

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8256 of 1995

Date of Decision: 18.05.2016

Charanjit Singh and others

... Petitioners

Versus

State of Punjab and another

... Respondents

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

Present: Mr. B.S. Patwalia, Advocate,
for the petitioners.

Ms. Rita Kohli, Sr. Advocate,
with Mr. Manik Bhandari, Advocate,
for the respondent-PPCB.

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

RAJIV NARAIN RAINA, J.

1. In the past two decades of the pendency of this petition the law developed by the Courts on equation of posts, equal pay scales and equal pay for equal work has undergone restrictively gradual transformation and the legal position rests ordinarily on non-interference by the Court in policy matters involving financial implications. The judicial debate is over on the subject confirming these issues to be best left to the opinions of experts in the field brought to bear in administration of Government departments and its personnel in a wide range of categories. The petitioners are employees of the Punjab Pollution Control Board. They were appointed to service as either Assistant Chemists or Chemists which latter is a promotional post.

The post of Chemists in the Board is a Class-II post which was re-

designated as Junior Scientific Officer (JSO).

2. The pay scale of Chemists has gradually increased with revision in pay scales by the passing years. The pay scale of Chemists/JSOs was revised to Rs.2000-3500/- w.e.f. January 01, 1986. In Punjab State Medical and Dental Colleges there were Chemists as well and vide notification dated May 10, 1990 their pay scales were revised to Rs.2200-4000. The petitioners wanted an increase in pay scale on parity with Chemists working in the Health Department of the Government of Punjab at par with the pay scale allowed in the Government notification. They based their claim on parity of educational qualifications between the two groups pleading that they were the same and so were the duties and responsibilities at par. They made representations to the Board claiming the scale of Rs.2200-4000 which was given to their counter-parts in the Punjab Government. The representation was rejected by the Board on April 21, 1993 in its 82nd meeting. The reason for rejection was that the posts of the petitioners were equated with Chemists working in the PWD Public Health Department but not with the Chemists in the Health Department.

3. On the other hand the petitioners' case was that the qualifications prescribed for the post of Chemist in PWD were lower than those of the petitioners and secondly, the duties and responsibilities of Chemists working in PWD were on the lower side in comparison with the petitioners. The minimum qualification required for the post of Chemist in PWD was B.Sc. 1st Division while the Chemists in the Board had to possess Master's Degree in Chemistry, Bio-chemistry, Micro-Biology and Life Science and the Chemists working in the Department of Health Govt. of

Punjab had to possess M.Sc. (Organic Chemistry)/ M.Pharma (Pharmaceutical Chemistry).

4. Dissatisfied with the rejection of their case, the petitioners persisted with their representations by serving one in January and then in September 1994. They plead that on September 13, 1994 an agreement was arrived at between the agitating Association of employees and the management of the Board wherein they were given an assurance that they will be granted the desired pay scale of Rs.2200-4000 and the cadre of JSO and Assistant Scientific Officer (ASO) would be merged. The post of ASO in the Board was in the pay scale of Rs.2200-4000. This assurance satisfied the petitioners for the time being. The minutes of the meeting are attached at Annex P-7.

5. The two issues agitated were revision of pay scales and merger of cadres. The request of the petitioners was again placed before the Board in its 88th meeting held in October 1994. That is how and from where the matter was sent to the State Government in the Department of Science and Technology through a reference made by the Board. The State Government responded by letter dated February 03, 1995 advising the Board that the demands of the employees may be considered at their own level and recommendations, if any, be sent to the State Government. That is how the matter was again placed in the agenda of the 91st meeting of the Board held on April 25, 1995. In this meeting their case was rejected. The opinion was that there were two cadres in the Board which comprised Environmental Engineers and Scientific Staff and the Board decided that the cadre structure of Scientific Staff should be at par with the Engineering Staff of the Board

and they also be allowed identical pay scales. The Board proposed that the posts of ASOs/JSOs should be merged in one category and may be designated as Assistant Scientific Officer in the pay scale of Rs.2200-4000. At the same time it was decided that the pay scale of Scientific Assistant should be revised from Rs.1500-2700 to 1800-3200 equivalent to the pay scale of Junior Environmental Engineers. These were proposals to be put to the Board for consideration and approval which answered in the negative resulting in the decision: “the matter was considered by the Board in depth and the item (91.18) was not approved by the Board”. It is against this decision that the petitioners approached this Court in 1995 in the present petition.

