

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.27572 of 2013
Date of Decision: 20.02.2015**

Malkit Singh

..... Petitioner

Versus

The State of Punjab and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Inder Pal Goyat, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J.

The petitioner joined service as a Plumber in 1979 in the Department of Health, Punjab to serve in the office of Civil Surgeon, Mansa on his name being sponsored by the employment exchange. At the time of recruitment, the qualification for the post of Plumber was Middle pass with two years ITI course in the Trade of Fitter, which he possessed. He qualified the Matriculation examination in 1982 after obtaining permission of the Department for further studies.

The First Pay Commission recommended in 1967 that the pay

scales of skilled and semi-skilled employees should be related to academic and technical qualifications. Such of the posts which required Matric with ITI (two years) qualification were entitled to the pay scale of Rs.140-300. These recommendations fall in Chapter XII of the Pay Commission Report. The Punjab Government accepted the recommendations in 1969 by its notification published on February 04, 1969. The pay scale of Rs.140-300 was revised w.e.f. 01.01.1978 to Rs.450-800 on the recommendations of the Second Pay Commission. The Third Pay Commission found that the existing grade structure of skilled and semi-skilled staff in various departments was highly diverse and presented a confused picture since posts bearing the same designations in different departments carried different pay scales. Qualifications prescribed also varied from department to department. While recommending revision of the pay scale from Rs.450-800 to Rs.1200-2100, the Commission advised Government that skilled and semi-skilled staff across departments should be re-designated as Junior Technicians Grade-I to Grade-IV. Chapter 26 of the Third Punjab Pay Commission Report deals with the subject.

The petitioner complains that when he was offered appointment it was in the pay scale admissible to Class-IV employees whereas he was entitled to be placed initially in the pay scale of Rs.140-300 on the strength of his technical qualifications of Matric plus two years ITI. However, he was left out and did not get the benefit of revision. He pleaded for justice. Some persons holding counter-part posts in the Department of Public Health, Punjab feeling aggrieved approached this Court in CWP No.10759 of 1990, titled *Rajinder Pal Gautam and others vs. State of Punjab and*

others which was decided in their favour on May 30, 2008. Gautam and company were employees who possessed the qualifications of two years ITI diploma course with Matriculation who were working as Pump Operators and were held entitled to the pay scale of Rs.140-300 w.e.f. the date when they joined service. Those who did not hold the qualifications were denied relief. The said unsuccessful non-matric employees carried LPA No.44 of 2009 against the judgment of the learned single judge in which the order was modified on February 15, 2010 holding that no arrears will be paid to the petitioners. Aggrieved, the State carried SLP (C) No.15225 of 2010 which was dismissed by the Supreme Court on July 12, 2010. It is the say of the petitioner that the judgment passed in *Gautam* case has been implemented by the Department of Water Supply & Sanitation, Punjab qua the petitioners vide a letter dated July 23, 2010. The Government of Punjab generalized the judgment passed in intra court appeal to other left-out counter-parts working in the Department of Water Supply & Sanitation with a view to bring uniformity in the department and therefore, instructions dated June 30, 2011 were issued granting parity of treatment.

It was then that the petitioner staked his claim through representations for grant of technical pay scales as a Plumber when Plumbers working in other departments had already been allowed higher pay scale on the basis of their qualifications. The benefit was extended to Plumbers of other departments but not to the petitioner. He felt discriminated against. He relied on the decisions passed in CWP No.14405 of 2011 and CWP No.2777 of 2013. The copies of the judgments are attached as P-11 to P-13.

Feeling aggrieved, the petitioner approached this Court by filing CWP No.11044 of 2013 praying for conversion of pay scale from Rs.140-300 to Rs. 450-800 on the basis of his qualification from the date he acquired the Matriculation certificate plus already earned two years ITI diploma in terms of the judgment relied upon and noticed supra. The claim was based on the principles of similar treatment when similarly situated persons working on technical post other than Plumbers in the petitioner's department had been granted the benefit of higher pay scales. On these premises, he claimed benefit of Senior Selection Grade/ACP on the basis of what should have been his initial pay scale of Rs.450-800 but was not granted. The petition was disposed of on May 21, 2013 with liberty to the petitioner to file a detailed representation to the 2nd respondent within six weeks and the same would be decided within five months. The department did not relent. The representation was dismissed on August 16, 2013. The principle of 'equal pay for equal work' did not find favour with the primary authority. This writ has been filed to assail the order (P-16) rejecting his representation.

