

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

Date of Decision January 16, 2015

1. CWP No.488 of 2015 (O&M)

Gurbir Singh and ors.

... Petitioners

Versus

Punjab & Haryana High Court & anr.

... Respondents

2. CWP No.22429 of 2014

Raja Ram and others

...Petitioners

Versus

Punjab & Haryana High Court & anr.

... Respondents

CORAM : HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present : Mr. Saurabh Arora, Advocate,
for the petitioners in CWP No.488 of 2015.

Mr. Akshay Bhan, Sr. Advocate, with
Mr. A.S. Talwar, Advocate,
for the petitioners in CWP No.22429 of 2014.

Mr. Amit Chaudhary, Advocate,
for the Pb & Hry. High Court.

Mr. Sushant Maini, Sr.DAG, Punjab.

...

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

This order will dispose of CWP Nos.22429 of 2014 and 488 of

2015 as common questions of law and fact are involved in both the Writ Petitions and both can be conveniently disposed of by a common order.

Issue notice of motion in CWP No.488 of 2015 to the respondents. Mr.Amit Chaudhary, Advocate, accepts notice on behalf of respondent No.1, that is, the Punjab & Haryana High Court and Mr.Sushant Maini, learned Sr.DAG, Punjab accepts notice on behalf of State of Punjab-respondent no.2. Service through summons is waived by both.

In connected CWP No.22429 of 2014 notice of motion has already been issued vide interim order dated 12th November, 2014. Respondent No.2 has filed reply. Mr.Sushant Maini, learned counsel for respondent no.2 states that he adopts the reply filed in CWP No.22429 of 2014 which may be treated as the reply to CWP No.488 of 2015 since both the Writ Petitions involve similar questions of law and fact and nothing further is to be pleaded in defence.

Matters are called for final disposal in motion hearing.

I have heard the learned counsel for the parties and perused the record based on the writ file.

Learned counsel for the petitioners has drawn attention of this Court to the minutes of meeting of the Committee of Hon'ble Judges of the Punjab & Haryana High Court constituted for consideration of service Matters/Grievances of High Court employees.

The Committee of Hon'ble Judges considered several items in the meeting on representations filed by various employees of the Establishment of this Court and accepted their grievances as genuine.

These two cases concern Item No.2 (CWP No.22429 of 2014) and Item No.3 (CWP No.488 of 2015) placed on the agenda of the Hon'ble Committee. The decisions taken by the Committee in the meeting held on 08.11.2012 on Items No.2 and 3 are reproduced below in succession:-

“ITEM NO.2: Representation dated 05.03.2012 from Shr. Raja Ram and 18 other Supervisor of this Court regarding rectification in anomaly in the pay scale of the applicants (i.e. Record Supervisors).

From the facts submitted before us, we find that the pay scale of the Record Supervisors was not revised as was done in the case of Clerks and Junior Assistants though at one point of time i.e. on 01.01.2006 their pay band and the Grade Pay was in between the Cadres of Clerks and Junior Assistants. After considering the matter, the Committee recommends that the Government of Punjab may be requested to rectify the anomaly by granting to the Record Supervisors, the pay band of Rs.10300-34800 with Grade Pay of Rs.3400/-.

ITEM NO.3: Representation dated 01.02.2012 from Sh. Gurbir Singh and other Restorers of this Court regarding rectification in anomaly in the pay scale of the applicants (i.e. Restorers)

It is shown to us from the record that as on 01.01.2006, the Clerks and the Restorers were in the same pay band

and Grade Pay. In view of subsequent revision by the Government of Punjab vide notification dated 03.10.2011 and 15.12.2011, the pay band of the Clerks was revised to 10300-34800. But the pay band of the Restorers was not revised. This has given rise to an anomalous situation which deserves to be rectified. The Committee, thus, after considering the matter recommends to the Government of Punjab to rectify the anomaly by granting to the Restorers the pay band of Rs.10300-34800 with Grade Pay of Rs.3200/-.”

Item No.2 relates to 19 Supervisors of this Court who are aggrieved by an anomaly in the pay scale of Record Supervisors and pray that the anomaly be rectified in their favour and they be allowed the resultant pecuniary benefits. Whereas, the grievance of Restorers on the establishment of this Court was considered in Item No.3, where the prayer was that their pay scales be brought at par with those of Clerks of the establishment on the ground that the pay scale of both the posts, that is, Restorers and Clerks were equated in the past and the anomaly was created by the Government of Punjab in its notifications dated 03.10.2011 and 15.12.2011 which increased the Pay Band of Clerks to Rs.10300-34800, but failed to attach the said scale to the posts of Restorers whose Pay Band was not released.

Learned counsel for the petitioners submit that this has been occasioned by a *casus omissus* and deserves restoration of the status quo

ante for which directions of this Court in the present Writ proceedings are sought to reinstate the previous equation between Record Supervisors, Restorers and the Clerks.

Mr. Saurabh Arora, learned counsel for the aggrieved petitioning Restorers, submits that their pay be brought at par with those of Clerks with equal Pay Bands.

Mr. Akshay Bhan, learned Senior counsel appearing for petitioners/Supervisors submits that in their case as well the grievance is for rectification of an anomaly in the Pay Scale of Record Supervisors.

The Hon'ble Committee of this Court recommended by recorded proceedings that the rectification exercise be carried out favourably and the anomaly which has arisen be removed in the case of Restorers and the pay scale of the Record Supervisors be rectified as was revised in the case of Clerks and Junior Assistants. Though, at one point of time, i.e. on 01.01.2006, their Pay Band and the Grade Pay was in between the Cadre posts of Clerks and Junior Assistants. Therefore, they deserve to be brought and placed in between the cadres of Clerks and Junior Assistants as before.

