

CWP No.13262 of 2012
CWP No.5371 of 2013
CWP No.16745 of 2013
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.13262 of 2012

Narinder Pal Singh and others ... Petitioners

Versus

State of Punjab and others ... Respondents

2. CWP No.5371 of 2013

Pawan Kumar and others ... Petitioners

Versus

State of Punjab and others ... Respondents

3. CWP No.16745 of 2013

Harjinder Singh Minhas ... Petitioner

Versus

State of Punjab and others ... Respondents

4. CWP No.10441 of 2015

Gursewak Singh Rajpal ... Petitioner

Versus

The State of Punjab and others ... Respondents

Date of Decision: 29.03.2016

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

Present: Mr. Vibhav Jain, Advocate,
and Mr. Arun Gupta, Advocate,
in CWP Nos.13262 of 2012 and 5371 of 2013
Mr. R.S. Bajaj, Advocate in CWP No.16745 of 2013
Mr. I.S. Saggu, Advocate in CWP No.10441 of 2015
for the petitioner(s).

Mr. Harkesh Manuja, 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.

1. This order will dispose of CWP No.13262 of 2012 titled *Narinder Pal Singh and others v. State of Punjab and others*, CWP No.5371 of 2013 *Pawan Kumar and others v. State of Punjab and others*, CWP No.16745 of 2013 titled *Harjinder Singh Minhas v. State of Punjab and others* & CWP No.10441 of 2015 titled *Gursewak Singh Rajpal v. The State of Punjab and others* by consent of all the counsel that these four cases be decided by one order. Facts are culled from CWP No.13262 of 2012 for the sake of convenience. The cause being common to the petitions.

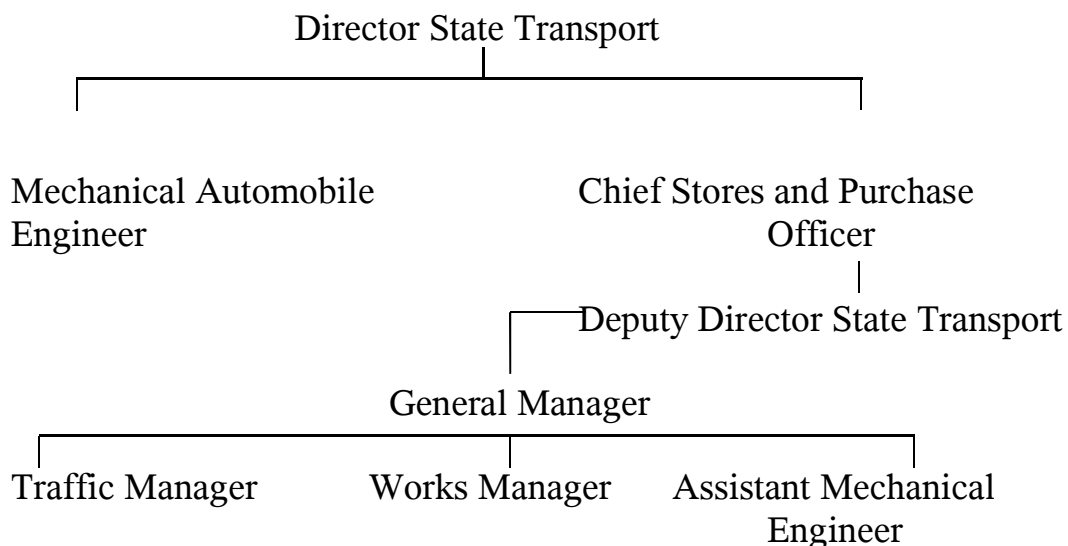
2. This petition and the accompanying cases present a rather strange anomaly in pay scales in the Department of State Transport where Senior officers are drawing basic pay lower than the feeder cadre post of Assistant Mechanical Engineer etc. The anomaly is with reference to the date January 01, 1996 and deserves the highest attention of the Government to bring an end to the suffering of the petitioners as argued before the Court.

