

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

CWP No.2866 of 2015

Date of decision: 07.09.2016

Davinder Singh and others

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Sehajbir Singh, Advocate
for the petitioners.

Mr. Anshul Gupta, AAG, Punjab
for the respondents -State.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 30.12.2014 (Annexure P-9), whereby, the claim of the petitioners for equal pay scale has been denied whereas the same has been granted to similarly situated persons.

Briefly, the facts of the case as made out in the present writ petition are that the petitioners had been working in the Department of Home Guards on the post of CPL Instructors as well as Havaladar Instructor, Platoon Commandant and Company Commandant. From the inception of the Department of Home Guards, there was a parity in existing scale of pay to the post of Constables to Inspectors. Meaning thereby, they were treated equally during the years 1986, 1996, 2006 as well as in the year 2009. The

petitioners and their counterparts in the Police Department were getting

revised pay scales from ₹2400-3800 but during the year 2011, while revising the pay scales, the petitioners were deprived of the benefits as allowed in case of Police Constables. They even made representations for grant of equal pay scales on the basis of same qualification, training process and nature of duties assigned to them with their counterparts in the Police Department but their request was not accepted. Ultimately, they served a legal notice upon the respondents but the same was also not decided. Thereafter, they filed CWP No.16206 of 2014, which was disposed of vide order dated 14.08.2014 with a direction to consider the claim of the petitioners as mentioned in the legal notice. In spite of directions issued by this Court, no order was passed and the petitioners filed contempt notice through their counsel. Thereafter, order dated 30.12.2014 was passed, which is subject matter of challenge in the present writ petition.

Learned counsel for the petitioners submits that the petitioners from the very beginning were treated at par with Constables and Inspectors in the Police Department but subsequently, they have not been granted equal pay scales in spite of making representations and serving legal notice. Learned counsel further submits that the requisite qualification, training process and nature of duties of Home Guards Officials and of their counterparts in Police Department are almost identical and they are being treated equally. The claim of the petitioners has been rejected on the ground that their claim for grant of pay scale at par with Police Personnel cannot be considered at this stage as no anomaly has arisen in their pay scales on the recommendation of the Cabinet Sub Committee. Learned counsel also submits that the reason mentioned in the impugned order is contrary to

of fundamental right to equal treatment, equal opportunity of employment and right to life is liable to be set-aside. He also submits that the action of the respondents is also arbitrary, discriminatory and against the principles of natural justice. Learned counsel further submits that one similarly situated person, namely, Tarlochan Singh, filed CWP No.3339 of 2014 and the same was disposed of vide order dated 24.08.2016 with a direction to the respondent-State to send the proposal of revision of pay scale to the next Pay Commission.

Learned State counsel submits that the claim of the petitioners has already been considered and decided as per rules framed by the Government in compliance of directions issued by this Court on 14.08.2014. Learned State counsel further submits that the State Government has constituted a Cabinet Sub Committee to look into the demands of employees pertaining to pay scales and recommendations of Sub-Committee have also been implemented. The claim of the petitioners for grant of pay scales at par with the Police Personnel cannot be considered at this stage as no anomaly has arisen in their pay scales on the recommendations of the Cabinet Sub Committee.

Heard arguments of learned counsel for the petitioners as well as learned State counsel and have also perused the impugned order as well as other documents available on the file.

The petitioners are claiming equal treatment at par with Police Officials in Police Department as earlier they were kept in the same pay scales. They are claiming parity of pay scales as they are performing the similar duties and their process of selection and nature of duties are also

same. As per the case of the petitioners, they are facing major pay anomaly

since 01.12.2011 due to failure of the respondents to grant equal pay scales as per Notification dated 27.05.2009 (Annexure P-4).

Hon'ble the Supreme Court in ***Home Guards Volunteer titled as Grah Rakshak, Home Guards Welfare Association vs. State of H.P. and others, 2015(2) SCT 537***, has held that the State Government should pay them duty allowance and equal pay scale at par with their counterparts of Police employees and also employees of Jail Department.

It is also not disputed that similarly situated personnel of Police and Jail Department are getting revised pay scale since 01.12.2011 (Annexures P-5 and P-6) and as such, there is major pay anomaly in the pay scales of petitioners viz-a-viz Police Constables.

It has been held by this Court in ***Rupinder Singh Sidhu vs. State of Punjab, 1995(1) SCT 157*** that once the Govt. realises the need of revising the pay scales of its employees of different cadres, it cannot prescribe different dates of implementation of the same for different cadres. It was also held that to provide, different dates for different cadres to implement the revised pay scale is discriminatory, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

Similarly Division Bench of this Court in ***Haryana State Biologists Association vs. State of Haryana, 1994(3) SCT 198***, has held that pay scale/revision of pay scale, parity of pay scale granted and followed for a long time, should not be disturbed without the authority of law. In case, the pay scales are revised of one category, it cannot be denied to the other category.

It has not been disputed by learned State counsel that the equal

pay scale has been granted to the petitioners since 1986 till 01.12.2011.

Same issue was there in **Trilochan Singh's case (supra)** and it was mentioned in the written statement filed by the respondent-State by relying upon instructions dated 23.05.2012 that the proposal for revision of pay scales of the Government employees may be sent to the Department of Finance, which have come subsequent to the implementation of the recommendations of the Cabinet Sub Committee. It was also mentioned in the instructions that remaining demands of the Government employees can be considered by the next Pay Commission and that the Department of Finance shall not consider any other reference as it is to be considered by the next Pay Commission. Said petition was disposed of with a direction to the respondent-State to send the proposal of the revision of pay scale of the petitioner to the next Pay Commission.

Accordingly, the present writ petition is allowed and impugned order dated 30.12.2014 (Annexure P-9) is hereby quashed. However, the present writ petition is disposed of with a direction to the respondent- State to consider the case of the petitioner for sending the proposal of revised pay scales in view of instructions dated 23.05.2012 to the next Pay Commission and pass necessary order by mentioning reasons within a period of three months from the date of receipt of certified copy of this order.

In case, the petitioners are still aggrieved in any manner by action of the respondents, they are at liberty to avail the appropriate remedy.

07.09.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No