

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

(1) CWP No. 18466 of 2014 (O&M)
Date of decision: April 26, 2017

Anuj Kumar Sharma and another

...Petitioners

Versus

State of Punjab

...Respondents

(2) CWP No. 8687 of 2015 (O&M)

Vinod Kumar and others

...Petitioners

Versus

The State of Punjab and another

...Respondents

(3) CWP No. 24372 of 2015 (O&M)

Sukhwinder Singh and others

...Petitioners

Versus

The State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kanwal Goyal, Advocate,
the petitioners in CWP No. 18466 of 2014.

Mr. Ranvir S. Chauhan, Advocate,
for the petitioners in CWP Nos. 8687 and 24372 of 2015.

Mr. Pankaj Mulwani, DAG, Punjab.

JAISHREE THAKUR, J.

1. By this common order, this court proposes to decide CWP

No.18466 of 2012 and CWP Nos. 8687 and 24372 of 2015, since a common

law point is involved. For the sake of brevity, facts are being taken from Civil Writ Petition No. 18466 of 2014 titled **Anuj Kumar Sharma and another Versus State of Punjab and others.**

2. In brief, the petitioners were initially appointed as Restorers and subsequently promoted to the post of Telephone Attendants in Punjab Civil Secretariat. The basic qualification required for appointment to the post of Restorers, Clerk, Photostat Machine Operator and Telephone Attendants/Operators in Punjab Civil Secretariat is the same namely, matriculation from a recognized University or its equivalent. In addition, candidates applying for the post is required to qualify the competitive tests to be held by the recruiting authority. The employees initially were placed in the same pay scale of ₹950–1800 which was subsequently revised to ₹3120-5160 w.e.f. 01.01.1996 and thereafter they were all granted the revised pay scale of ₹5910–20200 and grade pay of ₹1900 w.e.f. 01.01.2006. Thereafter, the pay scales of Clerks, Constables Photostat Machine Operators were again revised from ₹5910–20200 to ₹10300–34800 with grade pay of ₹3200 w.e.f. 01.12.2011. However, the pay scale of the Telephone Attendants and Operators was not revised and they were kept in the same pay band of ₹5910–20200 with a revision in the grade pay from ₹2400. Aggrieved against the denial of revision in pay scale as is given to others, the instant writ petition has been filed.

3. Mr. Kanwal Goel and Mr. Ranvir S. Chauhan, learned counsels appearing on behalf of the petitioners, contend that initially Photostat Machine Operators, Constables, Clerks and Telephone Attendants had all been given the same pay scale and it is only vide Punjab notification dated

15.12.2011 that the scale of pay of Telephone Attendants was kept at ₹5910–20200 with grade pay of ₹2400, while increasing it for others to ₹10300–34800 with grade pay of ₹3200 w.e.f. 01.12.2011, thereby creating a disparity in the pay scale. In this regard, a representation had been addressed to the authorities concerned to remove the anomaly that had arisen but no action was taken thereon. It is argued that as per Rule 7 of Punjab Civil Secretariat (State Service Class III) Rules 1976 (hereinafter called '**the Rules of 1976**'), the mode of appointment and minimum educational qualification to the post of Clerk is mentioned at serial No. 4 which is either by direct appointment, by transfer from another department or by promotion from amongst Restorers who would have the qualification of being a graduate from of a recognized University or its equivalent or being a matriculate with 5 years experience with as a Restorer along with having to qualify a Departmental test. As per Rule 7, at serial No. 5 a Restorer could be appointed by direct appointment, through transfer or by selection from amongst the Daftris of the Punjab Civil Secretariat and the qualification of the Daftri's is matriculation from a recognized University or its equivalent with 3 years experience in service as Daftri. Furthermore, at serial No. 19 Telephone Attendant is to be appointed only by way of promotion from amongst the restorers with educational qualification of Matriculate from a recognized university with the ability to handle telephone and being prompt in conveying messages on the telephone. It is further argued that in similar cases this Court in **Gurbir Singh and others Vs Punjab And Haryana High Court and others CWP No. 488 of 2015** and other connected writ petitions had allowed the revision of pay scales of

Restorers of this Court who had also raised a grievance regarding the anomaly in the pay scale. Once a person is promoted to a higher post his pay cannot be lower than the pay scale of the feeder post. Based on the aforesaid judgment, the petitioners herein claim removal of the anomaly that has crept in.