The specific stand of the petitioner, which has a material bearing to the relief sought, has been pleaded in paras.22 to 24 of the petition which reads as follows:-

"22. That the qualification for the post is one of the factors to be reckoned, but the same is to be seen at the time of initial entry of the employee in service. In the present case, the petitioner was appointed in the year 1979. Thereafter, his services were regularized in the year 1986. He has been continuously working in the department on the posts of Plumber and performing the same duties as being performed by other Plumbers working in the Department. There is no

difference in the duties and responsibilities of the petitioner than the plumbers working in the department. Even the department has not mentioned any such difference of duties than the other Plumbers. Once, the petitioner is performing same duties and sharing same responsibilities and their postings are interchangeable, the respondents cannot be allowed to discriminate the petitioner for the purpose of granting him pay scale as being granted to other Plumbers in the department.

23. That the post of Plumber occupied by the petitioner is a technical post. The post occupied by the petitioner in the Civil Hospital, Mansa is a sanctioned class III post in the pay scale of Rs.3120-5160 in the letter dated 21.7.1999 whereas the petitioner is being paid pay scale of a class IV employee i.e. Rs.2520-4140. The petitioner is entitled pay scale as sanctioned for the post and also entitled benefit of higher pay scale on the basis of his qualification in terms of recommendations of the Pay Commission as allowed to the technical posts. Copy of the letter dated 21.7.1999 is being annexed herewith as Annexure P-17.

24. That other Plumbers working in the Govt. of Punjab and also in the department have already been given revised pay scale according to their qualification of ITI Trade certificate, but the petitioner is being discriminated. Once Sh. Mohinder Singh S/o Sh. Shadi Ram, who joined the department on 28.05.1991 and presently posted at Civil Hospital, Ropar and is possessing the qualification of ITI Certificate of one year which is lower qualification than the qualification possessed by the petitioner, is being treated as Class-III employee and is being granted the higher pay scale than the petitioner on the ground that he was appointed by the Director. The appointment of an employee is not in the jurisdiction of the employee. It is for the employer to see or to prescribe the appointing authority. The petitioner cannot be denied the pay scale of the technical post occupied by him merely on the ground that he was appointed by the Civil Surgeon. There is no post of Plumber which is treated as Class-IV post in any of the Department of the State of Punjab. Rather, it is a Class-III post. The petitioner is performing the duties of a Class-III

employee and also possessing the qualification of Class-III post. Other employees, who are working on the post of Plumbers with similar qualification, have been granted higher pay scale on the basis of their qualification of Matric with two years ITI, whereas, the petitioner is being discriminated in the matter of grant of higher pay scale. This action of the respondents is violative of the provisions of Article 39 (d) of the Constitution of India and also violative of the principle of equal pay for equal work. Further all the posts of Pump Operators, Fitters and Plumbers etc. have been declared as Technical vide letter No.E-2/12724-34 dated 9.8.2012 by Department of Water Supply and Sanitation. Hence, the petitioner is being discriminated."

The State has filed a written statement in defence of the petition.

In replies to paras.22 to 24 the State has this to say:-

"22. That in reply to the contents of Para No.22 of the Civil Writ Petition, it is submitted that the petitioner was appointed as Class-IV on the post of Plumber on the basis of the qualification at the time of appointment. The post of Plumber in the scale of Class-IV has not be upgraded neither the petitioner promoted as Plumber in class III. It is further submitted that in Service Rules of 2007, there is no provision for promotion as plumber from the category of Class IV.

23. That the contents of the Para no.23 are admitted to the extent that the post of Plumber sanctioned as a Class III employee in the Civil Hospital, Mansa. The rest of the para wrong and hence denied as the petitioner was appointed in the pay scale of Rs.80-120 as Class-IV employee and other all benefits of Class-IV employee has been given to the petitioner. There is no provision for promotion as plumber from the category of Class IV in the Service Rules of 2007.

