

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

***CWP No.24282 of 2011 (O&M)
Date of decision : 29.09.2016***

Jashwant Singh and others

....Petitioners

Vs.

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Shalender Mohan, Advocate for the petitioners.
Mr. Rajesh Gaur, Additional Advocate General, Haryana.
...

TEJINDER SINGH DHINDSA, J.

The petitioners herein who are 13 in number were engaged as Drivers under the Haryana Roadways on contractual basis on different dates between the years 1996 to 1998. Services of the petitioners were regularized vide State Government Notification dated 18.03.2004 but effective w.e.f. 04.08.2003.

Petitioners set up a claim for counting of their contractual service rendered prior to regularization to be counted towards seniority as also for grant of regular pay scale, fixation of pay and qualifying service for pension, gratuity, etc. Such claim was raised by means of a legal notice having been served upon the respondent-Department through counsel. The legal notice has been responded by passing of order dated 26.11.2008 by the General Manager, Haryana Government Transport Department, Hisar at Annexure P-5.

The instant petition is directed against such order dated 26.11.2008 at Annexure P-5.

Learned counsel appearing for the petitioners would contend that the issue as regards grant of regular pay scale pertaining to the period of

contractual service has not been dealt with at all. Counsel states that as per order dated 26.11.2008 at Annexure P-5, the arrears of salary have been calculated w.e.f. 04.08.2003 i.e. the date of regularization and the same have been quantified and released. In a nutshell submission made is that the service rendered by the petitioners prior to the date of regularization for grant of various benefits and as claimed in the legal notice has not been dealt with at all.

Apart from assailing the impugned order dated 26.11.2008 at Annexure P-5, a writ of mandamus is prayed to direct the respondents to count the service of the petitioners rendered on contractual basis for purpose of qualifying service of pension, gratuity, regular pay scale, fixation of pay, promotion, seniority and other connected benefits.

Upon notice of motion having been issued, a joint written statement on behalf of respondents No.1 to 3 has been filed and placed on record. A stand has been taken on behalf of the State that the Haryana Government Transport Department (Group C) Haryana Roadways Service Rules, 1995 stand amended and as per amended rules, a contractual Driver would initially be designated as a Driver Class-B, thereafter, on completion of 2 years of satisfactory service of the desired level would be eligible for designation in Class-A and after another 2 years of satisfactory service, he would be regularized as Driver in Grade-II in the pay scale of Rs.3050-4590. As per the amended rules, a Driver having been designated in Grade-II upon completion of further 2 years of satisfactory service would be eligible for upgradation in the pay scale of Rs.4000-6000 in Grade-I. Learned State counsel would submit that since the petitioners were regularized only w.e.f. 04.08.2003, the regular pay scale are admissible

w.e.f. such date and prior that too it is the fixed emoluments as per Driver Class-B, Class-A, Grade-II and Grade-I that were to be released. Against such broad stand, passing of the impugned order dated 26.11.2008 at Annexure P-5 is sought to be justified.

Counsel for the parties have been heard at length.

It would be apposite to take notice of the categoric submission made by Mr. Shalender Mohan, learned counsel appearing for the petitioners that he would not be pressing the instant petition as regards the relief of counting of contractual service towards seniority. As such, qua such relief, the instant petition stands dismissed.

Insofar as grant of regular pay scales to the petitioners from the date of their initial appointment on contractual basis is concerned, this Court is of the considered view that the issue is no longer *res integra*.

Civil Writ Petition No.22516 of 2012 titled as ***Mohinder Singh and others Versus State of Haryana and others*** and other connected petitions came to be filed in this Court. The petitioners in the aforementioned petition were also Drivers and Conductors under the Haryana Transport Department who had also been engaged on contractual basis and whose services had subsequently in point of time regularized. The petitioners in the case of ***Mohinder Singh and others (supra)*** laid a challenge to the amendment carried out in the Haryana Transport Department (Group C) Haryana Roadways Service Rules, 1995 by virtue of a Notification dated 04.08.2003 and as per which the Drivers were classified i.e. Class-B, Class-A, Grade-II, Grade-I and granted structured fixed emoluments, on the ground that such classification is not based on any reasonable classification and was not permissible within one unified group of Drivers. **CWP**

No.22516 of 2012 titled as ***Mohinder Singh and others Versus State of Haryana and others*** came to be decided by the Division Bench of this Court vide judgment dated 01.04.2013 and it was held in the following terms:

“We are, therefore, of the opinion that placing the petitioners on consolidated salary is impermissible and the rules to this extent are unconstitutional and, therefore, liable to be set aside. The placing of the petitioners in pay scales meant for Grade-II and two years thereafter in Grade-I cannot be permissible. The petitioners, thus, would be entitled to the minimum of the pay scale from the date of their initial appointments and their pay shall be fixed accordingly. However, insofar as arrears of pay are concerned, they will be entitled to the arrears for three years and two months' period prior to the date of filing of these petitions.

Petitions allowed in the aforesaid terms.

(A.K. SIKRI)
CHIEF JUSTICE

April 01, 2013

(RAKESH KUMAR JAIN)
JUDGE ”

The dictum laid down by the Division Bench of this Court in ***Mohinder Singh's case (supra)*** would squarely apply even to the present petitioners.

Resultantly, the impugned order dated 26.11.2008 at Annexure P-5 is set aside. The present petitioners are held entitled to the minimum of the pay scale from the date of their initial appointments. It is directed that their pay shall be fixed accordingly within a period of two months from the date of receipt of a certified copy of this order. Insofar as arrears of pay are

concerned, the petitioners are held entitled to the arrears for 3 years and 2 months period prior to the date of filing of the instant petition.

Petition is allowed in the aforesaid terms.

29.09.2016

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**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | No |