In other words, the pay of the promotional post has become lower than the

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pay of the feeder category in the circumstances explained hereafter. The hierarchy of posts in the service presents the following picture:-



3. The petitioners are General Managers, Punjab Roadways etc and hold superior posts. They pray for removal of an anomaly surfacing between their pay scale and that of Assistant Mechanical Engineers in the Punjab Roadways. In times past some of the Assistant Mechanical Engineers working in the Department of Transport, Punjab, filed Civil Writ Petition No.10823 of 2003, titled “Sarabjit Singh Khokhar and others v. State of Punjab and others”, inter alia praying for removal of the anomalies in their pay scales petitioner while granting them same pay scale as given to S.D.O/S.D.E./A.E. in other Departments of the State of Punjab. The said Writ Petition was decided by this Court on 04.08.2010 and directions were issue to the Respondent-State of Punjab to consider the matter afresh, so as to remove the anomalies by considering granting Asstt. Mechanical Engineers working in the Department of Transport, Government of Punjab, the same pay scales given to the persons working in other departments on the same nomenclature/character of posts. A copy of the said Judgment and

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Order dated 04.08.2010 passed in C.W.P. No.10823 of 2003, is placed at Annex P-2.

4. In compliance of the Judgment and Order dated 04.08.2010 the Assistant Mechanical Engineers have been granted the following pay scales:-

Pay scale as per 4th Pay Commission	No. of years of Service	Equivalent pay scale as per 5th Pay Commission
7880-13500 with start of 8000	With start of Rs.8000/-	15600-39100 with grade pay of 5400/-
10025-15100	After 4 years service	15600-39100 with grade pay of 6600
12000-15500	After 9 years of service	15600-39100 with grade pay of 7600/-
14300-18150	After 14 years of service	37400-67000 with grade pay of 8600/-

5. The result of the litigation was the beginning of the rift between the pay scales of the present petitioners and the differential resulting in the yawning anomaly. Aggrieved, the petitioners approached the authorities on April 16, 2012 by serving representation on the 3rd respondent to remove the anomaly and to grant them pay scales higher than the lower post of Assistant Mechanical Engineers. The grievance was not resolve by the department. That is what has brought this and the accompanying petition. On July 28, 2015 this Court [Brother Arun Palli, J.] passed an elaborate interim order which deserves reproduction since it culls out the spirit of the issues involved for determination in these set of cases:-

“On July 18,2012, this Court had passed the following order:

Heard.

***The petitioners, who are holding the posts
of General Manager, Deputy Director and Chief***

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Stores & Purchase Officer in the Transport Department, State of Punjab are aggrieved of the action of the respondent/authorities in terms of having been granted a pay scale which is lower than the post of Assistant Mechanical Engineer, Punjab Roadways.

Learned Senior counsel appearing for the petitioners contends that the post of Assistant Mechanical Engineer, is in fact a lower post in the hierarchy of service and is a feeder cadre for the post that the petitioners hold. Counsel would even refer to the recommendations contained in communication dated 30.09.2011 (Annexure P6) issued by the Director, State Transport, Punjab, wherein such glaring anomalies were sought to be removed.

Notice of motion for 01.11.2012.”

As the written statement filed on behalf of respondents No.1 to 4 by way of counter affidavit of Secretary to Government of Punjab, Department of Transport, Punjab, was found to be inchoate, and would not address the issue, learned State counsel was granted time to furnish a specific affidavit to respond to the issue involved for consideration.

In response, an additional affidavit dated 04.05.2015, of the Principal Secretary, Government of Punjab, Department of Transport, has been filed. It would be apposite to refer to the assertions set out in paragraphs 4, 6 & 7 of the affidavit, which read as thus:

“4. That the Director State Transport sent memo no.8/24/08-G1/1A2/17889 dated 30.09.2011 to the Financial Commissioner Revenue-cum-Chairman Anomaly Committee, Punjab regarding removing anomalies in the pay scales of Works Manager, General Manager, Deputy Director, Chief Store purchase Officer/Mechanical Automobile Engineers (Annexure P-6). However the anomaly

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committee had not decided the matter till its existence i.e., 14.11.2011.

