

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16777 of 2015

Date of decision: 07.09.2015

**District Red Cross Society Faridabad
& others**

.....Petitioner(s)

Versus

**Central Administrative Tribunal,
Chandigarh & another**

.....Respondent(s)

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

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

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Present: Mr. Saurabh Bajaj, Advocate for the petitioner(s).

DARSHAN SINGH, J.

- 1. The present civil writ petition under Article 226/227 of the Constitution of India has been filed for issuing the appropriate writ in the nature of certiorari for quashing of order dated 13.3.2015 passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called 'the Tribunal'), vide which the TA No.060/00004 of 2014 filed by respondent No.2 was allowed granting the pay scale of ₹ 4000-6000 to him in spite of the fact that he was**

not legally entitled for the same which is in violation of the Service Rules framed on 18.8.2009 by Deputy Commissioner-cum-President, District Red Cross Society, Faridabad.

2. That respondent No.2. Satvinder Kumar was working as a Driver in the District Red Cross Society, Faridabad since May, 1995. He claimed that his services were regularized in January, 2009 and he was paid the regular pay in the pay scale of ₹ 4000-6000 which is meant for the post of Driver in the State of Haryana. However, without assigning any reason or without issuing any show cause notice, his salary has been reduced in March, 2010 in the pay scale of ₹ 2550 which is meant for the post of Peon. Ram Kishore and Ram Lal, who were also Drivers in the Society, were getting the full salary as the petitioner was getting in the pay scale of ₹ 4000-6000 before his salary was reduced. In view of the directions of this Court in CWP No.8007 of 2010, the Secretary of the petitioner-Society rejected the representation moved by respondent No.2 vide order dated 9.7.2010. He filed TA No.060000/4/2014 in CWP No.3549 of 2011.

3. That application was contested by the petitioners on the plea that respondent No.2 had joined as Ambulance Driver in August, 1996 without following any process of law and he continued in service till date. Till August, 2009, there were no service rules applicable to the office of District Red Cross Society, Faridabad. The Service Rules were framed on 18.8.2009 by the competent Authority i.e. Deputy Commissioner-cum-President, District Red Cross Society,

Faridabad and as per Serial No.7, four posts of Driver were sanctioned and the pay scale and qualification for a driver was as under:

04 Driver (2 posts for B.K. Hospital Ambu, 1 for President's camp office and 1 for Red Cross Office.	Matric should have valid Driving Licence and two years driving experience for under-matric	4000-6000 2550-3200
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4. Due to clerical mistake, the pay of respondent No.2 was fixed in the pay scale of ₹ 4000-6000 whereas as per Service Rules, he was entitled to the pay scale of ₹ 2550-3200 as he was under-matric, but later on, the said mistake was rectified.

5. The application filed by respondent No.2 was allowed by the learned Tribunal vide impugned order dated 13.3.2015 whereby respondent No.2 was held entitled to the pay scale of ₹ 4000-6000 w.e.f. January, 2009. Hence, this petition.

6. We have heard Sh.Saurabh Bajaj, learned counsel for the petitioners and have meticulously examined the case file.

7. Initiating the arguments, learned counsel for the petitioners contended that respondent No.2 had joined the services of the petitioner-Society in August, 1996 without following any process of law on a consolidated salary and continued in service as such till August, 2009 since there were no service rules applicable to the petitioner-Society. He further contended that for the first time on 18.8.2009, the Service Rules were framed by the competent Authority and as per Serial No.7 of the said Rules, four posts of

Drivers were sanctioned. The pay scale and qualification of the drivers were mentioned in the Rules. The drivers, who were possessing the qualification of matric, were entitled for pay scale of ₹ 4000-6000 and the under-matric drivers were entitled to the pay scale of ₹ 2550-3200. He contended that admittedly, respondent No.2 was under matric, so, he was entitled only to the pay scale of ₹2550-3200 but due to some clerical mistake on the part of the accountant, the pay scale of ₹ 4000-6000 was granted which was later on rectified by the competent Authority vide order dated 9.7.2010 and the pay of respondent No.2 was fixed in the pay scale of ₹ 2550-3200.

