

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

CWP No. 4194 of 1992 (O&M)

Date of Decision: 15.09.2017

Shri Raj Pal Setia and others

.....Petitioners

Vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ramesh Hooda, Advocate,
for the applicants-petitioners no. 1 and 9.

Mr. R.K. Doon, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 9034-CWP-2016

By this application, the applicants-petitioners no. 1 and 2 seek exemption from filing the certified copies of Annexures A-1 and A-2.

The application is allowed, as prayed for.

CM No. 9033-CWP-2016

By this application, the applicants-petitioners no. 1 and 9 seek to place on record the Government notification dated 19.08.2009 and a letter dated 05.05.2016, as Annexures A-1 and A-2.

The application is allowed and Annexures A-1 and A-2 are taken on record with the accompanying writ petition.

CWP No. 4194 of 1992

By this petition, the petitioners are seeking, firstly, issuance of a writ of certiorari quashing the impugned order Annexure P-6 and thereafter, a writ of

mandamus directing the respondents to release the pay and allowances of the petitioners with effect from the date of issuance of the impugned order.

2. The petitioners being Municipal Engineers in different municipalities of the State of Haryana, are seeking a pay scale of Rs. 3,000/- - 4,500/- as also the selection grade of Rs. 4,100-5,300/- after 12 years of regular service, which have been denied to them vide the impugned order, which reads as under:-

“From

*The Commissioner & Secretary to Government of
Haryana,
Local Government Department*

To

- 1. Director,
Local Bodies, Haryana, Chandigarh.*
- 2. Examiner,
Local Fund Account, Haryana,
Chandigarh.*
- 3. President/Administrator,
'A' Class Municipal Committees of the State.*
- 4. Examiners Local Account
of 'A' Class Municipal Committees of the State.*

Subject:- Regarding revised pay scales to Municipal Engineers

*With reference to Government Memo No. 17/45/49-3A2,
dated 16.04.1991 on the subject cited above.*

2. *As per above referred letter, the pay scale of Municipal Engineers working in 'A' Class Municipal Committee has been revised from Rs. 2000-3500 to Rs. 2200-4000. In this connection, it is hereby clarified that no Municipal Engineer can be given a pay scale more than Rs. 2200-4000/-. In so far as the pay scale of Rs. 3000-4500 is concerned, this pay scale cannot be given to the Municipal Engineers, since there is no post higher than that of the S.D.O. No. Municipal Engineer be given the pay scale more than Rs. 2200-4000.*

Sd/-

*Superintendent Committee-II,
for Commissioner and Secretary, Haryana Govt.
Local Government Department*

3. At the outset, Mr. Hooda, learned counsel for two of the petitioners, (the others four not being represented today), points to Rule 18 of the Haryana Municipal Services (Integration, Recruitment and Conditions Service) Rules 1982, which reads as follows:-

“Leave, travelling allowances, joining time, suspension, medical facilities, fees and honoraria and other matters:-

In respect of leave travelling allowances, joining time, suspension, leave, medical facilities, fees, honoraria, house-rent allowance, dearness allowance, fixation of pay, grant of increment, crossing of efficiency bar, deputation and other matters not expressly provided in these rules, members shall be governed by the corresponding provisions contained in the rules applicable to Haryana Government employees. The authority competent to sanction casual leave, earned leave increment and efficiency bar shall be as indicated against each category of service of Appendix D.

Provided that a person on transfer shall draw his traveling allowance and joining time benefits from the committee to which he is transferred.”

(Emphasis applied by this Court)

Thus, the contention is that the petitioners, as they are Municipal Engineers, are entitled to the same pay and allowances as are applicable to Government employees.

The impugned order obviously denies the aforesaid benefit to the petitioners on the ground that since no municipal engineer is of a higher status/rank than a Sub-Divisional Officer (Sub-Divisional Engineer), in the

Government, with the basic pay scale of an SDO being Rs. 2,200-4,000/-, the petitioners are not entitled to any higher scale.

4. It has also been stated in the written statement, reiterated by Mr. Doon, learned counsel for the State, that vide the circular of the Finance Department annexed as Annexure R-1 with the written statement, the revised pay scale given to engineers and doctors vide the Finance Departments' earlier circular dated 02.06.1989 (Annexure P-3 with the petition), would be limited to only engineers of all three wings of the Public Works Department.

The said circular dated 02.06.1989, is also reproduced hereinunder:-

“No. 6/38/3PR (FD)-87

From

*The Financial Commissioner & Secretary to
Government, Haryana, Finance Department*

To

- 1. All Heads of Departments, Commissioners Ambala/Hissar
Division, Deputy Commissioner & Sub-Divisional Officers
(Civil) in Haryana.*
- 2. The Registrar,
Punjab & Haryana High Court, Chandigarh.*

Dated, Chandigarh, the 2nd June, 1989.