5. x x x x x

6. That the pay scales of the employees are granted by the Department of Finance & Personnel of the Punjab Government. The Finance Department, Punjab have issued instructions on 23.05.2012 (Annexure R-2) to the effect that only those anomalies should be referred to the Finance Department which have been occurred due to the recommendation of the Cabinet Sub Committee. It is further mentioned in the Instructions dated 23.05.2012 that except from those no other proposal shall be considered. It is pertinent to mention here that in the present Writ Petition, the anomaly have been created due to the higher pay scale given to the Assistant Mechanical Engineers by the Hon'ble High Court vide order dated 04.08.2010 passed in C.W.P. No.10823 of 2003. The higher pay scale was given to the Assistant Mechanical Engineers Cadre as per the decision of the orders of the Hon'ble High Court dated 4.8.2010 after being approved by the Finance Department.

7. That as per the instructions dated 23.05.2012, the matter in issue shall be considered by the next Pay Commission and the Department of Transport have no authority to decide this matter. Whether the feeder cadre is enjoying higher pay scales and what will be the entitlement of the petitioners etc, has to be considered by the next pay commission and the Department of Transport have no authority to decide the matter.”

Ex facie, it is conceded that there indeed exists an anomaly as regards the pay scale that is being afforded to the Assistant Mechanical Engineers (AMEs) and the pay scales, which the petitioners are placed in. Pursuant to an

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approval accorded by the Finance Department, Assistant Mechanical Engineers are being given higher pay scale. That being so, vide a letter dated 30.09.2011 (Annexure P6), even the Director State Transport, Punjab, recommended removal of this glaring anomaly to the Chairman Anomaly Committee, Punjab. However, the Anomaly Committee did not resolve the issue during its tenure that ended on 14.11.2011. In reference to the Finance Department instructions dated 03.05.2012 (Annexure R2/T), the administrative department has expressed its helplessness in the matter and the onus is apparently being shifted upon the Department of Finance. However, an analysis of the said instructions rather reveals:

“In light of above, it is directed that only those recommendations with regard to increase in the scales of Govt. employees be sent to the Finance Department which are related to those anomalies which are created due to increase in the scale of lower post as compare to the promotional post.”

That being so, it is deemed essential and expedient to array the Department of Finance as party to the lis and accordingly the Department of Finance, Punjab, through Principal Secretary to Government of Punjab is arrayed as respondent No.5. In the wake of the position as sketched out above, respondent No.5 is directed to furnish a specific affidavit to address the matter in issue and respond as to how and on what grounds in law the anomaly, the petitioners aggrieved by, can be allowed to exist.

Learned State counsel prays for and is granted two weeks' time to do the needful.

Adjourned to 11.08.2015.”

6. The Department of Finance was impleaded as party respondent No.5 and was directed to furnish a specific affidavit addressing the issue

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and to supply grounds to the Court as to why the anomaly should be allowed to exist. The affidavit was filed in Court on August 25, 2015 whereupon this Court passed the following order:-

“Affidavit filed in court is taken on record.

State counsel prays for time to complete the process of revision of pay scales of Chief Stores & Purchase Officer, Deputy Director, State Transport and General Manager in the Transport Department, Punjab as stated in para.5 of the affidavit where the court is informed that the Administrative Department has proposed revision of the pay scales to remove the anomaly in pay scales.

Therefore, let the exercise be completed within a period of three months and monetary benefits resulting in award of the higher pay scales be made admissible thereafter without any delay so that the morale of the officers is boosted.

List again on 03.12.2015.

A photocopy of this order be placed on the files of the connected cases.”

7. It was given out to Court that the Administrative Department [Transport] has proposed revision of pay scales to remove the anomaly. The recommendations are in favour of the petitioners. The Court gave three months time to the respondents to complete the exercise and take a final decision. However, the exercise was not completed although sufficient time was granted and when the matter came up on December 03, 2015 and costs were imposed in each of the cases. When the matter came up on January 15, 2016 the learned State counsel filed compliance report and stated that all that remains in the case was implementation of the decision already taken by the Transport Department. It was submitted that the matter was resting

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on the desk of the Minister-in-charge of the Transport Department and the final decision would be taken without delay. On this assurance the State was granted further time to take a final decision and the case was adjourned to February 17, 2016. Still further time was sought and granted on February 17, 2016.

