

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I.

C.W.P. No.17077 of 2004 (O&M)

Baljeet Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

II.

C.W.P. No.10586 of 2005 (O&M)

Mahabir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

III.

C.W.P. No.10587 of 2005 (O&M)

Balwant Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

IV.

C.W.P. No.10618 of 2005 (O&M)

Krishan Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

V.

C.W.P. No.10621 of 2005 (O&M)

Sanjiv Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

VI.

C.W.P. No.10634 of 2005 (O&M)

Rai Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

VII.

C.W.P. No.10637 of 2005 (O&M)

Ramesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

VIII.

C.W.P. No.10641 of 2005 (O&M)

Tek Chand

... Petitioner

Versus

State of Haryana and others

... Respondents

IX.

C.W.P. No.9866 of 2005 (O&M)

Gurmeet Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

X.		
C.W.P. No.9867 of 2005 (O&M)		
Dharam Pal		... Petitioner
Versus		
State of Haryana and others		... Respondents
XI.		
C.W.P. No.9888 of 2005 (O&M)		
Satish Kumar		... Petitioner
Versus		
State of Haryana and others		... Respondents
XII.		
C.W.P. No.9906 of 2005 (O&M)		
Naresh Singh		... Petitioner
Versus		
State of Haryana and others		... Respondents
XIII.		
C.W.P. No.9907 of 2005 (O&M)		
Krishan Lal		... Petitioner
Versus		
State of Haryana and others		... Respondents
XIV.		
C.W.P. No.9908 of 2005 (O&M)		
Lal Chand		... Petitioner
Versus		
State of Haryana and others		... Respondents

XV.	C.W.P. No.9909 of 2005 (O&M)
Satyawan	... Petitioner
	Versus
State of Haryana and others	... Respondents
XVI.	C.W.P. No.9910 of 2005 (O&M)
Paramjeet Singh	... Petitioner
	Versus
State of Haryana and others	... Respondents
XVII.	C.W.P. No.9911 of 2005 (O&M)
Surinder Singh	... Petitioner
	Versus
State of Haryana and others	... Respondents
XVIII.	C.W.P. No.9912 of 2005 (O&M)
Harbhajan Lal	... Petitioner
	Versus
State of Haryana and others	... Respondents
XIX.	C.W.P. No.9913 of 2005 (O&M)
Sukhwinder Singh	... Petitioner
	Versus
State of Haryana and others	... Respondents

XX.	C.W.P. No.9914 of 2005 (O&M)
Sant Lal	... Petitioner
Versus	
State of Haryana and others	... Respondents
XXI.	C.W.P. No.9915 of 2005 (O&M)
Jaswant Lal	... Petitioner
Versus	
State of Haryana and others	... Respondents
XXII.	C.W.P. No.9916 of 2005 (O&M)
Radhey Shyam	... Petitioner
Versus	
State of Haryana and others	... Respondents
XXIII.	C.W.P. No.9917 of 2005 (O&M)
Sucha Singh	... Petitioner
Versus	
State of Haryana and others	... Respondents
XXIV.	C.W.P. No.9918 of 2005 (O&M)
Neki Ram	... Petitioner
Versus	
State of Haryana and others	... Respondents

Decided on : 28.07.2017

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

Present : Mr. Jagbir Malik, Advocate,
for the petitioner.

Mr. Samarth Sagar, Addl. AG., Haryana

MAHESH GROVER, J. (Oral)

This order shall dispose of the abovesaid 24 writ petitions as common questions of law and fact are involved therein.

The parties are *ad idem* that the controversy stands concluded by a Division Bench judgment of this Court reported as **Mohinder Singh and others v. State of Haryana and others; 2013 (2) Law Herald 1392** which was also tested before Hon'ble Supreme Court unsuccessfully.