*Subject:- Revision of Pay Scale-Removal of anomalies in the Pay Scales of
HCMS (Doctors), Deputy Superintendents, Enginners.*

Sir,

*I am directed to invite a reference to Haryana Government Finance
Department letter No. 6/38/3PR (FD)-87, dated 16th May, 1989 wherein the pay*

scales of HCMS Doctors, Deputy Superintendent of Police and Superintending Engineers were revised w.e.f. 01.05.1989. The matter has been considered further and after careful consideration the State Government has decided to revise the pay scales of Doctors and Engineers w.e.f. 01.05.1989 as indicated below:-

<i>Sr. No.</i>	<i>Name of the Post</i>	<i>Existing scales</i>	<i>Revised scales of pay</i>
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	<i>HCMS Doctors</i>	<i>2200-4000 + NPA</i>	<i>2200-4000+NPA</i>
	<i>(Class I & II)</i>	<i>3000-4500</i>	
		<i>(After 8 years of regular</i>	<i>3000-4500+NPA</i>
		<i>service) 4100-5300</i>	<i>(After 5 years of</i>
		<i>(After 18 years of regular</i>	<i>regular service).</i>
		<i>Service)</i>	<i>4100+5300+NPA</i>
			<i>(After 12 years of</i>
			<i>regular service).</i>
	<i>Engineers/AEE/AE/SDO</i>	<i>2200-4000</i>	<i>2200-4000</i>
	<i>/SDE (Class I & II)</i>	<i>2000-3500</i>	<i>3000-4500</i>
			<i>(After 5 years of</i>
			<i>regular service).</i>
			<i>4100-5300</i>
			<i>(After 12 years of</i>
			<i>regular service).</i>

The pay of these employees may be re-fixed in the newly revised scales of pay in accordance with the normal rules as laid down in Punjab Civil Services Vol.I, Part-I.

Sd/-

(S.K. SAXENA)

Joint Secretary, Finance (PR)

*for Financial Commissioner & Secretary to
Government, Haryana, Finance Department."*

5. The said circular dated 02.06.1989 was modified vide a circular dated 16.05.1990 of the Finance Department, and giving reference to that circular, the

Engineer-in-Chief PWD (Public Health Branch), issued the circular Annexure P-4, by which, as contained in paragraph 2 of the said circular, the revised pay scales, qua the selection grade of Rs. 4,100 -5,300/- which was to be given to employees after 12 years of regular service, was restricted to 20% of the cadre posts, in the case of Doctors, Engineers and Deputy Superintendents of Police.

6. Having considered the stand taken by both the sides, reiterated by both learned counsel appearing for them, in the opinion of this Court, this petition deserves to be allowed, in view of the fact that undoubtedly the circulars Annexures P-3 and P-4 reflect the revision of pay scales/revision of number of years from which a particular pay scale is to be given to a particular cadre, only in respect of Government employees; however, Rule 18 of the aforementioned Rules of 1982 stipulates that the conditions of service as regards fixation of pay, increments leave, travelling allowances, joining time, suspension, medical facilities, fees and honoraria and other matters would be equivalent to the corresponding provisions contained in the rules applicable to the Haryana Government employees.

Thus, in the face of rules framed under the proviso to Article 309 of the Constitution, the instructions of the Finance Department dated 16.04.1991 (Annexure P-5), stating that the circular of the Finance Department dated 02.06.1989 stipulating that the revised pay scales as per Annexures P-3 and P-4 would be limited only to the Engineers and Doctors as are employed with Government itself, (the implication being not to those employed with other statutory bodies), cannot be held to apply to employees of municipalities, as are governed by the aforesaid Rules of 1982, all pay scales applicable to Government employees, *ipso facto*, becoming applicable to employees of municipalities in equivalent cadres.

In this context, if any law needs to be cited, the judgment of the Supreme Court in State of Haryana and others vs. Shamsher Jang Bhadur Singh Shukla AIR 1972 SC 1546, can be cited, consistently followed thereafter, wherein it has been stated that instructions contrary to the statutory rules cannot be sustained.

7. Consequently, this petition is allowed and the impugned Annexure P-6 is hereby quashed and a direction is issued to the respondents to release the pay scales as applicable to the petitioners, as per the circulars dated 02.06.1989 and 18.06.1990, within a period of three months from the date of receipt of a certified copy of this order, along with all arrears as have accrued to them, with their pensions also to be fixed accordingly, in case of all such petitioners who have retired.

No orders as to costs.

September 15, 2017
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes