

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

CWP No.21808 of 2014 (O&M)

Date of Decision: 21.04.2016

Malkiat Singh and others

...Petitioners

Versus

State of Punjab and others

... Respondents

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

Present : Mr.Arinder Singh, Advocate for the petitioners

Dr. Puneet Kaur Sekhon, Addl.A.G., Punjab

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

RAJIV NARAIN RAINA, J. (Oral)

1. The Punjab Government sent a requisition to the Punjab Agriculture University, Ludhiana (for short “the University”) on behalf of the Department of Agriculture, Department of Horticulture and Department of Water & Soil Conservation, Punjab authorizing the University make the selection by issuing public advertisement to fill up 11 categories of posts in the three departments and accordingly send its recommendations to the Government by way of merit list of candidates. A number of vacancies were advertised, including that of Agriculture Sub Inspectors (for short “ASI”) in the Department of Agriculture, Punjab numbering 274 posts and also the posts with the same designation i.e. ASI in the Department of Soil and Water Conservation mentioned at Sr.Nos.7 and 9 of the advertisement published in the daily newspaper on 29th October, 2011. The pay scales of both the posts

were the same i.e. Rs.5910-20200+GP Rs.2400. 25 vacancies of ASIs were advertised in the Department of Soil and Water Conservation.

2. Learned counsel for the petitioners states at the bar that pages 22 to 32 of the paper-book which have been attested as true copy by the Advocate are none other than the documents downloaded from the Website of the University i.e. www.pau.edu mentioned at page 19 of the advertisement (Annex.P-1) informing candidates that the website could be visited for details regarding qualifications, experience, category wise vacancies, application form fee and how to apply and the terms and conditions of the recruitment. There is no difference in the pay scale, grade pay or essential qualifications for both the posts in the recruitment process as advertised. While applying for more than one post, separate application form was required to be submitted for each post.

3. The case stated in point, as submitted by the learned counsel for the petitioners, is that petitioner no.3 applied for both the posts and was successful in the competition. He was offered appointments by separate letters for both posts issued by the Department of Agriculture, Punjab and by the Department of Soil and Water Conservation, Punjab. He accepted the offer in the Department of Soil and Water Conservation, Punjab and joined service while the remaining 16 petitioners were appointed to the Department of Soil and Water Conservation, Punjab. It is not disputed that two separate lists were prepared by the University of each of the posts and the recommendations of the University were forwarded to the Government for appointments. Though the learned counsel for the petitioners is unable to state whether petitioners no.1, 2 and 4 and onwards were selected on merit in one or two lists, but the question that remains at large is that after the appointments were made, all of them were placed in pay scales/Grade Pay lower than those granted to ASIs in

the Department of Agriculture, creating the heartburn. The terms and conditions mentioned in the advertisement make out no visible difference in pay scales, grade pay or essential qualifications which were identical. It is also difficult to understand how to extrapolate candidates from a combined list drawn in the recruitment process on merit including 274 vacancies of ASIs advertised in the Department of Agriculture, Punjab and 25 vacancies of ASIs in the Department of Soil and Water Conservation, Punjab. It also remains a mystery as to how the University selected on merit 399 candidates [274+25] for the two posts unless the candidates were restricted to their options exercised for either or both the posts as they may have applied for either one or both the posts. Even then it would be difficult to determine *inter-se* merit in such a complicated advertisement simultaneously conducted in two departments under the administrative control of the same administrative department comprising three services under the overall administrative control of the Financial Commissioner (Development) and Principal Secretary to Government, Department of Agriculture, Punjab. It was only after the petitioners joined services and were paid their salaries that they learnt that they were in receipt of pay less than their counter-part ASIs [at Sr.No.7 in the public notice] in the Department of Agriculture, Punjab, although the pay scales advertised for both the posts were identical. The petitioners claim that their salary should be stepped at par with their counter-parts in the Agriculture Department there being no reasonable classification between the two posts carrying the same terms and conditions. Even though the ASIs in the Agriculture Department were to be recruited in the pay scale of Rs.5910-20200+GP Rs.2400, they were given the Grade Pay of Rs.2800 in their appointment letters for which reason ASIs in the Department of Agriculture became entitled to higher pay though they participated in the same recruitment

process. There was no visible difference between the two posts except for the number of advertised vacancies.

4. Aggrieved by the disparity, the petitioners represented to the Government to rectify the initial pay scale and grade pay. The representations of the petitioners have gone against them vide letter dated 18th June, 2013 (Annex.P-8) rejecting their case citing paragraph 2 of the circular letter dated 23rd May, 2012 (Annex.P-9) issued by the Finance Department, Punjab. The letter records that the subject matter was sent to the Finance Department with a recommendation mentioned in the reference which was favourable to the petitioners, but the Finance Department had advised the Chief Conservator of Soils, Chandigarh to proceed in terms of paragraph 2 of the Circular dated 23rd May, 2012 (Annex.P-9) in the case of the representationists which reads as follows:-

“With regard to the above, it is being instructed that regarding enhancement of pay scales only those recommendations be sent to the finance department which pertain to the anomaly created after the implementation of the recommendations of the Cabinet Sub Committee vide which the pay of an employee promoted has fallen less than the pay of that of the lower post. Rest of the demands of the government employees will be considered at the time of next pay commission.”

5. In short, the stand of the State in the impugned order is that the case of the petitioners is not open to consideration of the Finance Department since there is no anomaly created [or arising] after the implementation of the recommendation of the Cabinet Sub-Committee vide which it was decided that when the pay of an employee promoted has fallen less than the pay of that

of the lower post then pay is to be protected and not otherwise. In the considered view of this Court, reliance of paragraph 2 of the Circular clearly appears to be misconceived. The present is not a case of promotion. It is a case of direct recruitment. The rules of the game were advertised by the University applicable universal to all in which the pay scales were identical and so were the minimum qualifications and the candidates competed accordingly.