The Division Bench observed as follows : -

“11. The admitted facts, which are appearing on record, are that the recruitment rules for appointment to the posts of Drivers and Conductors are same whether they are appointed on contract basis initially or are given the pay scales after rendering the services for specified number of years. All these petitioners fulfill those eligibility conditions contained in the recruitment rules. It is also an admitted position on record that there was a proper selection procedure followed by issuing the advertisement

and making the selection through the Staff Selection Board/Service Commission. The petitioners were selected on merits. From day one they started doing the job of Driver and Conductor which is the same as performed by the Drivers/Conductors who are placed in the regular pay scale. It is, thus, not in dispute that the posts in question were advertised for open competition for direct recruitment and all the petitioners were appointed through the selection process made by the Staff Selection Commission after giving opportunity to each and every eligible person. The only reason for putting them on contract/fixed salary in the beginning and bringing them on the regular pay scale after they render service for specified period is that the provisions are made with objective to recruit best Drivers and Conductors who can provide best services to the commuting public. It is not understood as to how this objective is achieved by putting the Drivers and Conductors initially on the fixed salary and bringing them in graded pay scales after 4/6 years. The aforesaid objective can well be achieved by putting the Drivers and Conductors after their appointment initially on probation and watching their work and conduct during the period of probation. The respondents have not been able to dislodge the weighty and meritorious contention of the petitioners that paying different salary

even after getting same work offends the principle of 'equal pay for equal work'. The matter is squarely covered by the Full Bench judgment of this Court in **Avtar Singh v. State of Punjab and others (CWP-14796-2003)** decided on 11.11.2011. In this detailed judgment, after taking note of every possible case law of the Supreme Court and this Court on the subject, the Full Bench categorically held that even a daily wager, ad hoc or contractual appointee against a regular sanctioned post, if appointed after undergoing a regular selection process based upon fairness and equality of opportunity to all other candidates, shall be entitled to minimum of the regular pay scale from the date of engagement. Position would have been different if the petitioners were not appointed against the sanctioned posts or they were not fulfilling the requisite qualifications for the posts or they were not appointed after regular selection process.

12. We also agree with the contention of the petitioners that the impugned amendments are contrary to the Standing Orders Act of 1946 which permits classification of the workmen only on the basis of tenure of the post and not on any other basis. In any case, we are of the opinion that once these Drivers and Conductors are appointed after due selection, they cannot be discriminated as far as grant of pay scales is concerned merely on the basis that they are

recruited initially on contract basis and would be considered for granting pay scales after 4/6 years of service.

13. No doubt, the petitioners have filed these petitions after few years of their appointment. However, if the rules in question suffer from the vice of arbitrariness and are found to be unconstitutional being violative of Article 14 of the Constitution, the principle of estoppel would not apply. Moreover, in such a case, the relief can be restricted but writ petitions cannot be dismissed on this ground alone. In **A.P. Dairy Development Corporation Federation v. B. Narasimha Reddy and others (AIR 2011 Supreme Court 3298)**, the Supreme Court explained the principle of reasonable classification enshrined in Article 14 of the Constitution in the following manner :

“It is well settled law that Article 14 forbids class legislation, however, it does not forbid reasonable classification for the purpose of legislation. Therefore, it is permissible in law to have class legislation provided the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question. Law also permits a classification even if it relates to a single individual, if, on account of some special

circumstances or reasons applicable to him, and not applicable to others, that single individual may be treated as a class by himself. It should be presumed that legislature has correctly appreciated the need of its people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. There is further presumption in favour of the legislature that legislation had been brought with the knowledge of existing conditions. The good faith on the legislature is to be presumed, but if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The law should not be irrational, arbitrary and unreasonable in as much as there must be nexus to the object sought to be achieved by it. (Vide **Budhan Choudhry and others v. State of Bihar, AIR 1955 SC 191**; and **Ram Krishna Dalmia v. Justice S.R.Tendolkar & ors., AIR1958 SC 538**).

14. 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.

15. Petitions allowed in the aforesaid terms.”

The only modification that Hon'ble Supreme Court has made is regarding admissibility of the consequential benefits which the writ petitioners have been made entitled to with effect from the date of decision by the Division Bench of this Court, i.e., 1.4.2013.

Consequently, we dispose of the present petition along with connected petitions in the same terms.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

July 28, 2017

Paritosh Kumar

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