

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

**CWP No. 25798 of 2014
Date of Decision: 18.03.2017**

Rajinder Parshad & Others

...Petitioners

Versus

State of Punjab & Others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Sangita Dhanda, Advocate
for the petitioners.

Mr. Pankaj Mulwani, Deputy Advocate General, Punjab.

JAISHREE THAKUR, J.

The petitioners herein are seeking a writ in the nature of Mandamus directing the respondents to grant salary in the higher regular pay scale of the post of driver, which is Class-III post, to all the petitioners on the principle of 'equal pay for equal work' with effect from the date the respondents started taking work of driver.

2. In brief, the facts are that the petitioners were appointed in the office of Respondents No. 3 - 6 in the State of Punjab on the post of peon, which is a Class-IV post. On account of possessing a valid driving license, the petitioners, who though were appointed on the posts of peon, were asked to work as drivers on official vehicles. They have been working and performing duties of drivers continuously. Respondent No. 2 even requested the State to promote petitioner No. 2 on the post of a Driver since the post

of driver was lying vacant in the Department. A Departmental Promotion Committee (*for short 'DPC'*) was held on 05.04.2007 to fill up the vacant posts of drivers from post of Class-IV employees by way of their promotion. The name of the petitioners was considered and their driving licences were verified. The DPC noted that 48 posts of drivers were lying vacant and a request be sent to the Excise Board to fill up the said vacant posts while keeping 11 posts from their jurisdiction so that the peons working on the post of drivers could be promoted and regularized on the post of drivers. Since no action was taken on the said recommendation, the petitioners approached this Court for redressal of their grievances. The writ petition was rejected on the ground that there was no avenue of promotion of a peon to the post of driver. The instant writ petition has been filed with the prayer of 'equal pay for equal work' and for services to be regularized.

3. Ms. Sangeeta Dhanda, learned counsel appearing on behalf of the petitioners would contend that the petitioners herein are working as drivers for the last more than 20 years and would be entitled to the pay scale of the post of drivers on the principle of 'equal pay for equal work'. It is argued that the petitioners herein having discharged the duties of a driver, which admittedly carries longer hours and much more responsibility, would be entitled to pay commensurate with the work discharged by them along with regularization.

4. Per contra, Mr. Pankaj Mulwani, learned Deputy Advocate General, Punjab argues that the petitioners, though working on the post of drivers for more than 20 years, are not qualified and cannot be given regularizations as sought.

5. I have heard learned counsel for the parties and with their

assistance have gone through the record of the case.

6. It is an admitted position that the petitioners were appointed on the post of peon on a Class-IV post, in the Excise and Taxation Department and have been discharging duties of drivers in the Department for more than 20 years. There is no complaint about their working which has been found satisfactory. The DPC in its meeting held on 05.04.2007 considered their name for promotion by noting that the petitioners had the necessary driving licences and had passed the road test. The petitioners herein had already preferred a ***Civil Writ Petition No. 15251 of 2010*** seeking the relief of promotion to the post of driver based on the recommendation of the DPC. A Single Bench of this Court dismissed the said writ petition on the ground that there are no statutory rules/instructions permitting such promotions to the post of driver from the post of peon and the petitioners would have no right for consideration for promotion to the said post. This order has attained finality since the same was never challenged by the petitioners. The claim in the instant writ petition is for grant of regular pay scale to the post of driver and regularization on the post of drivers on account of having put in 15 to 20 years in such service.

7. There are no rules which would entitle the petitioners herein to be promoted to the post of a driver as has been noted in the earlier civil writ petition filed. However the law is well-settled that a person working against a higher post should be entitled to pay commensurate against that post.

8. For the claim of the petitioners to be addressed, the law as settled for 'equal pay for equal work' has to be referred to. First and foremost, the nature and duties of the post against which a higher scale is sought has to be determined. It is well-settled that parity in pay scale can be

claimed on the ground when it is shown that the incumbents of a post and reference post discharge similar duties and responsibilities (*State Of West Bengal v. Minimum Wages Inspectors Association Reported As (2010) 5 SCC 225*). In the case of *Dhirendra Chamoli v. State of Uttar Pradesh (1986) 1 SCC 637*, the Apex Court examined the claim of the petitioners who were temporary employees seeking parity in their pay scale with the scale being disbursed to regular employees. It was held that in a welfare state committed to a socialist pattern of society, not paying the same wage despite same work being done would amount to violation of Article 14 of the Constitution of India. The plea of the petitioners was accepted. In the case reported as *Randhir Singh v. Union of India (1982) 1 SCC 618*, it was held that persons discharging identical duties cannot be treated differently in the matter of their pay merely because they belong to different departments of the government. The same principle was laid down in the case of the *D. S. Nakara V. Union of India (1983) 1 SCC 305*. A conjoint reading of the law as settled, would lead to an inescapable conclusion that in case an employee is performing a duty which is similar in nature and carries the same responsibility, as another in a different department, parity in pay scale ought to be maintained.

9. In the recent case reported as *State of Punjab and others v. Jagjit Singh and others (2017) 1 SCC 148*, the Apex Court had occasion to consider whether temporarily engaged employees, daily wage employees, *Ad hoc* appointees, employees appointed on a casual basis, contractual employees and the like would be entitled to minimum of the regular pay scale along with dearness allowances as revised from time to time, on

account of their performing the same duties which are discharged by those engaged on a regular basis against sanctioned posts. A Full Bench of this High Court had come to the conclusion that such like temporary and daily wage employees would not be entitled to the minimum of regular pay scale only for the reason that the activities that were carried on by such daily wagers/temporary employees were similar in nature. However two exceptions were carved out by the High Court (i) where a daily wager, *Ad hoc* or contractual employee is appointed against a regular sanctioned post after undergoing a regular process of selection, then in that situation such employee would be entitled to minimum of regular pay scale, (ii) but if such employee is not appointed against a sanctioned post and services are availed continuously with notional breaks by the State for a long period of time that is for 10 years, such employees shall be entitled to minimum of regular pay scale without allowances and their claim for regularization may be considered separately. On delineating on the entire case law, the Hon'ble Judges of the Apex Court culled out the following ratio:

“60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the

factual position. We say so, because it was fairly acknowledged by the learned Counsel representing the State of Punjab , that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the Appellants, that the Respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.”

