

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

LPA No.1967 of 2014

Date of decision: 04.08.2015

Satish Kumar

....Appellant

Versus

State of Haryana and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

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

Present: Mr. Rajesh Goyal Advocate
for the appellant.

P.B. Bajanthri, J.

The appellant has questioned in the Letter Patent Appeal the order dated 05.09.2014 passed in CWP No.10794 of 1993.

The appellant was statedly appointed as an Accounts Clerk/Assistant on 16.02.1979 in the pay scale of Rs.160-10-280-15-400. His grievance is that one Sh. O.P. Khanna and Sh. Chander Bhan who were juniors to him in the post of Assistant, are drawing higher pay than him. Thus, he sought for stepping up his pay on par with them. His grievance was rejected by the concerned department. Aggrieved by the order of rejection, he filed writ petition. The learned Single Judge after due examination of service particulars of the appellant and so also of Sh. O.P.Khanna and Sh. Chander Bhan held that the appellant is not entitled for stepping up of pay to that of aforesaid Assistants. Accordingly, writ petition was dismissed on 05.09.2014. Feeling aggrieved by the order of the learned

Single Judge, he is before us.

Heard learned counsel for the appellant.

The appellant was directly recruited to the post of Accounts Clerk/Assistant in the PWD(B&R) department on 16.02.1979. Sh. O.P. Khanna and Sh. Chander Bhan were recruited to the post of Sub-Division Clerks in the year 1968 and 1971 respectively. When things stood thus, revision of pay was notified with effect from 01.04.1979. The appellant opted for revision of pay with effect from 01.10.1979 in the post of Assistant. Whereas, Sh. O.P.Khanna and Sh. Chander Bhan were granted selection grade in the post of Sub-Divisional Clerk before they were promoted to the post of Assistant on 12.05.1980 and 05.05.1980 respectively. Obviously pay of Sh. O.P. Khanna and Sh. Chander Bhan varied in the post of Assistant when compared to the appellant's pay. In this regard, it is necessary to reproduce fixation of pay of both the appellant and Sh. O.P. Khanna and Sh. Chander Bhan which are as follows:-

"S.No.	Name & Designation	Old Scale	Basic Pay
			prior to 1.4.79
1.	Satish Kumar Asstt. Scale revised w.e.f	160-10-280/- 15-400 1.4.79 1.10.79 12.05.80	200/- 525-1050 Rs.585 in the new scale Rs.585 -----do-----

2. Table showing the pay of Sh. O.P.Khanna SDC now SAC,

Date	Pay in old Old scale to 01.04.79	Pay as SDC in the scale of Rs.400+660+25/-	SDC selection grade 480-760 +25/-spl-	Pay as Asstt. Rs.525-1050
1.4.79	165+20/-	540+25/-	555+25/-	-
2.4.79	-	555+25/-	570+25/-	-

1.4.80	-	570+25/-	585+25/-	-
12.5.80	-	570+25/-	585+25/-	620/-

Promoted as Asstt. w.e.f. 12.05.80.

3. Table showing the pay of Sh. Chander Bhan/SAC

1.4.79	165+20/-	540+25/-	-	-
2.4.79	-	555+25/-	-	-
1.4.80	-	570+25/-	-	-
5.5.80	-	570+25/-	-	600/-
23.5.80	-	-	585+25/-	620/-”

Reading of the above fixation, it is crystal clear that question of stepping up of pay of the appellant does not arise on the sole reason that Sh. O.P. Khanna and Sh. Chander Bhan were granted selection grade in the post of Sub-Division Clerk for which post the appellant was not appointed. On the other hand, he was appointed to higher post of Accounts Clerk/Assistant. Therefore, the appellant does not have any right seeking for stepping up of his pay with reference to fixation of pay of Sh. O.P.Khanna and Sh. Chander Bhan. Service particular of appellant and aforesaid persons are uncomparable.

The Apex Court in the case of ***State of Andhra Pradesh and others versus G. Sreenivasa Rao and others*** (1989)2 SCC 290 held that:-

“Equal pay for equal work” does not mean that all the members of a cadre must receive the same pay-package irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay-scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex-facie be arbitrary but if there are

justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when Pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at Efficiency Bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differential on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. (emphasis supplied) This court held that High Courts and Tribunals should not, in an omnibus manner come to the conclusion that whenever and for whatever reasons, a junior is given higher pay, the doctrine of "equal pay for equal work" is violated and the seniors are entitled to the same pay, irrespective of the scope of the relevant rules and the reasons which necessitated fixing of higher pay for juniors."

In the present case, there is a difference in pay between the appellant and Sh. O.P. Khanna and Sh. Chander Bhan due to grant of selection grade scale in the post of Sub-Division Clerk and not anomaly in Assistant cadre. The appellant cannot contend that there is a disparity or discrimination in fixation of pay.

The benefit of stepping up of pay is permissible in cases where the senior and junior employees stand on equal footing where all the considerations and incidences are identical and the anomaly in their pay is solely attributable to some situations like revision of pay scale and

promotion in a cadre. In the present case, while implementing the revision of pay or while granting promotion there is no pay anomaly. On the other hand, Sh. O.P.Khanna and Sh. Chander Bhan were granted selection grade scale in the cadre of Sub-Division Clerk. Consequently, pay of the appellant cannot be compared to that of aforesaid Assistants. Thus, the learned Single Judge rightly refused to interfere with the denial of stepping up of pay to the appellant.

In view of the above, we do not find any of the arguments advanced by Shri Rajesh Goyal, learned counsel for the appellant worth acceptance. The LPA is devoid of any merit and is accordingly dismissed.

No order as to costs.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

04.08.2015
pooja saini