6. The State in its written statements has not carved out a justifiable case of reasonable classification by asserting that the duties and responsibilities of both the posts are different in the two departments. That is not the case set up by the State in defence to the action and even if it is assumed that both the posts are equal in status with the same duties and responsibilities in the same administrative department of the Government of Punjab in the three streams of service performing three facets of work required in the Department of Agriculture, Punjab, though only two of them are in issue in this case. However, it has been sought to be justified in the preliminary submissions by trying to make out a case that the duties and responsibilities of both the posts are different. To this end Annex. R-1 and R-2 have been relied on and copies placed on record which are the list of duties enumerated for the two posts one by the Chief Conservator of Soils, Punjab (Annex.R-1) and the other by the Superintendent Grade-1, Agriculture Department (Agri-1, Branch) (Annex.R-2). On the strength of these two enumerations; the authenticity of which has not been opined in the written statement to accept them as true as to whether they have any statutory or legal force, the difference in pay scale is yet sought to be justified by contending that the duties and responsibilities for both the posts are different. However, the question is not one of prescription of duties, but of prescription of pay scales in the service rules framed under proviso to

Article 309 of the Constitution of India. The Department of Agriculture has framed rules called the Punjab Agriculture Department (Field Office) Group-C Service Rules, 2010 which repeal the Punjab Subordinate Agriculture Rules, 1933 insofar as it relates to the members of the service. Rule 10 is the Repeal and Saving Clause. Rule 8 prescribes that the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 will apply to the members of the service. The new rules were notified on 1st November, 2010. The categories of posts are specified in Appendix "A". The post of ASI is mentioned at Sr.No.14 in the pay scale of Rs.5910-20200+2400. The rules were in existence when the selections were made. No amendment has been shown to these rules changing the pay scale from Rs.5910-20200+GP 2400 to the same pay scale with GP Rs.2800 given to ASI in the Department of Agriculture, Punjab. It may be mentioned that the cadre strength of ASI is 725 being the substantial work force in the Department mentioned in Appendix "A". The essential qualifications for these posts are mentioned at Sr.No.14 in Appendix "B". 75% of the posts are to be filled up by direct recruitment whereas 30% by way of promotion. The qualifications required for direct recruitment of ASIs in the Department of Agriculture are as follows:-

- “(a) Should have passed Senior Secondary Part II Examination from a recognized University or Institution and should possess two years Diploma in Agriculture from the Punjab Agriculture University; or
- (b) Should possess Bachelor's Degree in Agriculture from a recognized University or Institution.”

7. The position prevailing in the Department of Water and Soil Conservation, Punjab is that the conditions of service of ASIs are governed by the provisions of the Punjab Soil and Water Conservation and Waste Land

Development Class-III Service (Non-Ministerial) Rules, 2001. Appendix “B” of the Rules lays down the following qualifications for direct recruitment:-

“(a)Should have passed examination of Matriculation in Second Division or has passed Senior Secondary Examination or its equivalent from a recognised University or Institution; and

(ii)Should have passed Agriculture Sub Inspector course from a recognised University or Institution.”

8. However, it has not been explained how the essential qualifications meant for direct recruitment in the 2001 Rules have been transformed in the public advertisement on which the recruitment was made. The State has not been able to reconcile the position on file.

9. In these peculiar facts and circumstances, the impugned order deserves to be examined. A perusal of the impugned order shows it does not explain any of the facets which have been raised in this petition with respect to the advertisement, the essential qualifications for both the posts, the duties and responsibilities of the two posts, the identical pay scales and grade pay and the case of the petitioners has been rejected arbitrarily by merely recording that there is no anomaly in the pay and therefore, the Finance Department, Punjab cannot consider the case of the petitioners. In this rather complex situation where ASIs in the Department of Agriculture, Punjab have been granted GP of Rs.2800 higher than the GP of Rs.2400 on appointment has created the dispute and differences. This anomaly has not been explained which is the core issue raised in this case. In the absence of consideration on all these moot issues, the order is not sustainable in law. Its supporting reason is not relevant for outright rejection of the case of the petitioners claiming grant of similar scales and grade pay at par with their counter-parts in the Agriculture

Department, Punjab. In this view of the matter, the impugned order does not qualify as a speaking one. It hides more than it reveals and therefore this Court has no hesitation to hold that that the impugned order does not deserve to be sustained on its weak foundations. However, it is not for this Court to express any final opinion on the merits of the case with respect to disparity created in pay scales which the rules might not support and it is left open to the competent authority amongst the respondents to pass a well reasoned fresh order in accordance with law so that all these issues are considered and dealt with in writing by assigning reasons which are free of doubt, clear and unequivocal. The impugned order is vague and vagueness is anathema to reason and the rule of law.

10. As a result of the above discussion, this writ petition has to be allowed and the impugned order dated 23rd May, 2012 (Annex.P-9) is hereby set aside. The case is remanded to the competent authority amongst the respondents to pass a fresh speaking order, in accordance with law. Needless to say, that in the making of the fresh order, the petitioners would be heard. They will be permitted to file supplementary grounds, if they desire. The competent authority may even take into consideration the averments made in the present writ petition and the documents attached thereto, before taking a final decision. However, nothing said in this order will be viewed as an expression of opinion on the merits of the case and the competent authority would decide the matter afresh without being influenced by anything said in this order. The exercise be completed within a period of three months from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

21.04.2016
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