24. That in reply to the contents of Para no.24, it is submitted that the petitioner was appointed as Plumber in pay scale of Rs.80-120 of Class-IV. He himself accepted the appointment of Class-IV and also other benefits which are admissible to Class-IV employees have been given to the petitioner. It is denied that the action of the answering respondents is violative

of the provisions of The Constitution."

A comparison of the assertion and the refutation reveals that there is no specific denial to the averments in the aforesaid paragraphs. It is trite to say that what is not specifically denied is deemed admitted.

A few more facts are focused for emphasis on the moot issue. The petitioner was appointed in 1979 and his services were regularized as Plumber in 1986. The post of Plumber in Civil Hospital, Mansa is a sanctioned Class III post which carried the pay scale of Rs.3120-5160 (unrevised). This is evident from the letter dated July 21, 1999 (P-17) which says that in the 100 bedded hospital, Mansa under the control of the Civil Surgeon, Mansa there are 24 category of posts, the last of which is that of Plumber in the pay scale of Rs.3120-5160 and the number of posts is "1". The cadre of Plumber is thus a single post cadre which means that the petitioner has manned that single post most definitely from July 21, 1999 leaving alone his work as a Plumber prior thereto. There is nothing on record to suggest that in 1979 or in 1986 or thereafter there was more than one Plumber working on the staff strength of the Civil Hospital, Mansa.

It is the contention of Mr. Inder Pal Goyat, learned Addl. AG, Punjab that there can be no doubt that the petitioner was appointed as a Plumber which was then a Class-IV post in the pay scale of Rs.80-120 and the petitioner was appointed to the post for a period of six months by the Civil Surgeon, Bathinda by office letter dated January 12, 1979. This was an irregular appointment, if not a legal one. His services were regularized retrospectively from September 10, 1979 as Plumber in Class IV pay scale vide order dated October 31, 1986. He does not dispute; since it is the stand

of the State in para.2 of the preliminary submissions, that the qualification of petitioner was Middle at the time of appointment. He was not a matriculate. The petitioner continued to work as a Plumber in Class-IV service at Civil Hospital, Mansa. There were no rules of service existing when the petitioner was appointed. The draft rules remained on paper till the rules were framed known as the Punjab Health and Family Welfare Technical (Group-'C') Rules, 2007 (for short "the Rules"). The qualifications for appointment and experience of the posts including that of Plumber have been laid down, where the post of Plumber falls at Sr. No.68 of the Rules. These essential qualifications are; Matriculation from a recognized university or institution; possession of an ITI certificate in the Plumber Trade; should have experience of repair of pipe fittings and water taps for a minimum period of two years in a reputed firm, hospital or institution. If Plumbers have been appointed post promulgation of rules, the appointees have necessarily to be placed in higher pay scales admissible to Class-III employees in accordance with rules. The petitioner does not possess the ITI in the trade of plumber. He holds the ITI in the Fitter Trade.

Mr. Goyat submits that it is not for the court to order a change in class category of the petitioner, that is, from Class-IV to Class-III which lies in the discretion of the State Government to grant or not. Nor can the Civil Surgeon make such an order. The Civil Surgeon is accused of exceeding his jurisdiction in appointing and regularizing the petitioner. The Civil Surgeon is not competent to appoint Class-III employees and, therefore, the petitioner has no case based on higher pay scales for work performed as a plumber. It is said that the Department of Finance is a necessary and proper

party to the litigation and it has not been impleaded as a party, therefore the writ must fail as it suffers from non-joinder of necessary party, the case bearing financial implications. Still further, it is stated in para.5 of the preliminary submissions that the petitioner passed his Matriculation in November 1982 but he did not possess ITI course Certificate in Plumber Trade as is required under the Service Rules of 2007. When he was appointed he possessed the certificate in the Fitter trade.

Mr. Arora submits per contra, to contend that his client has worked as a Plumber on a single cadre post since 1979 till beyond the promulgation of the 2007 Rules and still does. He was qualified to hold the post on the date of appointment in absence of a stipulation in the conditions of service or in the recruitment rules. It would be unfair to throw out the claim of the petitioner by insisting that the rules require a certificate in the Plumber Trade which is not possessed by the petitioner nor can he earn it at this stage of his life. If the work of the department has carried on successfully from 1979 by one person then his hands-on experience alone would resound to his credit towards experience as there is not even a whisper on record that his work and conduct was not been found satisfactory over the years. Experience gained over considerable period of time is a valuable asset for the employer and in some cases becomes a qualification by itself which is not easy to replace.

