

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

CWP No.11117 of 2013 (O&M)

Date of decision: 19.05.2016

Mahesh Chand Sharma and others

...Petitioners

versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Arora, Advocate,
for the petitioners.

Mr. Ravi Partap Singh, AAG, Haryana.

Mr. Arvind Seth, Advocate,
for respondent Nos.3 and 4.

Ritu Bahri, J.

The petitioners are seeking direction to the respondents not to withdraw the scale granted vide letter dated 17.10.2012 w.e.f. 09.08.2010 and notionally w.e.f. 01.05.1990 and pay salary to them in the scale of Rs.1200-2040 and subsequent revision.

The petitioners joined as *Nalkoop Chalak*/Water Pump Operators on adhoc basis in the years 1982 to 1985. Pursuant to the policy of regularization issued in the year 1993, their services were regularized as *Nalkoop Chalak*/Water Pump Operator w.e.f. 01.04.1993 on the basis of length of service. The State of Haryana, Financial Department, notified the revision of pay scales of technical posts vide notification dated 26.07.1991 whereby, the scales were revised to Rs.1200-2040. This benefit was given

service, who had joined before 1990. In terms of instructions dated 01.01.1996, the scales of Water Pump Operators were revised from Rs.1200-2040 to Rs.4600/- and this benefit was given to the technical employees, who were appointed before 01.05.1990. Later on, this benefit was also extended to other regular appointments made on 01.04.1993, 01.12.1993, 01.04.1996 and 16.04.1999. Pursuant to the order dated 07.12.2010 passed by this Court in CWP No.7600 of 1996 (Annexure P-1), the State Government circulated the notification that such technical employees, who were working before 01.05.1990 and whose services were regularized, would be entitled to the pay scale of Rs.1200-2040 and further revised scale of Rs.4600/-. The petitioners were granted the said benefit w.e.f. 01.04.1993 notionally and the arrears of scale were granted from 09.08.2010 vide order dated 17.10.2012 (Annexure P-2). Their scales were further revised to Rs.4600/- pursuant to the direction given by this Court in CWP No.7600 of 1996. They were also extended the benefit of Ist ACP Scale after completion of 10 years of service on 01.04.2003/01.05.2003. Vide order dated 14.02.2012, respondent No.3 had given direction to respondent No.4 to extend the benefit of the said technical scale to *Nalkoop Chalak*/Water Pump Operators, who were working before 01.05.1990. The petitioners were given the benefit of revision of scales w.e.f. 01.04.1993, notionally vide order dated 17.10.2012 and arrears of this benefit were granted w.e.f. 09.08.2010, whereas it became due w.e.f. 01.05.1990 i.e. the date on which other co-employees were allowed the arrears. A writ petition i.e. CWP No.22614 of 2010, titled as **Gurmit Singh Vs. State of Haryana,** was filed by similarly situated employees, which was disposed of vide order dated 20.09.2011 (Annexure P-3) by giving direction to the respondents to

regularization i.e. 01.12.1993. Pursuant to the order dated 20.09.2011 (Annexure P-3), the petitioners served a legal notice dated 30.03.2013 (Annexure P-4) upon the respondents by claiming the same benefit. Thereafter, the respondents have withdrawn the benefit of revised pay scales granted vide order dated 17.10.2012 (Annexure P-2). The petitioners are seeking the benefit of instructions dated 09.08.2010 (Annexure P-6), whereby the Financial Commissioner has taken a conscious decision to extend the benefit of pay scale of Rs.1200-2040 w.e.f. 01.05.1990 to all the employees holding technical posts, whether at the time of recruitment, they were matric or non matric. However, they have been held entitled to the notional benefit of pay scale and their salary would be fixed at par with their juniors. On the basis of instructions dated 09.08.2010 (Annexure P-6), the respondents are seeking to withdraw the scales of 17 petitioners.