10. Furthermore, their Lordships while delineating the major precedents dealing with the 'equal pay for equal work' principle laid down by the Hon'ble Apex Court, culled out ratios on the applicability of the above said principle some of which are applicable to the unique facts of the present case. They are :

“42.14 For parity in pay-scales, under the principle of 'equal

pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see - Union Territory Administration, Chandigarh v. Manju Mathur)."

11. Thus it is seen that among others one of the important tests to apply 'equal pay for equal work' is "equation in the nature of duties". The case in hand has its own peculiar facts. Regularly selected Class-IV employees are working on Class-III post. Nature of duties and degree of responsibility is higher as well as the working hours, but the petitioners were denied promotion as there is no avenue of promotion. The petitioners herein are performing duties that commensurate with those of drivers, while they officially held the posts of peons. The responsibility cast on them by virtue of their *de facto* job were greater than would, in the normal course of events, be expected of a peon and as such the nature of their duties is equitable with those of drivers who may have been regularly appointed as Class-III employees. Such responsibility placed them in a unique situation where they were performing services of greater value than they were being remunerated for, a wholly unfair situation, that needs rectification.

12. Their Lordships in ***Jagjit Singh's case*** (supra) also observed:

“42.5 In determining equality of functions and responsibilities, under the principle of ‘equal pay for equal work’, it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case and the State Bank of India case). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of ‘equal pay for equal work’ (see - State of U.P. v. J.P. Chaurasia, and the Grih Kalyan Kendra Workers’ Union case).”

13. Thus, another situation whereby the application of 'equal pay for equal work' would be sustainable is if the duties performed are of “equal sensitivity” and are “qualitatively similar”. Further their Lordships observe that “posts with difference in degree of responsibility, reliability and confidentiality” constitute a valid classification and in such a situation pay differentiation would be valid. Meaning thereby that once “equal sensitivity” and “qualitative similarity” in duties performed is established along with there being a necessary absence of a “difference in degree of responsibility, reliability and confidentiality” in the duties performed, there would be no justification in not granting equality in remuneration.

14. In the instant case, it is plain to see that the requirement of

“equal sensitivity” and “qualitative similarity” is met and further there is nothing to establish that there was any “difference in degree of responsibility, reliability and confidentiality”, as would have been the case had there been something to prove that the petitioners e.g. worked fewer hours or operated machinery of a lesser nature which is not the case here.

15. Needless to say, the duties of a driver are totally different from the nature of duties of a peon, carrying a higher responsibility and longer hours. The principle of 'equal pay for equal work' would certainly apply in the instant case. Denial of remuneration on account of discharging work on a higher post would certainly be violative of Article 14 of the Constitution of India. Therefore, on a deep and thoughtful consideration of the matter above, it is held that the petitioners who are Class-IV employees have been discharging the duties of a driver which is a Class-III post would be entitled to a 'special pay/salary' at par with the minimum of the pay-scale of regularly engaged Government employees, holding the post of a driver.

16. Recently, the State Government has enacted ***The Punjab Adhoc, Contractual, Daily wage, Temporary, Work Charged and Outsourced Employees' Welfare Act, 2016*** which provides for regularization of adhoc, daily wagers, contract/temp employees who have been working continuously on the post for more than 3 years would be entitled to regularization as is evident from a reading of Section 4 of The said Act :

4. (1) Notwithstanding anything contrary contained in any law, judgment, decree or order of any court, tribunal or any other authority, services of such Group 'D' employees, who are working on ad hoc, contractual, daily wage, temporary

or work charged basis under the State Government or its entities for a continuous period of not less than three years preceding the date of Regularization of services of Group 'A', 'B' and 'C' employees coming into force of this Act shall be regularized by the competent authority in such service of the State Government or its entities, subject to the following conditions, namely:-

- (a) fulfill the eligibility with regard to minimum and maximum age limit;*
- (b) possess requisite educational qualification and experience as specified for the post under the service rules at the time of initial appointment;*
- (c) satisfactory verification of antecedents;*
- (d) have good character and conduct; and*
- (e) have not been indicted or undergoing any civil, criminal or departmental proceedings:*

Provided that the entities of the State shall consider regularization only if such entity is in a financial position to take the burden of such regularization on its own without transferring any liability to the State exchequer.

(2) During the probation period, a person regularized under this section shall be entitled to draw salary at the minimum of the Pay Band applicable to the post against which his services have been regularised in Group 'D' service, or actual remuneration being received at the time of regularization, whichever is more.

17. The petitioners admittedly have been working as drivers for more than 15/20 years and, therefore, would also be entitled to be considered for regularization against the post of drivers, especially in view of the fact that a decision had been taken by the DPC to promote the

petitioners on the post of driver, which could not have been done in view of the fact that there was no such avenue of promotion from the post of peon to driver.

18. Therefore in view of the above, the State herein is directed to consider the case of the petitioners under the aforesaid act within a period of three months on receipt of a certified copy of this order as well as to release the Salary/Special Pay in terms of para 15 above limited to 38 months salary from the period prior to the filing of the writ petition.

19. Writ petition stands allowed accordingly.

March 18, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No