In **Bhagwati Prasad v. Delhi State Mineral Development Corporation**, AIR 1990 SC 371 the Supreme Court ignored the minimum educational qualification prescribed for different posts on the ground that though such educational qualification is a factor to be reckoned with, but it

is so at the time of initial entry into the service and once the appointments are made as daily rated workers and they are allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack of the prescribed educational qualification.

In Randhir Singh v. Union of India & Others, AIR 1982 SC

879 Chinnappa Reddy, J. said:

"It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Art.39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for every one and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Art. 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointments to any office under the State. These equality clauses of the Constitution must mean something to every one. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

It can also not be denied that the post of Plumber is a technical post and recognized as such by the respondent State itself. In any case, the 2007 rules cannot be read retrospectively as to deny the petitioner an accrued and vested right crystallizing at least from the date of regularization, if not from his initial appointment. The act of keeping the

petitioner in Class-IV on the post of Plumber for years together and which did not exist with minimum matriculation certificate as an essential qualification till under the 2007 rules would alone justify grant of relief on the principles of 'equal pay for equal work' which principle has been read into Article 14 of the Constitution. The petitioner's specific assertion is that he has performed the full duties and responsibilities of the post of Plumber throughout his career are deemed to be admitted by the State because of the vague and evasive reply to his pointed averments in the afore quoted paragraphs of the writ petition. It is not enough to refute baldly by saying that the averments made in those relevant paras are wrong and denied without explaining the reasons supporting refutation and denial. If the Finance Department has not been made a party then the State of Punjab is a party defending the action. The State cannot be broken into departments for purposes of eliciting responses before the Writ Court unless they become absolutely necessary as discovered by court during proceedings, which is not the case. Therefore, the objection as to non-joinder of parties is meaningless and is overruled.

There is merit in the contention of Mr. Arora, when seen from all angles. This is a case of exploitation of a single person for over three decades. Even assuming that the argument of Mr. Goyat is to be accepted that the Court cannot issue a mandamus declaring the petitioner as a Class-III employee, even then the petitioner is eminently entitled to the higher pay scales admissible to Plumbers, firstly on the strength of the recommendations of the successive Punjab Public Service Commissions in the matter of pay scales of technical posts and then on the promulgation of

the rules in 2007, applying the principle of 'equal pay for equal work' or in lieu thereof on the principle of *quantum meruit*. Which were the principles of law laid down in **Mrs. P. Grover vs. State of Haryana**, AIR 1983 SC 1060 that when a person shoulders the full duties and responsibilities of the higher post on a temporary charge he earns right to higher emoluments/salary of the higher post. These principles eminently deserve to be applied in this case for entitlement to higher pay scales of plumber for discharging duties and responsibilities of the cadre post. Therefore, when the case is examined from both angles then all roads lead to Rome. If I desist from issuing a mandamus for converting the petitioner from Class-IV to Class-III it does not mean that the petitioner has no case but is mostly because of the limitations placed upon the Writ Court in interference in policy matters, otherwise I would have so ordered and, therefore, I would accept the contention of Mr. Arora that the petitioner is entitled to higher pay scales as are reflected in the Rules 2007.

For the foregoing reasons, this petition is allowed. A writ of certiorari is issued quashing the impugned order dated August 16, 2013 (P-16) which is based on an incorrect reasoning and cannot be sustained. A writ of mandamus is issued to the State to grant the petitioner the higher pay scales of the single post of Plumber in the rules by according parity of treatment with the binding directions handed down in the aforesaid judgments, relied upon by the petitioner. This is ordered to be done notionally w.e.f. September 10, 1979 keeping in view the pay revisions from time to time. However, the actual monetary benefits of difference of arrears of higher pay are restricted to 38 months prior to the date of filing of the

first writ petition i.e. CWP No.11044 of 2013 which led to the passing of the impugned order.

(RAJIV NARAIN RAINA)
JUDGE

20.02.2015
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