8. He contended that the learned Tribunal has passed the impugned order in violation of the Service Rules. The Service Rules were never challenged by respondent No.2. He further contended that the other under-matric drivers have also been granted the pay scale of ₹ 2550-3200 by the petitioner-Society. Therefore, he contended that respondent No.2 was not entitled for the salary in the pay scale of ₹ 4000-6000 as he was an under- matric driver and was only entitled to the pay in the pay scale of ₹ 2550-3200. Thus, he contended that the impugned order passed by the learned Tribunal is illegal and is in violation of the Service Rules.

9. We have duly considered the aforesaid contentions.

10. This fact is not disputed that respondent No.2 joined the services of the petitioner-Society in August, 1996 as a driver and had been performing the duties as a driver since then. The whole

emphasis of learned counsel for the petitioner-Society is on the so-called Service Rules framed on 18.8.2009. The basis for providing the separate pay scales for matriculate and under matriculate drivers has not been detailed in the said Rules Annexure R-1. It is not disputed that the matriculate and under-matriculate drivers were performing the same job i.e. the driving of the vehicles of the petitioner-Society. So, there was no reason for having different pay scale of the drivers on the basis of their educational qualification.

11. Annexure P-5 with CM No.11642 is the copy of the service book of respondent No.2 which shows that respondent No.2 was granted basic pay of ₹ 4000-6000 w.e.f. 1.1.2009. Again this very entry has been repeated at page No.52 of Annexure P-5 i.e. the copy of the service book of respondent No.2. These entries in the service book shows that respondent No.2 was granted the pay scale of ₹ 4000-6000 w.e.f. 1.1.2009. Even as per the admitted case of the petitioners, the Service Rules have been framed on 18.8.2009 whereas respondent No.2 was already granted the pay scale of ₹ 4000-6000 w.e.f. 1.1.2009. The distinction in the pay scales of matriculate and under-matriculate drivers has been made for the first time in the document/Rules dated 18.8.2009. In the rejoinder filed by respondent No.2 before the learned Tribunal, it has been categorically mentioned that the aforesaid Rules were not supplied to him even though he had approached the Department under the Right to Information Act and it is for the first time that these Rules have been annexed with the reply/written statement filed before the

learned Tribunal.

12. In view of the directions given by this Court in CWP No.8007 of 2010, the representation moved by respondent No.2 was decided by petitioner No.5 vide order dated 9.7.2010 wherein it has been mentioned that pay scale of ₹ 4000-6000 was wrongly allowed to the petitioner since he was an under-matric and as per the Policy/Rules framed on 18.8.2009, he was entitled to the pay scale of ₹ 2550-3200. It is nowhere mentioned in this order that while passing this order, any opportunity of being heard was granted to respondent No.2.

13. Annexure R-1, the Rules shows that even the Peons, Chowkidars and Sweeper-cum-Mali having educational qualification of middle pass have been granted the pay scale of ₹ 2550-3200. The pay of a driver can never be equated to the Peons, Chowkidars and Sweeper-cum-Mali. It has also been pleaded in the TA filed by respondent No.2 before the learned Tribunal that the other drivers, namely, Ram Kishore and Ram Lal have been granted the pay in the pay scale of Rs.4000-6000/- whereas the pay of respondent No.2 has been reduced which is discriminatory.

14. Respondent No.2 had rendered more than 14 years of service when the Policy/Rules dated 18.8.2009 were made applicable. After such a lapse of time, it does not lie in the mouth of the petitioners to allege that respondent No.2 was allowed to join the service without following any process of law. The Policy/Rules dated 18.8.2009 cannot be made applicable retrospectively as the pay of

respondent No.2 was fixed in the pay scale of Rs.4000-6000 w.e.f. 1.1.2009.

15. Thus, in view of our aforesaid discussion, we do not find any illegality in the impugned order dated 13.3.2015 passed by the learned Tribunal whereby respondent No.2 has been held entitled to salary in the pay scale of Rs.4000-6000 w.e.f. January, 2009.

16. Consequently, the present petition is without any merit and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

September 07, 2015
ps

(DARSHAN SINGH)
JUDGE