4. Per contra, Mr. Pankaj Mulwani, Deputy Advocate General Punjab, for the respondents, contend that the Cabinets Sub-Committee which was constituted to remove the individual grievances of the employees did not favour pay scale to the Telephone Operators equivalent to Clerks, Photostat Operators and Constables. It is further argued that grant of pay scale and determination of parity in pay scale is a complex matter which is for executive to discharge and not within the purview of the High Court. It is also argued that the nature of job of a Clerk is absolutely different than that of Telephone Operator/Attendant. Clerks have to attend matters pertaining to Courts, RTI Commission and other ancillary matters which is not the case as of Telephone Attendants and moreover now the minimum qualification for the post of Clerk has been enhanced from matriculation to graduation by day notification dated 10.2.2009 with experience on computers and, therefore, the claim of the petitioners cannot be exceeded to. In this regard, learned counsel places reliance upon a judgment rendered in **S.C Chandra Versus State Of Jharkhand, reported in (2007) 8 SCC 219** and **Union Of India Versus Hiramoney Sein and others (2008) 1 SCC 630.**

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings.

6. A contention has been raised that this Court does not have the jurisdiction to entertain the matter by relying upon judgments rendered in **S.C Chandra and Hiramoney Sein** (supra). A perusal of the judgments would show that they are distinguishable and not applicable with the instant matter since they pertain to equal pay for equal work, which is not the case in hand.

7. It has been held in the case of **Randhir Singh & others vs. Union of India, AIR 1982 SC 879**, that the equation of posts and payment are the matters to be decided by expert bodies, like the Pay Commission. In **Union of India vs. Tarit Ranjan Das, (2003) 11 SCC 658** and **Union of India and another vs. P. V. Hariharan and another, (1997) 3 SCC 568**, a similar view has been expressed, wherein, it has been held that the fixation of pay scale is a function of the Government and once an expert body has gone into the issue, it is not open for any Court to sit in judgment as on appeal over the conclusion arrived at.

8. In the case in hand, learned counsel for the respondents is not in a position to dispute that till 15.12.2011 the pay scale of Constables, Clerks, Photostat Machine Operators and Telephone Attendants was the same, that is in the scale of ₹5910–20200. In **Gurbir Singh's** case (supra), the Restorers of this Court filed a writ petition seeking restoration of equation in pay scale between Restorers and Clerks, which writ petition came to be allowed by issuing a direction to restore the status quo ante as on 01.01.2006 where the Restorers and Clerks were in the same pay band and grade pay. These orders came to be passed by the Single Bench of this Court by taking note that the Hon'ble Committee of this court had recommended

the removal of the anomaly which stood approved by the Hon'ble the Chief Justice in exercise of powers vested in him under Article 229 of the Constitution of India. Therefore, by virtue of judgment rendered in **Gurbirs Singh's** case Restorers have been held to be entitled to a pay band of ₹10300-34800 with grade pay of ₹3200/-. The Telephone Attendants being a promotional post would also in all probability be entitled to similar scale if not an enhanced one.

9. The Finance Department by Instructions dated 23.05.2012 has issued a direction that *'only those proposals for revision of pay scale of employees is to be submitted to finance Department in which the anomaly has arisen as a consequence of re-revision of pay scale of a post on the recommendations of the Cabinet Sub-Committee whereby the pay scale of promotional post has become lower than the pay scale of the feeder post'*. The instant case is a fit case to be placed before the Finance Department or before the Pay Anomaly Committee for consideration of removal of the pay anomaly that has been created. The petitioners herein are Telephone Attendants who were in the same pay scale as Clerks, Constables, Photostat Machine Operators etc. A post of a Clerk can be filled up by promotion from Restorers who has the necessary qualification and at serial No. 19 the only source of recruitment to the post of Telephones Attendant is by promotion from the post of Restorers. Therefore, a person being promoted to a higher post cannot under any circumstances be in a lower pay scale.

10. In view of the above situation, where an anomaly has arisen in the pay scale of the petitioners being higher in post than the Restorers, while getting a lower pay scale, it is directed that this matter be placed before the

Finance Department in view of their own Instructions dated 23.05.2012 for consideration of removal of pay anomaly of the petitioners herein while keeping the judgment rendered in **Gurbir Singh's** case (supra) in mind where Restorers pay scale has been brought on par with Clerks.

11. Let this matter be considered by the Finance Department/or the Pay Anomaly Committee in its true perspective within a period of four months on receipt of a certified copy of this order. Needless to say in case the claim of the petitioners is being rejected, a speaking order be passed in this regard, which the petitioners would be at liberty to challenge. In case claim of the petitioners has merit, the monetary benefits including difference of arrears of pay accruing there from be calculated and paid to the petitioners within 2 months thereafter.

12. The writ petitions stand disposed of with the aforesaid directions.

April 26, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No