

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP-21983-2011

Date of decision: 05.10.2015

**Post Graduate Institute of Medical Education and Research,
Chandigarh**

.....Petitioners

Versus

**Drivers Welfare Association, Post Graduate Institute of Medical
Education and Research, Chandigarh and others**

.....Respondents

CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Rajesh Garg, Senior Advocate with
Ms. Nimrata Shergil, Advocate for the petitioner.

Mr. Dinesh Kumar, Advocate
for respondents No.1 to 26, 28 and 29.

DARSHAN SINGH J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of certiorari to quash and set aside the order dated 12.11.2010 (Annexure P-6) passed by the learned

Central Administrative Tribunal, Chandigarh Bench, Chandigarh (here-in-after called the ‘Tribunal’).

2. The brief facts of the case are that petitioner Post Graduate Institute of Medical Education and Research (in short 'PGIMER') is a statutory authority constituted under the Post Graduate Institute of Medical Education and Research Chandigarh Act, 1966 (hereinafter referred to as 'the Act'). The tenure, salaries and service condition etc. of the employees of the petitioner Institute are regulated and governed by the provisions of the Act and the rules and regulations framed thereunder. The Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training (hereinafter referred to as 'the DOP&T) issued a scheme dated 15.02.2001, vide which the new grades for the Staff Car Drivers were introduced w.e.f. 08.11.1996. The drivers were placed in four grades as per the new Revised Promotion Scheme, which is reproduced below:-

Sr. No.	Grade	Pay Scales	Percentage of Sanctioned strength
1.	Ordinary Grade	Rs.3050-4590	30%
2.	Grade-II	Rs.4000-6000	30%
3.	Grade-I	Rs.4500-7000	35%
4.	Special Grade	Rs.5000-8000	05%

3. Respondent No.1 approached the petitioner for implementation of the new Revised Promotion Scheme of 2001 and demanded that same be implemented to the Staff Car Drivers of PGIMER

w.e.f. the same date as has been implemented for the Central Government Staff Car Drivers. The Standing Finance Committee of the petitioner in its meeting held on 02.04.2005 approved the new Revised Promotion Scheme for the Staff Car Drivers and the matter was forwarded to the Government of India, since the Government of India contributes to the major part of the budget of the petitioner Institute. Vide letter dated 15.06.2007 the petitioner Institute was informed by the Ministry of Health and Family Welfare that Ministry of Finance has agreed to the implementation of Revised Promotion Scheme but with prospective effect. The petitioner Institute issued the order dated 14.07.2007 for implementing the scheme with prospective effect. This action of the petitioner Institute was challenged by the respondents before the learned Tribunal vide Original Application No.360-CH of 2009. The petitioner Institute contested the claim of the respondents by filing the detailed reply. It is pleaded that learned Tribunal without appreciating the position of law and facts allowed the said Original Application vide impugned order dated 12.11.2010. The said order passed by the Tribunal is illegal and arbitrary. Hence, this petition.

4. Respondent No.1 contested the present writ petition by filing the written statement on the grounds *inter alia* that the rules as applicable to the Central Government Service regarding general condition of service, pay allowances etc. shall be applicable to the employees of petitioner Institute. As per Regulation No.40, they are entitled to same pay scale applicable to the Central Government employees naturally from

the same date when the Central Government made it applicable to its employees. All other averments raised in the petition were controverted by the respondents and it was pleaded that the writ petition may be dismissed with costs.

5. We have heard Mr. Rajesh Garg, learned Senior Advocate with Ms. Nimrata Shergill, Advocate, learned counsel for the petitioner, Mr. Dinesh Kumar, Advocate, learned counsel for the respondents and have meticulously gone through the paper-book.

6. Learned Senior counsel for the petitioner contended that the employees of the Central Government and the employees of the Institute forms a distinct class/category. The benefits of pay etc. or other service conditions applicable to the Central Government employees cannot automatically apply to the employees of the petitioner Institute. They are governed by the different set of rules and different budget constraints. The employees of the Institute are not the Central Government employees. Their service conditions and pay scales etc. are governed under the rules and regulations made by the Institute under the provisions of the Act.