6. The Punjab Pollution Control Board has filed its reply contesting the case. Senior Counsel Ms. Rita Kohli appears for the Board. It is argued that if the demand of the petitioners is accepted it would amount to nullifying the infrastructure of posts and would tantamount to abolishing the post of JSOs held by the petitioners. The merger of posts was not found tenable. The law laid down by the Supreme Court in State of U.P. and others v. J.P. Chaurasia and others, AIR 1989 SC 19 is cited as reason enough for rejection of the prayers of the petitioners. The Board is an autonomous body governed by rules and regulations governing the service conditions of its employees. There is a prime difference of nature of work and responsibilities of the posts held by the petitioners as against those working in the State Government. The employees of the Board are not protected by Article 311 of the Constitution of India. The petitioners are employees of a Corporate body while the Chemists in the Health Department are public

servants. There cannot be equation between the two for purposes of 'equal pay for equal work'. The Board in its written statement relies on S. Nagaraj & Ors. v. State of Karnataka, 1993 Supp (4) SCC 595 : 1993 Supp 2 SCR 1, in the following words extracted from the judgment of the Supreme Court:-

“Moreover possessing minimum qualification prescribed under rules does not mean appointment on that post. It only provides eligibility. For instance a holder of SSLC certificate cannot be considered as eligible for the post of First Division Assistant as the minimum qualification for it is graduate. A graduate can apply for either. But being graduate does not mean that any stipendiary graduate is liable to be absorbed as First Division Assistant. No employee can claim higher post or scale of pay commensurate with his qualification. It may be ideal but not practical. Appointment of a graduate or a post-graduate to a post which carries lower qualification by itself, does not amount to exploitation nor it is violative of any constitutional graduate or principle.

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“Equal pay for equal job' should not be unduly stretched to frustrate the entire process of selection and appointment in Government service.”

7. For these reasons, respondents pray that the writ petition be dismissed. Further still, it is pointed out that the employees of the Board are governed by the Punjab Pollution Control Board Employees Service Regulations, 1980. Regulation 4 prescribes:-

“Number and character of posts under the Board:-

(1) There shall be permanent as well as temporary posts under the Board and the posts in existence immediately before the enforcement of these regulations are specified in Appendix 'B'.

Provided that nothing in these regulations shall affect the inherent right of the Board to add to or reduce the number of such posts or create new posts with different

designations and scales of pay whether permanently or temporarily.”

8. According to the above regulation, the Board is competent to create posts with different designations and scales of pay. The Board explains in the written statement that Chemist working in the Board, whose designation was later on re-designated as Junior Scientific Officer were initially appointed in the Board in the pay scale of Rs.825-1580. The Board thereafter in its 69th meeting held on 22.9.89 revised the pay scale of this post to Rs.2000-3500/-. The petitioners represented to the Board that their pay scales may be revised to Rs.2200-4000 as the State Government has almost in all categories where the pay scale was Rs.825-1580/- revised the scale to Rs.2200-4000. Matter was placed before the Board in its 82nd meeting held on 21.4.93 (Annex P-4) for revision of pay scales and the details regarding the pay scales, nature of duties and qualifications exists in the various departments was considered in depth keeping in view the overall facts of the case. The Board considered the matter and did not agree with the proposal.

9. It is submitted that the Board has laid down qualifications and experience of various posts according to their requirement. The post of Chemist is a Scientific post which is a higher technical post whereas other posts mentioned by the petitioners drawing analogy of reasoning are ministerial cadre posts, therefore, there cannot be any comparison between these posts because there is a wide difference in essential qualifications and nature of duties of the two categories. Classification by grades and posts is reasonable differentiation. The Board argues that if the existing pay scale of Rs.2000-3500 is revised to Rs.2200-4000, the pay scale of the post of ASOs

and the post of JSOs become equal and there will be a huge gap between the pay scale of Scientific Assistant and Junior Scientific Officer. It would also reduce the channel of promotion and this aspect was also assessed to decline the request.

10. The petitioners have not filed replication to the written statement.

11. I have heard Mr. B.S. Patwalia, learned counsel for the petitioners and Ms. Rita Kohli, learned Senior counsel appearing with Mr. Manik Bhandari for the Board and I have been taken through the material portions of paper-book and the documents either side and have perused them with their assistance.

