

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

CWP No.22069 of 2014 (O&M)

Date of Decision: September 11, 2017

Om Parkash and others

....Petitioners

vs.

Chief Secretary to Government of Punjab and others

....Respondents

2. CWP No.23209 of 2015 (O&M)

Madan Lal SLA and others

....Petitioners

vs.

Chief Secretary to Government of Punjab and others

....Respondents

3. CWP No.12875 of 2015 (O&M)

Malkiat Singh and others

....Petitioners

vs.

Chief Secretary to Government of Punjab and others

....Respondents

4. CWP No.4369 of 2017 (O&M)

Sheeru SLA and another

....Petitioners

vs.

Chief Secretary to Government of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Shashi Bhushan Nagpal, Advocate
for the petitioner(s).

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

TEJINDER SINGH DHINDSA, J.(Oral)

This order shall dispose of **CWP No.22069 of 2014 (Om Parkash and others vs. Chief Secretary to Government of Punjab and others)**, **CWP No.23209 of 2015 (Madan Lal SLA and others vs. Chief Secretary to Government of Punjab and others)**, **CWP No.12875 of 2015(Malkiat Singh and others vs. Chief Secretary to Government of Punjab and others)** and **CWP No.4369 of 2017 (Sheeru SLA and another vs. Chief Secretary to Government of Punjab and others)** as the issue involved in these bunch of petitions, is identical.

Petitioners in these connected petitions are serving as Senior Lab Attendants under the Punjab State Education Department. A few of them have already superannuated from such post.

Petitioners seek parity in terms of pay scale with other categories of employees working under the State Government such as Photostat Machine Operator, Lift/Telephone/Tubewell Operator, Senior Technician, Constables, Restorers, Patwari, Clerks(Basic Entry point), Bill Clerk, Assistant Revenue Clerks (Irrigation Department), Work Munshi, Booking Clerk, Ledger Keeper, Store Munshi, Complaint Clerk, Gram Sewak, as also Multi Purpose Health workers.

Counsel representing the petitioners would contend that the Senior Lab Attendants had enjoyed the same pay scale as granted to the other categories of employees noticed hereinabove w.e.f. 01.02.1968. A tabulation showing parity of pay scales between the posts of Senior Lab Attendants and the other posts, with whom parity is sought (reference posts) w.e.f. 01.01.1978 is reflected in a tabulation furnished in Para 8 of CWP No.23209 of 2015 and the same is extracted here under:-

Sr. No.	Post	2 nd Pay Commission pay scale w.e.f. 01.01.1978	3 rd Pay Commission revised basic pay w.e.f. 01.01.1986	4 th Pay Commission w.e.f. 01.01.1996
1.	Senior Lab Attendant	400-600	950-1800 initial start of Rs.1,000/-	3120-5160
2.	Photostat machine Operator/Ferro machine Operator	-do-	-do-	-do-
3.	Lift/Telephone/Tub ewell operator	-do-	-do-	-do-
4.	Senior Technician	-do-	-do-	-do-
5.	Constable	-do-	950-1800 initial start of Rs.1,000/-	3120-5160 initial start of Rs.3,300/-
6.	Restorers	-do-	-do-	3120-5160
7.	Patwaris	-do-	-do-	-do-
8.	Clerks(Basic Entry point)	-do-	-do-	-do-
9.	Bill Clerk	-do-	-do-	-do-
10.	ARC(Irrigation Department)	-do-	-do-	-do-
11.	Work Munshi	-do-	-do-	-do-
12.	Booking Clerk	-do-	-do-	-do-
13.	Ledger Keeper	-do-	-do-	-do-
14.	Store Munshi	-do-	-do-	-do-
15.	Complaint Clerk	-do-	-do-	-do-
16.	Conductor	-do-	-do-	-do-
17.	Mechanic	-do-	-do-	-do-

The precise grievance raised in the petition is that such historical parity has not been maintained and has been broken w.e.f. 01.12.2011. It is submitted that the Senior Lab Attendants who were enjoying identical pay scale earlier in point of time have now been placed in a pay scale/grade pay as also initial pay inferior to a

position as compared to the reference posts. In support of such contention another tabulation stands furnished in Para 11 of **CWP No.23209 of 2015** and which is extracted herein below:-

Post	Un-revised pay scale	Revised pay scale w.e.f. 01.12.2011			Revised pay scale w.e.f. 01.06.2011/10.10.2011			Repeated Revised/Re-revised pay scale w.e.f. 01.12.2011		
		Scale	Grade pay	Initial pay	Scale	Grade pay	Initial pay	Scale	Grade pay	Initial pay
Senior Lab Attendant	3120-5160/6200	5910-20200	1900	7810				5910-20200	2400	9880
Photostat machine	-do-	5910-20200	1900	7810				10300-34800	3200	13500
Patwari	-do-	5910-20200	1900	7810						
ARC (Irrigation Department)	-do-	5910-20200	1900	7810				10300-34800	3200	13500
Work Munshi	-do-	5910-20200	1900	7810				5910-20200	2400	9880
Gram Sewak	-do-	5910-20200	1900	7810				10300-34800	3200	13500
Constable	-do-	5910-20200	1900	7810	5910-20200	200	8240	10300-34800	3200	13500
Clerk	-do-	5910-20200	2400	9880				10300-34800	3200	13500
Restorer	-do-	5910-20200	1900	7810				5910-20200	2400	9880

The solitary contention advanced by counsel is that since Senior Lab Attendants had enjoyed identical pay scale for a period in excess of four decades, it was not open for the State Government to have broken such parity. The action of the State Government in having denied to the petitioners identical pay scale/grade pay and initial pay to the Senior Lab Attendants and while granting revised pay scales w.e.f. 01.12.2011 to the reference posts at a higher level is stated to be arbitrary and violative to Articles 14 and 16 of the Constitution of India.