Upon notice, reply on behalf of respondent Nos. 3 and 4 has been filed, wherein it has been stated that the Finance Department, vide memo dated 26.07.1991 had revised the pay scales of some technical posts as under:-

Sr.	Name of Post	Existing pay scale as on 01.01.1986	Modified scale of pay w.e.f. 01.05.1990
40.	General recommendations regarding technical posts in various departments for which minimum Educational Qualification prescribed is Matric with ITI Certificate/Polytechnic	750-940 775-1025 800-1150 950-1400 950-1500	1200-2040
40 (A)	General Recommendations regarding technical posts in various departments for which minimum Educational Qualifications prescribed is only ITI Certificate/diploma from Polytechnic without insistence on Matric.	750-940 775-1025 800-1150 950-1400	950-1400

The benefit of pay scales has now been withdrawn and the

recovery is being made in view of the judgment passed by the Hon'ble

Supreme Court in a case filed by Chandi Parkash Unniyal. A further stand has been taken that the benefit of technical pay scale had only been allowed by the Government to those employees who were in possession of qualification of Matric with ITI as per instructions dated 26.07.1991. These instructions were challenged before this Court by those employees, who did not have the qualification of Matric with ITI. In compliance of the directions given by this Court, the Government of Haryana, Finance Department, vide its instructions dated 09.08.2010, decided to grant the benefit of pay scales of Rs.1200-2040 notionally w.e.f. 01.05.1990 and actually from issuance of the said letter to those employees whose qualification was not Matric with ITI and they were appointed prior to 01.05.1990 on technical posts under the provisions of service rules/draft service rules/qualification prescribed. As per amended Act, the benefit of technical pay scale has been withdrawn vide notification dated 11.03.2014 and the recovery is being made in accordance with law.

After hearing learned counsel for the parties and going through the facts of the present petition, the question for determination is, “whether the petitioners are entitled to the revised pay scale of Rs.1200-2040/- w.e.f. 01.05.1990 as per letter dated 09.08.2010 (Annexure P-6).”

A perusal of letter dated 09.08.2010 shows that as per Pay Rules, 1986, item No.40, a recommendation was made for revised pay scales of technical posts, for which, the minimum educational qualification prescribed was matric with ITI. There were five technical posts in different pay scales, which were clubbed together and the modified pay scale w.e.f. 01.05.1990 was Rs.1200-2040/-. All the petitioners, who were working on technical posts, were held entitled to the revised pay scales of Rs.1200-2040/-

extending the benefit of revised pay scales vide order dated 09.08.2010 (Annexure P-6), the following decision was taken by the competent authority:-

“In view of the above quoted judgments of Hon'ble High Court, it has been decided to grant the benefit of pay scales of Rs.1200-2040/- notionally w.e.f. 01.05.1990 and actually from issuance of the letter to those employees, whose qualification was not matric with ITI and they were appointed prior to 01.05.1990 on technical posts whose qualification is matric with ITI under the provisions of service rules/draft service rules/qualification prescribed otherwise.”

The respondents are not disputing this fact that the petitioners are working since 1982/1985 as Water Pump Operators and their services have been regularised from the year 1983. In **Gurmit Singh's** case (supra), the services of the petitioner had been regularized on 11.11.1993 on the post of Pump Operator/Driver in the pay scale of Rs.950-1500 w.e.f. 01.12.1993. He was also allowed to cross the 'efficiency bar'. He had the prescribed qualification for Pump Operator/Driver. The said petition was allowed by giving direction to the respondents to grant regular pay scale to the petitioner with effect from the date of regularization i.e. 01.12.1993 along with all consequential benefits.

In the present case, the stand of the respondents is that the petitioners were appointed from 1982 to 1985 and were regularized on 01.04.1993. Hence, they cannot be extended the benefit of instructions dated 09.08.2010 (Annexure P-6) as they cannot be taken to be in service as on 01.05.1990. This ground is liable to be rejected as the judgment passed by this Court in **Gurmit Singh's** case (supra) has attained finality. For all intents and purposes, the petitioners had joined on adhoc basis in the years 1982 to 1985 and the date of joining is to be taken as the date of

has to be extended to the petitioners and revised pay scale is to be granted with effect from the date of regularization as per the decision given in **Gurmit Singh's** case (supra) (Annexure P-3). The respondents have re-fixed the pay of the petitioners on wrong presumptions that their dates of appointments were not prior to 01.05.1990. Further, as per notification dated 11.03.2014, the Haryana State has abolished the distinction of pay scales between technical and non technical posts. Therefore, the already extended benefit cannot be withdrawn.

In view of the above, this petition is allowed and the respondents are directed to restore/grant the pay scale of Rs.1200-2040/- to the petitioners as per the judgment passed by this Court in **Gurmit Singh's** case (supra) (Annexure P-3) along with all consequential benefits, within a period of three months from the date of receipt of certified copy of this order.

19.05.2016
ajp

(RITU BAHRI)
JUDGE