

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

Date of decision:13/12/2016

(1) CWP 18612/2013

Jaspal Singh and others v State of Punjab and another

(2) CWP 18613/2013

Amarjit Singh and others v State of Punjab and another

CORAM:- HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Pankaj Jain,Advocate for the petitioners.

Mz.Sudeepti Sharma,DAG Punjab assisted by
Mr.Ram Sarup,Sr.Asstt., office of DHS,Punjab

Jaswant Singh,J(Oral)

This order shall dispose of aforesaid two writ petitions as they involve similar facts and identical issues.

In CWP 18612/2013, petitioners (9 in number) are working as Assistant Malaria Officers and petitioners in CWP 18613/2013 (22 in number) are working as Assistant Unit Officers in the Health Department, Government of Punjab.

It is an admitted case that posts of Assistant Malaria Officers, Assistant Unit Officers and Multi Purpose Health Supervisors (Male) belong to Technical Cadre and are governed by Punjab Health and Family Welfare Technical (Group C) Service Rules, 2007. Recruitment to all the three posts is only by way of promotion. The post of Multi Purpose Health Supervisor (Male) is a feeder cadre for the promotional post of Assistant Unit Officer, which in turn, is feeder cadre for the next promotional post of

It is also an admitted case that pay scale of post of Multi Purpose Health Supervisor was throughout less than the pay scales of aforesaid two posts. After the acceptance of recommendations of Fifth Pay Commission the revised pay scale w.e.f. 1.1.2006 of the aforesaid three posts was fixed as under:-

<i>Sr.No.</i>	<i>Cadre</i>	<i>Unrevised pay scale</i>	<i>Revised pay scale w.e.f. 1.1.2006</i>
1	Multipurpose Health Supervisor	4550-7200	5910-20200 + 3000 (GP) =11470
2	Assistant Unit Officer	5000-8100	10300-34800+3200 (GP=13500(IP)
3	Assistant Malaria Officer	5800-9200	10300-34800+3800 (GP)=14590(IP)

It transpires that State of Punjab further revised the pay scales of employees, including that of Multi Purpose Health Supervisors w.e.f. 1.2.2011 whereby the said posts now carried the pay scale of Rs.10300-34800 plus Grade pay of Rs.4200. Resultantly, an anomaly stood created as the feeder cadre posts henceforth was granted a higher pay scale than the promotional posts of Assistant Unit Officers and Assistant Malaria Officers. Pay scales w.e.f. 1.12.2011 of the aforesaid three posts stood fixed as under:-

<i>Sr.No.</i>	<i>Cadre</i>	<i>Present Pay Scale</i>	<i>Basic Pay</i>
1	Assistant Malaria Officer	10300-34800+3800 (Grade Pay)	14590
2	Assistant Unit Officer	10300-34800+3600 (Grade Pay)	14430
3	Multipurpose Health Supervisor	10300-34800+4200 (Grade Pay)	16290

Aggrieved by the aforesaid grant of pay scale to a lower post, the aforesaid two writ petitions have been filed.

Upon notice, initially a short reply dated 13.3.2015 was filed

wherein it was averred that the proposal for removal of anomaly in the pay scales had been referred to the Finance Department. Subsequently, another affidavit dated 15.2.2016 was filed wherein it has been stated that the post of Assistant Unit Officer and Assistant Malaria Officer has been merged with identical pay grade and the anomaly in the pay scale with respect to the lower post of Multi Purpose Health Supervisor (Male) stands removed w.e.f. 21.12.2015. The relevant paras 4 and 5 of the said additional affidavit dated 15.2.2016 read as under:-

“4. That after considering the claim of petitioners, the respondent no.1 in consultation with Finance Department has merged the cadre of Assistant Unit Officer and Assistant Malaria Officer in the pay scale of Rs.10300-34800+ 4400 G.P. vide Government Memo No.4/107/13-3HB4/650180/1 dated 21/12/2015. After above said revision of scales, the pay scales of Multipurpose Health Supervisor (Male) and promotional cadre have now become as under:-

Sr. No.	Name of post	Previous	Present	Remarks
1	Multipurpose Health Suprevisor (Male)	10300-34800+4200 G.P.	10300-34800 +4200	
2	Assistant Unit Officer	10300-34800 + 3600 G.P.	10300- 34800 + 4400 G.P.	Both the cadres are merged in the pay scale of Rs.10300-34800 +4400 G.P.
3	Assistant Malaria Officer	10300-34800 + 3800 G.P.		

The perusal of the above revision reveals that the pay anomaly which was created in the pay scales of Multipurpose Health Suprevisor (Male) and their promotional cadres i.e. Assistant Unit Officer and Assistant Malaria Officer has now

been removed by merging and revising the pay scale of promotional posts as above. The copy of Government memo 4/107/13-3HB4/650180/1 dated 21/12/2015 is annexed herewith as Annexure R-1.

5. *That as far as effective date of merger/revision of pay scale is concerned, it is submitted that a proposal with the recommendation to grant this benefit from 1.12.2011 has also been sent to the Government vide letter No.E-7(1)-Pb.-16/474 dated 5.2.2016 by the respondent no.2.”*

Learned counsel for the petitioner by relying on a Full Bench decision of this Court rendered in **Rajbir Singh and others v Haryana State Electricity Board and others**, The Punjab Law Reporter Vol.CLVI (2009-4)206 submits that removal of anomaly has to relate back to the date of creation of the anomaly i.e. w.e.f. 1.12.2011 instead of 21.12.2015. That apart, it is submitted that no rationale has been furnished for adopting 21.12.2015 being the effective date for removal of anomaly.

Learned State counsel in the light of authoritative pronouncement of a Full Bench of this Court in **Rajbir Singh's** case (supra) does not really has much to say on the question of law point involved. Further, the learned State counsel has not been able to deny that an anomaly has to be redressed retrospectively i.e. with effect from the date when the anomaly had arisen, as has been the stand of the respondent-Department itself in para 5 of preliminary submissions in the additional affidavit dated 15.2.2016, wherein it is stated that a proposal with the recommendation to grant the benefit from 1.12.2011 has been sent to the Government vide letter dated 5.2.2016.

After hearing counsel for both the parties and perusing the

pleadings, it is apparent that the Health Department itself has recommended for removal of the anomaly with effect from 1.12.2011 i.e. the date of creation of pay anomaly and the matter is pending for consideration before the Government. Be that as it may, the issue is already covered by the authoritative judgment of Hon'ble Full Bench in **Rajbir Singh's** case (supra) laying down that the pay anomaly has to be removed from the date of its creation. The facts of the present case are squarely covered under the cited Full Bench. Thus, the claim of the petitioners is accepted.

In view of the above, both the writ petitions are allowed and petitioners herein are held entitled to the grant of pay scale of Rs.10300-34800 plus Grade pay of Rs.4400 with effect from 1.2.2011 i.e. the date when the revised scale, creating anomaly, was granted to Multi Purpose Health Supervisors, who, otherwise were throughout drawing less pay than the petitioners herein. The consequential benefits shall be granted to the petitioners within a period of six months from today.

Allowed in the above terms.

13.12.2016
joshi

(Jaswant Singh)
Judge

Whether speaking/ reasoned	Yes/No
Whether Reportable:	Yes/No