7. He further contended that in the instant case the Ministry has clearly mentioned that the scheme shall be implemented with effect from a prospective date i.e. the date of passing the order by the Institute. It was nowhere specifically provided that it will be implemented retrospectively. He contended that the date from which the promotions scheme for the Staff Car Drivers was to be implemented was to be

determined by the competent authority as per the instructions of the Ministry. He contended that the Tribunal had exceeded its jurisdiction in directing the petitioner Institute to implement this scheme retrospectively. It was open to the petitioner Institute to extend the benefit to its employees i.e. respondents with effect from a particular date. The Tribunal is not competent to deal with any anomaly in the pay scales. Thus, he contended that the impugned order passed by the learned Tribunal is illegal. To support his contentions, he relied upon case ***Union of India Vs. Arun Jyoti Kundu and others (2007) 7 Supreme Court Cases 472.***

8. On the other hand, Mr. Dinesh Kumar, Advocate, learned counsel for the respondents contended that the petitioner Institute was competent at its own level to grant the pay scaled as per the promotion scheme. He further contended that the petitioner Institute had revised the pay scales of thousand of employees of different categories from the date from which the Central Government has allowed new pay scales but in the case of respondents the matter remained pending for consideration between the petitioner Institute and the Central Government and the process took more than 6 years for no fault of the respondents. He further contended that earlier also the Central Government had issued the Notification dated 20.11.1993 laying down the promotion scheme for the Staff Car Drivers w.e.f. 01.08.1993 and the petitioner accorded the post facto approval to implement the said scheme w.e.f. 01.08.1993 vide order dated 03.05.2002. He further contended that the approval has been

accorded by the Ministry of Health and Family Welfare to implement the new promotion scheme w.e.f. 15.06.2007 instead of 08.11.1996 without assigning any reason and there is no legal and valid justification for this discrimination. Thus, he pleaded that the impugned order passed by the learned Tribunal does not suffer from any legal infirmity.

9. We have duly considered the aforesaid contentions.

10. This fact is not disputed that the respondents were serving the petitioner Institute as Staff Car Drivers. It is also not disputed that DOP&T had issued a new Revised Promotion Scheme for the Staff Car Drivers on 15.02.2001 w.e.f. 08.11.1996. It is also not disputed that respondent No.1 approached the petitioner Institute for implementation of the new Revised Promotion Scheme of 2001 for the Staff Car Driver of PGIMER with effect from the same date. It is also not disputed that the Standing Finance Committee of the petitioner Institute in its meeting held on 02.04.2003 approved the new Revised Promotion Scheme for the Staff Car Drivers and the matter was forwarded to the Government of India for approval. The Government of India, Ministry of Health and Family Welfare vide letter dated 15.06.2007 conveyed to the Director of petitioner Institute that the Ministry of Finance Department of Expenditure has agreed to the implementation of Revised Promotion Scheme of Staff Car Drivers of PGIMER, Chandigarh based on the guidelines issued by DOP&T vide memo dated 15.02.2001. However, the said benefit was to be given prospectively with effect from the date of issue of the order. In compliance of the aforesaid letter dated 15.06.2007

the Director, PGIMER issued the office order dated 14.07.2007 granting the sanction for according the implementation the revised Staff Car Drivers scheme as per the guidelines issued by DOP&T vide letter dated 15.2.2001 with immediate effect. This denial of the retrospective benefit of the scheme was challenged by the respondent before the learned Tribunal.

11. So, the only dispute between the parties is as to whether the said Revised Promotion Scheme/pay scales granted to the respondents are to be implemented retrospectively or prospectively.

12. Regulation 40 of the Act reads as under:-

“40 Other Conditions of Service:- In respect of matter not provide for in these regulations, the rules as applicable to Central Government servants such as regarding the general conditions of service, pay, allowances including travelling and daily allowances, leave salary, joining time, foreign service terms, and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Institute.

*** Provided that in case of employees appointed in the Institute who are drawing pay at the rates admissible to the corresponding categories of employees of the government of Punjab, it shall be competent for the institute to revise the scales of pay of such employees so as to bring the said scales at par with the scales of pay sanctioned by the Government of Punjab from time to time for such corresponding categories of employees.”

13. The aforesaid Regulation clearly indicates that the petitioner Institute shall follow the rules and regulations applicable to the

Central Government employees in the matters for which the rules are not specifically provided in the Act. But for implementation thereof the approval of the Ministry and competent authority has to be obtained. Annexure IV shows that the Senior Administrative Officer wrote a letter dated 24.02.2003 to the Under Secretary to the Government of India, Ministry of Health and Family Welfare seeking clarification with respect to the implementation of the new Revised Promotion Scheme dated 15.02.2001. In response to the said letter the Government of India, Ministry of Health and Family Welfare vide Annexure VI dated 02.06.2008 clarified that question of promotion scheme for the Staff Car Drivers may be placed before the Standing Finance Committee of the petitioner Institute. The Standing Finance Committee of the petitioner Institute in its meeting held on 02.04.2005 Annexure II (page 71 of the paper-book) made its recommendations as under:-

“Implementation of revised Promotion Scheme for Staff Car Drivers of PGIMER, Chandigarh.