Since a Committee of three Hon'ble Judges of this Court has deliberated during the subject meeting, inter alia, on Items No.2 and 3 which are subject matter of the present petitions and have made positive recommendations for removal of anomaly and restoration of status as on 08.11.2012, nothing further remained except the approval of the Chief Justice. The recommendations made by the Hon'ble Committee of Hon'ble

Judges stand approved by Hon'ble the Chief Justice in exercise of powers vested in him under Article 229 of the Constitution. The decisions are final dispensations and govern the terms and conditions of service of both sets of petitioners and are binding on the State government.

It was, however, open to the State Government to have pointed out a factual error in the decision taken by the Hon'ble Committee of Judges of this Court as approved by Hon'ble the Chief Justice, but the same has not been resorted to. In the present case no back reference was made by the State Government which alone concludes the business transacted in the meeting as endorsed by Hon'ble the Chief Justice and is not open to be tinkered with by the respondent State and the decision of the Chief Justice of this Court has to be respected and given full effect so that the monetary benefits percolate to the employees who fall in Items No.2 and 3.

The State of Punjab has filed a reply by way of an affidavit of the Under Secretary of the Government of the Punjab, Department of Home affairs and Justice on behalf of the State of Punjab in connected CWP No.22429 of 2014. The defence of the State is that the nomenclature/designation of the posts are different which justifies separate Pay Scales and Pay Bands. It is well settled that the nomenclature of a post is not material to the determination of Pay Scales which depend on many factors including the duties and responsibilities attached to the post and if they have been found equivalent once by the State Government itself on 01.01.2006, then the equation is not open to be disturbed without just cause and legal justification.

Therefore, the defence of the State based as per its instructions dated 23.05.2012 (R-1) that the demands regarding enhancement of Pay Scales by employees-petitioners shall alone be considered by the next Punjab Pay Commission, is not justified and the same cannot be sustained being an erroneous view of the law on the subject of parity granted consciously to said posts earlier by the State Government in consultation with the Chief Justice.

It is always open to the Government to create financial rights and to prescribe pay scales for posts under the State but that power is subject to past practice and precedent. But the decision of the Chief Justice with respect to the service conditions of the establishment of the High Court is final and enjoys constitutional primacy being the Cadre Controlling Authority of the staff on the strength of this Court. The decisions of the Chief Justice when taken under Article 229 of the Constitution of India have supremacy over the decisions of the State Government on the same subject matter as he is entitled to lay down the terms and conditions of service of employees working under his control. Clause 2 of Article 229 of the Constitution of India empowers the Chief Justice of the High Court to prescribe by rules the conditions of service of Officers and servants of the High Court. Such Rule shall, however, be subject to: (1) the provision of any law made by the legislature of the State; (2) the approval of the President/Governor of the State so far as it relates to salary, allowances, leave or pensions. There is nothing on record to suggest that the Governor has expressed his disapproval of the recommendations of the High Court.

Hence, the stand of the State Government in the present cases is not a good one, which in fact shows not only a casual approach in the matter but a disrespectful one which should have been avoided so as not to be seen challenging the wisdom and authority of the Chief Justice.

The power and authority of Chief Justice of High Court to prescribe pay scales of employees and consider mergers and equation of posts has been considered by the Supreme Court in a vivid enunciation of the scope of powers in *Union of India v. S.B.Vohra and others*, (2004) 2 SCC 150: 2004(3) SLR 353. The Supreme Court after noticing a large number of its previous decisions declared that it is not appropriate for the State Government to exercise control over subjects provided under Article 229 (2) of the Constitution and the State Government may not refuse approval which has been accorded by the Chief Justice. Refusal of approval by the Government is not sustainable in view of the absolute control that has been vested in the Chief Justice of the High Court over his staff and servants which is free from interference by the Government, subject to limitations imposed by the law itself. There are no vestiges, in this case, of anything curtailing the powers of the Chief Justice by statute to have taken the subject matter decision. It is the absolute business of the Chief Justice to make final decisions on equation of pay scale by providing higher pay scales for the post of higher responsibility and Government must respect and accept the suggestions of such higher dignitary. If there is a difference of opinion, it must be based on sufficient and cogent reasons by a back reference to reconsider the decision in the light of a fresh input or

suggestion given and the State Government should only recommend for consultation and discussion and that too within a reasonable time. There cannot be an emphatic refusal of approval in total disregard to the status, integrity and efficiency of a high dignitary, which a Chief Justice holding office represents.

For the reasons recorded above, these petitions are allowed. The impugned orders are set aside. The defence of the State in the impugned orders are quashed on certiorari issued. A mandamus is issued to the State of Punjab-respondent No.2 to give effect to the decision of the Chief Justice of this Court forthwith and steps be taken to act in the aid of the Chief Justice by restoring the status quo ante as on 1.1.2006 and the monetary benefits including difference of arrears of pay accruing there from be calculated and paid to the petitioners and non-party post holders within two months from the date of receipt of a certified copy of this order. It is directed that interest on arrears will run at the rate of 12 percent simple per annum till payment is made, since the petitioners and those who are likely to benefit have been deprived of use of money unjustly which was legally their due but was wrongfully withheld under colour of perverse orders/stand taken in defence which are nullified as a result of this order.

16.1.2015
anju rani/MFK

(RAJIV NARAIN RAINA)
JUDGE