8. On March 10, 2016 this Court was confronted with the situation where the exercise had not been completed and, therefore, a direction was issued that the Secretaries of the Transport and Finance, Departments of the Government of Punjab to remain present in Court on the next date of hearing to make concrete proposal of removal of anomaly failing which the Court may posture itself against Government and its officers who are unable to resolve such a glaring anomaly; a dispute where in the Transport Department persons senior are getting less pay than their juniors and for a sufficiently long period of time. These interim orders were passed in the wake of the comprehensive interim order passed on July 28, 2015 (reproduced supra).

9. Today, Mr. D.P. Reddy, IAS, Secretary Finance and R. Venkatratnam, Principal Secretary Transport are present in Court for the Court to receive their views on the subject first hand and to try to find solutions to the vexed problem. They have been personally heard on the anomaly and the State has been heard through Mr. Harkesh Manuja, Addl. AG, Punjab in the light of the written statements and the counter affidavits etc filed. It is not disputed that the Assistant Mechanical Engineers working in the Punjab Roadways have been given the higher pay scale as per

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judgment of this Court. Those were ten in number in the joint petition. The last of the Assistant Mechanical Engineers has been given the higher pay scale notionally from January 11, 2013. It is admitted that the scales of Assistant Mechanical Engineers were lower than the scales of General Managers but the Fourth Punjab Pay Commission recommended the pay scales of SDO/SDE/Assistant Engineers as Rs.7680-13500 with initial start of Rs.8000/-. It is further admitted that the pay scale of the post of Assistant Mechanical Engineer was once lower than the posts held by the petitioners. The only reason assigned in para.3 of the preliminary submissions to parry off the claim for stepping up pay is that the Pay Anomaly Committee did not make any recommendations with respect to the post of the petitioners. The Pay Anomaly Committee is not in existence since November 14, 2011. The State is, therefore, not in a position to be of any help in the matter involving financial implications. Both the senior officers submit that the matter should be left in stand-by position till the recommendations of the new Pay Commission are received by the Government and till such time the anomalous position be left in status quo. The other submission is that the matter involves an exercise of cadre review and the State Government may enter upon such an exercise for which sufficient time may be granted but for the present the Finance Department is unable to grant any relief even though the factual position is admitted.

10. It is well settled that ordinarily promotion brings with it the fruit of higher pay scale or additional increments to maintain the difference between lower and higher post. The is no gainsaid that a junior cannot

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receive more pay than a senior. This principle is well recognized in service jurisprudence as evolved by Courts over many decades. This would especially true when the post of General Manager is filled from feeder cadre which includes the post of Assistant Mechanical Engineers. The rights of senior officers in the Transport department cannot be kept at bay to await administrative decisions of the Government to remove such a patently conspicuous anomaly in pay especially when it encourages unreasonable and unfair discrimination resulting in breach of Article 14 of the Constitution. If the equality principles are disturbed the Writ Court exercises its primary review jurisdiction and becomes the administrator of equality in a class of persons reasonably classified by rules. The Writ Court must then step in to prevent continued unfair and unreasonable discrimination in the matters of pay scales with seniors getting less pay than their junior in the same Department of Government and in a common hierarchy of posts. The State cannot be seen to throw up its hands while the Court is not without its inner strength to curb mischief. The writ court is the torch bearer of the Constitution on the sentinel qui vive. The Court has to step in without accommodating requests which would delay in restoring the balance by correcting the imbalance in matters of pay scales. The equality principles in Article 14 do not tolerate vacuum. The cure must immediately be administered to remove right deprivation by rejecting requests made by the State for long adjournment or to await the recommendations of the Pay Commissions. If the Pay Anomaly Committee has been wound up another one could have been set up to enter the dispute and resolve it. If

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Government has failed it does not mean that the court must also fail in its constitutional duty to tackle the issue.

11. What pay scales the General Managers and the petitioners in these connected cases are entitled to is not the business of the Court being a policy matter. However, in order to remove the blatant anomaly and bring about stability in service the State of Punjab should at least for the time being pending all other considerations grant at least the pay scales of Assistant Mechanical Engineers to the petitioners along with arrears so that the rhythm of the pendulum is stabilized by the passing time by the hand of the Court. This restoration obviously would be ameliorative and stop gap arrangement without prejudice to the rights of the petitioners to higher pay scales than those of their juniors. This would be the minimum guarantee of the equality clause which is desirable to make available today by giving wholesome effect to the well embedded principle that a junior cannot get higher scale than the senior unless some other event or condition of service justifies it.