The SFC noted that PGI is already following the DOPT cadre structure/promotion scheme with regard to Staff Car Driver and agreed to the proposal of the Institute to adopt the revised special promotion scheme to Staff Car Drivers with Grade structure as introduced by DOPT, Subject to clearance of Ministry of Finance (Deptt. Of Expenditure):-

Sr. No.	Grade	Pay Scales	Percentage
1.	Ordinary Grade	Rs.3050-4590	30
2.	Grade-II	Rs.4000-6000	30
3.	Grade-I	Rs.4500-7000	35
4.	Special Grade	Rs.5000-8000	5

14. The Standing Finance Committee has categorically mentioned that the petitioner Institute is already following the DOP&T cadre structure/promotion scheme with regard to the Staff Car Drivers. This observation of the Committee is fortified/supported from the copy of the Notification dated 06.05.2002 vide which the post facto permission was accorded to implement the graded scheme of the Government of India/Ministry of Public Grievances and Pension Department DOP&T issued vide letter dated 30.11.1993 effective from 01.08.1993 for Staff Car Drivers of the petitioner Institute w.e.f 01.08.1993. It shows that earlier also the petitioners have been granting the service benefits to its Staff Car Drivers as per the schemes issued by the Government of India DOP&T with effect from the same date as notified by the Government of India.

15. There is no dispute with the proposition of law that it is always open to the Government to extend the service benefits to its employees and also to determined a particular day with effect from which those benefits were to be made applicable. But where one set of employees who are similarly situated is being discriminated the judicial intervention becomes essential to undo the injustice to the employees who are similarly situated but are not being treated alike. In the instant case, the same scheme is being made applicable by the petitioner Institute itself to its Staff Car Drivers as issued by the Government of India DOP&T vide memo dated 15.02.2001. The impugned office order dated

14.07.2007 passed by the Director of the petitioner Institute depicts that the sanction has been accorded for implementation of revised Car Driver Scheme as per the guidelines issued by the DOP&T vide Office memo dated 15.2.2001. But no reason has been mentioned either in the office order dated 14.07.2007 or the communication of Government of India, Ministry of Health Family Welfare dated 15.06.2007 as to why this benefit was to be given to the respondents prospectively i.e. from the date of issue of the order. When the similar benefit has been given to corresponding categories of the employees of the Central Government with effect from a much earlier date. As already mentioned it is evident even from the regulations framed by the petitioner under the Act that the petitioner follows the DOP&T cadre structure/promotion scheme with respect to the Staff Car Drivers, so there should have been the cogent and convincing reasons to justify the denial of implementation of the scheme retrospectively, which are totally lacking in this case.

16. As already mentioned the grant of a particular pay scale from a particular date is in the domain of the Government but it is equally obligatory on the competent authority that its action should not be discriminatory and similar benefits should be extended to the employees similarly situated. But in the instant case the new Revised Promotion Scheme/cadre structure has been made applicable retrospectively to the similarly situated Staff Car Drivers of the Central Government and the similar concession has been denied to the respondents who also have been granted the benefits of the aforesaid scheme as per the guidelines

issued by the DOP&T vide same office memo dated 15.02.2001. Once, the aforesaid benefit was granted to the similarly situated Staff Car Drivers of the Central Government with retrospective effect, the respondents were also entitled for the similar concession/benefit. The deviation from this principle can only be on the basis of the cogent and justifiable reasons. No such reasons have been indicated either in the communication of Government of India dated 15.06.2007 and the office order dated 14.07.2007 passed by the Director of petitioner Institute. The learned Tribunal has rightly observed that non-recording the reasons in the context assumes added importance in the light of the fact that the PGIMER hitherto followed the DOP&T salary structure. The respondents were certainly entitled for implementation of the Revised Promotion Scheme with effect from the date it has been made applicable to the similarly situated Central Government Staff Car Drivers.

17. Case *Union of India Vs. Arun Jyoti Kundu and others* (supra) relied upon by learned counsel for the petitioner is quite distinguishable on facts. In that case the Tribunal is directed to grant the same pay scale to the English language and Hindi language Typist as applicable to the Senior clerks, Head Clerks and Office Superintendent with retrospective effect. The said pay scale was not recommended by the 5th Pay Commission and the aggrieved typists had pointed out the anomalies to the Government and the Government on the basis of the recommendation of the Anomaly Committee decided to give them the scale with effect from 31.01.2000. So, that was a case of anomaly in the

pay scale of the post of two different caters.

18. Thus, keeping in view our aforesaid discussion, the learned Tribunal has rightly quashed the impugned orders and directed the petitioner to implement the Revised Promotion Scheme with effect from the date it has been made applicable to the similarly circumstanced Central Government employees. Consequently, the impugned order dated 12.11.2010 passed by the learned Tribunal does not suffer from any legal infirmity and impropriety warranting any interference of this Court.

19. Resultantly, the present writ petition is without any merits and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

05.10.2015
sunil yadav