

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

Date of decision: 03.03.2017

1. CWP No. 21775 of 2013 (O&M)

Harjinder Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

2. CWP No. 26650 of 2013 (O&M)

Sona Devi and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. G.S. Bal, Sr. Advocate, with
Mr. Gagandeep Singh, Advocate,
for the petitioners.

Mr. Avinit Awasthi, AAG, Punjab.

JAISHREE THAKUR, J.

1. By this order I propose to dispose of two writ petitions i.e. CWP No. 21775 and 26650 of 2013.

2. The petitioners herein seek to quash the impugned order dated 13.01.2014 (Annexure P-7) passed by respondent No.3 whereby grant of pay scale of Class-III post has been denied; with a further prayer for release of the said scale w.e.f. 01.01.1996 along with arrears.

3. In brief the facts are, that the petitioners joined on the post of Trained Dais in the Department of Homeopathic in the pay scale of ₹ 2620-4260 with start of ₹ 2720/-. The department of Ayurveda and department of Homeopathic are both under the Department of Health and Family Welfare and service conditions of Trained Dais in the Ayurvedic Department are governed by statutory rules known as Ayurvedic Department (Class III-Technical) Service Rules, 1963 and for Homeopathic Department service rules are Punjab Health and Family Welfare (Homeopathic System of Medicine) (Group-C Technical) Services Rules, 2001. One Smt. Satya Devi worked as Trained Dai in Ayurvedic Department, had retired on 30.09.2008 on attaining the age of 58 years. The Accountant General (A&E) while preparing her retiral benefits raised an objection that if the pay scale of Smt. Satya Devi was ₹ 2720-4260 she should be treated as a Class-IV employee and in fact should retire on attaining the age of 60 years and if, Smt. Satya Devi was to be treated as a Class - III employee and her pay should be raised to that commensurate with Class-III employee. The matter was considered by the Department of Health and Family Welfare, Punjab and an order dated 24.05.2010 was passed declaring the post of Trained Dais in Ayurvedic and Homeopathic Department as Group-D post. This order came to be challenged in the High Court through CWP No. 12924 of 2010 titled Rajinder Kaur and 37 others vs. State of Punjab and others, and CWP No. 11758 of 2010 titled Baljinder Kaur and others vs. State of Punjab and others, and both the writ petitions were disposed of on account of withdrawal of order dated 24.05.2010 declaring the post of Trained Dais as a Group "D" post. The writ petition was disposed of with a further direction

that the plea of grant of pay scale admissible to Group “C” posts should be considered by the authorities concerned. On the basis of the order that was passed, the petitioners and Trained Dais working in both Ayurvedic Department and Homeopathic Department approached the competent authorities concerned for grant of pay scale admissible to Class - III posts but to no avail, leaving the petitioners with no option but to approach the Court by filing instant **CWP No. 21775 of 2013**. In this writ petition notice was issued to respondent Nos.1 & 2 and on appearance written statement was filed. An order dated 13.01.2014 was issued in which *inter alia* it had been mentioned that the pay scale of Group-C post of ₹ 5910-20200 + ₹ 1900 Grade Pay could not be granted to the petitioners. Aggrieved against the denial of the pay scale as has been granted to Group -C employees, the instant writ petition has been filed.

4. Mr. G.S. Bal, learned senior counsel appearing on behalf of the petitioners would submit that the Punjab Civil Services Rules Vol. I, Part-I defines the meaning of “**pay**”. Rule 2.44 of the same defines “**pay**” to mean as :-

- (a) *the basic pay, that is the amount drawn monthly by a Government employee in the scale of pay of the post held by him, or to which he is entitled by reason of his position in a cadre; and*
- (b) *includes any other emoluments which may specifically be classed as part of pay by the competent authority.”*

5. It is also argued that if by their own action respondents have declared the petitioners and similarly situated Trained Dais as Group “C”/Class -III employees they would be entitled to the minimum pay scale

as due to them.

6. Per contra, it is argued that the minimum pay scale of Group “C” cannot be paid to the Trained Dais as no educational/ professional qualifications have been prescribed for this post whereas there is some qualification prescribed for others in that category. It is also argued that the matter was put up before the Anomaly Committee of the 5th Pay Commission but the said demand was not accepted. As per the recommendations of the Cabinet Sub Committee, the pay scale of Trained Dais was fixed at 4900-10680 + 1400 G.P. from 01.01.2006 which was enhanced to 4900-10680 + 1800 G.P. From 01.12.2011. It is also contended that the Government of Punjab has constituted 6th Punjab Pay Commission and the Commission has invited all Services Associations Employees Union / Institutions to refer their disputes regarding anomaly of pay to them, therefore, this matter should be referred to the Pay Commission.

I have heard learned counsel for both the parties and have perused the record of the case.

7. Admittedly, the sole question that arises for consideration is that would the petitioners would be entitled to the minimum pay scale as Group “C” employees.

8. The definition of pay clearly specifies that the basic pay is the amount drawn by a Government employee in the scale of pay of the post held by him or to which he is entitled to by reason of his position in a cadre and includes any other emoluments which may specifically be classified as part of pay by the competent authority. Basic pay is not dependent on the qualification as held by a person but is on the basis of the scale of pay of the

post held by him or in the alternate to which he is entitled to by his position in a cadre. The Trained Dais though in Group “C” cadre, are not required to have any educational qualification. A Trained Dai has been defined in Section 2(l) of the Punjab Nurses Registration Act, 1932 as : *“trained dai” means a dai who has been granted a training certificate under the bye-laws made by the Council, or one who has been registered in accordance with the provisions of clause (d) of sub-section (1) of Section 14*”. Class “III” post as specified under the Rules are that of Superintendent (Office), Head Assistant, Assistants, Head Clerks and Head Clerk-cum-Accountant, Clerk, Store-keeper, Stenographer and Steno-typist. A Steno-typist is the lowest post as available under the Punjab Ayurvedic Department (Class-III-Ministerial) Services Rules, 1963. In Annexure “A” minimum qualification of a Steno Typist is that he should be matriculate with a speed of 40 words in type and 80 words in shorthand. As has already been noted in the forgoing paragraph no educational qualification is required, therefore, the petitioners herein would not be able to rely solely on the definition of “pay” as defined in Rule 2.44 to contend that they would be entitled to the cadre pay. In fact, it was on the basis of the recommendations of the 5th Pay Commission, it was decided to put the Trained Dais in the pay scale of 4900-10680 + 1400 G.P. The concept of seeking equal pay in the minimum scale of Class-III employee is without any foundation as there is a qualitative difference in functions and responsibilities based on the type of work that is done. This matter was already being considered by the Cabinet Sub Committee which is an expert body and after considering the request certain recommendations have been made. Therefore, this Court is not

inclined to interfere in the matter regarding the grant of minimum pay scale of a Class-III employee.

9. The writ petitions stand dismissed accordingly.

03.03.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.