12. It may be mentioned that the petitioners are either Chief Stores & Purchase Officers, Deputy Directors State Transport or General Managers in the pay scale of Rs.37840/- etc. while the lot of Traffic Managers, Work Managers and Assistant Mechanical Engineer enjoy the basic pay of Rs.53350/-. The post of Traffic Manager, Works Manager, Assistant Mechanical Engineer are at the same level and are feeder category posts for promotion to the higher post of General Manager etc. As per the service rules of 1985, as amended from time to time, 24% of the posts of General

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Managers are to be filled by way of promotion from Assistant Mechanical Engineers, who have put in a minimum period of seven years on their post to be eligible for promotion. Furthermore, the pay scales of Assistant Mechanical Engineers are automatically revised after 4, 9 and 14 years of service which compounds the problem faced by the General Managers since it results in widening the gap. The petitioners in CWP No.13262 of 2012 are directly recruited General Managers in 1990 and are in service for the last about 22 years at the time of the presentation of the petition. As a result of the anomaly they are drawing far less pay than Assistant Mechanical Engineers who have put in only 14 years of service. The petitioners have explained the discordance in the pay scales from the point of view of educational qualifications which are far higher for General Managers than that of Assistant Mechanical Engineers. There is also a differential in experience for appointment. The anomaly is suitably demonstrated with reference to the 1st petitioner who is working as Chief Stores & Purchase Officer. He is presently three grades above Assistant Mechanical Engineers and is drawing substantially less salary. It is urged that the edifice of any service structure depends upon the categorization of posts and responsibilities attached thereto. In any service structure, where the employees sitting on the lower rung are drawing much higher pay scale than the employees who are on much higher pedestal, will lead to crumbling of the service structure and the morale of service.

13. Even the Transport Department has recognized the anomaly affirmatively and has recommended its removal by its letter dated

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September 30, 2011 (Annex P-6) to the quarters concerned but the respondent-State is lying limp on the burning issue. This is like Emperor Nero playing the lyre while the city burned.

14. Since the anomaly is not disputed and exists for a long time these petitions deserve to be allowed. They are accordingly partially allowed. A mandamus is issued to the respondents to consider granting pay scale one step higher than that of Assistant Mechanical Engineers with effect from the date the anomaly arose. Meanwhile, the pay of the petitioners will be stepped up to that of their juniors to bring relief to them without prejudice to their rights to a pay scale above the pay scale of Traffic Managers, Works Managers, Assistant Mechanical Engineers.

15. The maintenance of status quo till the fresh Pay Commission recommendations come in as strongly pleaded by Mr. D.P. Reddy, IAS, the Finance Secretary, Government of Punjab is not acceptable for the reason the grave anomaly will continue to persist without any resolution in sight and postpone valuable rights of the petitioners to future imponderable events. The Court is not prepared to see the two senior officers and particularly the Finance Head of Government throwing up his arms. The Court understands the limitations placed on them. Therefore, the Court must step in to perform its constitutional obligations and not abdicate them. It will thus be open to the Government to constitute a fresh Pay Anomaly Committee convened to resolve this case but that would not mean that the pay of the petitioners in the meanwhile will not be stepped up in terms proposed in this order. On the other hand, the State would be free to await

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recommendations of the current Pay Commission being an executive function involving pay scales where cases of the petitioners would be specifically considered, if not already on agenda, and be dealt with and decided for removal of the anomaly permanently and from the retrospective date claimed by the petitioners when their juniors came to receive higher pay than them as a result of litigation. The character of this order is prophylactic in nature to act as a pontoon bridge to the goal till a permanent and abiding solution is found to the vexed problem. However, the final workable solution must also be found by the respondents within reasonable time so that the petitioners and their ilk are not compelled to come to court again.

16. The operative part of this order be implemented within 6 weeks, the anomaly being an admitted fact. The rest would await resolution within reasonable time, say within 6 months from the date of supply of the order in certified form.

(RAJIV NARAIN RAINA)
JUDGE

29.03.2016
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