12. Having regard to the contentions raised before me I am not inclined to interfere in this matter and would be extremely reluctant to enter into thickets of the odious comparison between Chemists working in the Board and in the Health Department of the Government of Punjab. When the claim is not admitted by the Board and on the other hand it has rejected it after due deliberations in many layers of review, then it is not open to the writ court in secondary review of administrative action, I should imagine, to set about the task equating posts and granting to the petitioners the pay scale of Rs.2200-4000 w.e.f. January 01, 1986 or from any other date being a purely policy matter and management function. It is a misnomer to call the Chemists working in the Health Department counter-parts of Chemists in the Board. There can be no comparison between the Board employees and the employees of the Health Department, Punjab. The nomenclature of the post is of hardly any consequence. Judicial restraint would have to be

exercised in the matter of pay scales involving huge financial implications which the Board is not willing to shoulder having done its duty in classifying posts and assigning pay scales to them.

13. The law which has developed in the Supreme Court in *J.P. Chaurasia's* case and thereafter in a succession of judgments shies away the Court to exercise discretionary jurisdiction vested in Article 226 of our Constitution. None of the petitioners' fundamental rights have been violated by the Board in rejecting their case. Even the argument that the impugned decision is non-speaking is not maintainable as a ground of challenge. The Board is a multimember body representing the prime interests of management so long as the agenda placed before the Board was clear enough then to say that the Board was expected to write a thesis rejecting the case is not correct legal reasoning. The principles of natural justice do not reach that far in a collective policy decision taken by the Board in its wisdom not to increase the pay scale as demanded by the Association of employees. The 82nd meeting of the Board can be viewed at its best or worst as a broken promise. The petitioners cannot assert legitimate expectation from a tentative decision which may have been taken at a time where the members of the Association needed to be pacified. The Board is the best Judge on its requirements with sufficient free play left in its joints.

14. Ms. Rita Kohli, has placed for the consideration of the Court two decisions of the Supreme Court which are relevant in S.C. Chandra and others v. State of Jharkhand and others, (2007) 8 SCC 279 where the principles of equal pay for equal work and pay parity have been clarified after noticing the earlier dicta of the Supreme Court including its decision in

Dhirendra Chamoli v. State of U.P., (1986) 1 SCC 637. The Supreme Court noticed in the separate but concurring opinion of Hon. Markandey Katju, J. that in recent years, the Court has avoided applying the principle of equal pay for equal work “unless there is complete and wholesale identity between the two groups” borrowing from past dicta. There is almost a complete prohibition on the Court itself granting higher pay on these principles as are pressed herein. The principles identified by Katju, J. in the judgment are summarized thus:-

“(i) Fixation of pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State.

(ii) In recent years Supreme Court avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay).

(iii) Only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply.

(iv) Equation of posts and salary is a complex matter which should be left to an expert body.

(v) Fixation of pay and determination of parity is a complex matter which is for the executive to discharge.

(vi) Granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences.”

15. In the same strain Ms. Kohli, cites State of Himachal Pradesh and another v. Tilak Raj, (2014) 16 SCC 545. In this case the Supreme Court cautioned in the judgment that in the matter of equal pay for equal

work, petitions with disputed questions of fact should not have been entertained by the High Court and that too without examining relevant evidence of exact nature of work, working conditions and other relevant factors in absence of which it could not be possible to decide similarity in the nature of work of persons belonging to different cadres. Such exercise should not be carried out by the High Court under its writ jurisdiction. The work of fixing pay scales has to be left to expert bodies like Pay Commissions etc., the Supreme Court reiterating past dicta including in *S.C. Chandra* case and several of the Courts earlier decisions. Not to leave before parting an important fact has brought to my notice which is an office order dated November 02, 1996 produced by the Board at the hearing which promotes the petitioners as Assistant Scientific Officers. The writ petition was filed in May 1995. Those promotions were made about a year and half later and their grievances, if any, stand largely removed by these promotions placing them in the coveted pay scales.

16. In the result, I find no ground to interfere and disturb pay and post as they stood and would dismiss the petition as without any merit.

(RAJIV NARAIN RAINA)
JUDGE

18.05.2016
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