble Supreme Court in the SLP preferred by them and also having issued the communication dated 28.2.2002 conferring Central pay to the respondents, U.T. Administration is not supposed to rake up an issue which already stood

decided and settled.

18. It was submitted by learned counsel appearing for the writ petitioner that if pay package as directed by the Tribunal is granted to the Senior Laboratory Attendants, it would create an imbalance in the pay scale of other employees of U.T. Administration who possess better qualification and status.

19. The respondents have, in fact, exercised their option to avail Central Pay Scale right from the year 1988. The above exercise made by them was the source for fixing their pay on Central pattern. If some employees of U.T. Administration had not exercised their option of availing Central pay structure which resulted in fixation of low scale of pay for them, it cannot be lawfully helped and on that ground Central Pay Scale fixed for the respondents cannot be downgraded/lowered.

20. It was further submitted by the learned counsel appearing for the writ petitioners that the respondents are claiming a pay parity with Laboratory Attendants serving in different Union Territories whose qualification has been fixed at a higher level

21. There is no material to show that Laboratory Attendants appointed with higher qualification in other Union Territories discharge a different nature of work from that of the Laboratory Attendants serving in U.T. Chandigarh. Under such circumstances, higher qualification prescribed for Laboratory Attendants in other Union Territories makes no difference. Therefore, the respondents are entitled to equal pay as that of their counterparts in other Union Territories drawing the Central pay.

22. In view of the above, we are of the considered view that the Tribunal has rightly declared as illegal and quashed the order Annexure A-1 dated 28.1.2002 and Annexure A-2 dated 4.10.2002 and passed suitable direction to the writ petitioners to place the respondents in the pay scale of ₹1200-2040 w.e.f. 1.1.1986 and ₹4000-6000 w.e.f. 1.1.1996 with all consequential benefits.

23. We do not find any merit in the writ petition and the same stands dismissed.

**(M. JEYAPPAUL)**  
**JUDGE**

September 16, 2015  
Gulati

**(DARSHAN SINGH)**  
**JUDGE**