Counsel for the parties have been heard at length.

It is by now well settled that grant of pay scale is a complex function which involves evaluation of duties and responsibilities of different posts. Such evaluation is best left to be carried out by the expert bodies. Granting parity in pay scales depends upon a comparative job evaluation and equation of posts. It is equally well settled that the principle of *Equal Pay for Equal Work* is not a fundamental right but a constitutional goal. The question as regards pay parity would depend on a number of relevant factors/parameters such as educational qualifications, nature of the job, duties to be performed, responsibilities to be discharged, method of recruitment etc.

It may be noticed that even though, Senior Lab Attendants i.e. the petitioners herein are seeking pay parity with the holders of reference posts i.e. Photostat Machine Operators, Patwaries, Assistant Revenue Clerks (Irrigation Department), Work Munshies, Gram Sewak, Constables, Clerks, Restorers and Multi Purpose Health Workers yet the pleadings are completely bereft as regards the duties and responsibilities of the post of Senior Lab Attendants as opposed to the reference post mentioned hereinabove. There is no averment in the instant petition that would shed light on the comparative educational qualifications required for the posts, the method of recruitment, the duties to be performed and the responsibilities to be discharged. In the absence of such pleadings and material on record, the prayer of the petitioners i.e. Senior Lab Attendants to be granted pay parity with the posts under reference

cannot be adjudicated upon and accepted.

Parity also cannot be claimed merely on the basis that earlier in point of time the subject post i.e. the post of Senior Lab Attendants and the reference category posts i.e. noticed hereinabove, were carrying identical pay scale. A reference in this regard may be made to the decision of the Hon'ble Supreme Court of India in **State of West Bengal and another vs. West Bengal Minimum Wages Inspectors Association and others 2010(2) SCT 250**. The issue before the Apex Court in case of State of West Bengal (supra) was pay parity sought by employees holding the post of Inspector Agricultural Minimum Wages (for short Inspector-AMW) with those holding the posts of Inspector (Co-operative Societies), Extension Officers (Panchayat) and Revenue Officers. The case set up on behalf of Inspectors-AMWs while seeking pay parity with the reference posts was that they had enjoyed pay parity with the reference posts all through and such parity had subsequently been broken. Apparently, the State of West Bengal had appointed a Pay Review Committee to consider the representations submitted by Inspector-AMW and the Pay Review Committee made a recommendation in their favour and for establishing and restoring pay parity with the reference posts. The State of West Bengal however decided not to accept the recommendations of the Pay Review Committee. The matter having been agitated, a Division Bench of the Calcutta High Court allowed the claim of the Inspectors-AMWs and directed as follows:-

“The petitioners be given the same scale from the respective date as were given to their counter parts namely the four posts under RPA 1981 as well as corresponding scale under RPA 1986 and the same scale that would be given to those four posts under the 4th Pay Commission and accordingly they pay be fixed and the difference/arrears be paid to the petitioners within six months from the date of receiving of certified copy of the order.”

The matter having been carried up in appeal before the Hon'ble Supreme Court, appeal was allowed and the impugned judgment of the Division Bench of the Calcutta High Court was set aside.

It was held that the Apex Court as follows:-

“17. It is now well-settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an

earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust. The respondents have neither pleaded nor proved that the holders of post of Inspectors (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) were discharging duties and functions similar to the duties and functions of Inspector-AMW. Hence, the prayers in the original writ petition could not have been granted. In fact, that is why the learned single Judge rightly held that whether the posts were equivalent and whether there could be parity in pay are all matters that have to be considered by expert bodies and the remedy of the respondent was to give a representation to the concerned authority and the court cannot grant any specific scale of pay to them.”

In the considered view of this Court, the dictum laid down

in the case of State of West Bengal (supra) applies squarely to the facts of the present case as well.

The petitioners could have claimed the benefit of higher pay scale as admissible to the reference posts of Photostat Machine Operator, Lift/Telephone/Tubewell Operator, Senior Technician, Constables, Restorers, Patwari, Clerks(Basic Entry point), Bill Clerk, Assistant Revenue Clerks (Irrigation Department), Work Munshi, Booking Clerk, Ledger Keeper, Store Munshi, Complaint Clerk, Gram Sewak, as also Multi Purpose Health workers, only upon establishing that the Senior Lab Attendants also discharge duties and functions identical with or similar to the ones discharged and carried out by holders of the posts in reference. It is only in the eventuality of the petitioners having discharged such onus that this Court could possibly hold that the dis-parity in pay scales is irrational and unjust. There are no such pleadings on record. The only ground set up for claiming pay parity is that there had been pay parity in the past. That by itself cannot be a ground to accept the prayer made in the instant writ petition.

It is not even the case of the petitioners that the State Government at any point of time had taken a conscious decision of equating the post of Senior Lab Attendant with any of the reference posts noticed hereinabove.

In view of the discussion above, no merit is found in these petitions and the same are dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

September 11th,2017
anju rani

Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**