

**208 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 13153 of 2012.
Date of Decision: 13.12.2018**

Gulshan Kumar and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Pankaj Jain, Advocate,
for the petitioners.

Mr. Vikas Mohan Gupta, Addl. AG, Punjab.

JITENDRA CHAUHAN J.

The petitioners seek quashing of the order dated 01.12.2011 (Annexure P-3) vide which the respondent-State has ordered revision of pay scales of the petitioners with effect from 01.12.2011 which has led to anomaly in the pay scales with the other class of employees who had been earlier drawing the same salary with the petitioners.

The petitioners were appointed through direct recruitment at different times with the Department of Homeopathy against the posts of Pharmacists/Dispensers. Prior to the year 2006, the petitioners were placed in the pay scale of Rs.3330-6200. The Pharmacist being a technical grade was placed in pay scale a step higher than that of the Clerks who were placed in the pay scale of Rs.3120-6200. As per their respective pay scales, the initial pay payable to the Pharmacists was at Rs.3330/- and that of the Clerks was at Rs.3150/-.

The State of Punjab appointed Fifth Pay Commission to

revise the pay scales attached to different posts to maintain parity with the pay scales being enjoyed by the employees of other States and employees of Government of India.

The Fifth Pay Commission maintained 32 pay scales which were earlier recommended by Fourth Punjab Pay Commission and further decided to introduce five distinct pay bands from PB-1 to PB-5 one running band each for all categories in Group-D, Group-C and Group-B and further two running pay bands in Group-A. Grade Pay being a fixed amount attached to each post in the hierarchy was further linked to the status of the post with a senior post being given higher grade pay. The said recommendations were accepted by the respondent-State and the post of Pharmacist was placed in pay band PB-2 Group C and the pay scale was revised from 3330-6200 to 5910-20200 with Grade pay of Rs.2000/- and initial pay of Rs.8240/-. Similarly, the Clerks employed in various departments including the Department of Homeopathy were placed in Group C with Pay Band PB-2 and their pay scale was revised from 3120-6200 to 5910-20200 with Grade pay of Rs.1950/- and initial pay of Rs.7960/-. In other departments also, the pay scales were revised and Assistant Revenue Clerks (Technical Grade) which were earlier placed in pay scale of Rs.3330-6200 got revised pay scale of Rs.5910-20200 with the Grade pay of Rs.2000/- i.e in the corresponding pay scale that the petitioners as Pharmacist were enjoying.

The State of Punjab in 2011 revised the pay scales of

certain categories of posts. The Clerks which were earlier in the pay band of Rs.5910-20200 with Grade pay of Rs.1950 and initial pay of Rs.7960 were now placed in the revised pay scale of Rs.10300-34800 with Grade pay of Rs.3200/- and initial pay of Rs.13500/-. However, the petitioners who are serving as Homeopathic Dispensers were kept in the pay band of Rs.5910-20200 with increased Grade pay of Rs.3000/- and initial pay of Rs.11470/-.

Similarly, revision of pay scales has also been granted to Assistant Revenue Clerks employed in the Department of Irrigation, Punjab who had been earlier enjoying the same pay scale of 5910-20200 with grade pay of Rs.2000/- and initial pay of Rs.8240/- as was payable to the petitioners, were granted pay band of Rs.10300-34800 with grade pay of Rs.4200/- and initial pay of Rs.16290/- with effect from 01.12.2011.

It is contended that there is no change in duties of the petitioners after 01.01.2006 till date and they have been discharging the same set of duties as was assigned to them on the date of joining of the department. Similarly, Clerks have been also discharging the same duties though their qualification was changed vide 1998 Rules i.e. prior to the Fifth Pay Commission. It is further contended that the government cannot downgrade pay attached to the post of Dispensers after having accepted the recommendations made by 5th Pay Commission which placed post of Dispensers at a step higher than that of Clerks and equivalent to that of Assistant Revenue Clerks.

On the other hand, the stand of the respondents is that the post of Homeopathic Dispenser is quite different from other posts as they perform duties of different nature. The duties of both are dissimilar and distinct. The petitioners have already been given better pay scale of Rs.5910-20200+3000 grade pay (initial start of Rs.11470/-) after considering the anomalies presented before the concerned Committee. The pay scales have been recommended keeping in view all the aspects of duties etc.

Heard.

This Court in CWP No. 7920 of 2013 titled as “Manmohan Singh and others vs. State of Punjab and others” decided on 01.02.2018 has held as under:-

“A bare perusal of the afore-stated chart reveals that the drivers were initially drawing pay scale of 400-600 in the year 1978 and in the year 1986 their pay scale was at a higher pedestal than the Patwaris. Similar was the position in the year 1996 as also in 2006. However, the recommendations made by the Pay Commission in 2011 brought about anomaly in the pay scales to be granted to the drivers. Intriguingly, Patwaris, who were drawing lower pay scale were granted pay scale of Rs.10,300-34,800/- plus grade pay of Rs.32,00/- as against the drivers (petitioners) who were not granted the revised pay scale in 2011. This anomaly has to be redressed. Admittedly, the petitioners being drivers are performing arduous duties but have been drawing lesser pay than the Patwaris. The changed pay

scales adverse to the petitioners are not justifiable in the background explained above. They are legally entitled for the pay scale of Rs.10,300-34,800/- plus grade pay of Rs.32,00/- as is being drawn by the Patwaris. The State being a model employer cannot act arbitrarily and in a discriminatory manner to the prejudice of one class of its employees. From the inception till date, the nature of job has substantially remained unchanged. This fact itself is suggestive of the fact that the deviation in the original pattern of pay scale is not substantiated by any logic nor any material in support of the fact that both the cadres have undergone any change has been brought on record by the State. Therefore, it is inherently illogical to discriminate against one set of employees of the State as against their counterparts who were at the same footing at the time of inception of the process.

A comparison of the pay scales in a tabular form is being reproduced as under:-

Sr. No.	Post	Before 5 th Pay Commission	After 5 th Pay Commission	After revision by State Government
1.	Pharmacists/ Dispensers	3330-6200	5910-20200+Grade Pay 2000, initial pay 8240	5910-20200 grade Pay Rs.3000/- initial pay Rs.11470/-
2.	Clerks	3120-6200 Initial pay 3150	5910-20200+ Grade pay 1950, initial pay 7960	10300-34800 with grade pay Rs.3200, initial pay Rs.13500/-

3.	Assistant Revenue Clerks	3330-6200 initial pay 3330	5910-20200 + grade pay 2000, initial pay 8240	10300-34800 with grade pay of Rs.4200/- and initial pay of Rs.16290/-
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In the present case, the petitioners were drawing pay scale of Rs.3330-6200 with initial pay of Rs.3330/- before 5th pay commission and after 5th pay Commission they were drawing 5910-20200 + grade pay of Rs.2000/- with initial start of Rs.8240/- which was at a higher pedestal than that of Clerks. However, the revision made by the State Government caused anomaly in the pay scales granted to the Pharmacist/Dispensers. Clerks who were drawing lower pay scale were granted pay scale of Rs.10300-34800 with grade pay of Rs.3200 with initial start of Rs.13500/- as against the Pharmacist/Dispensers (petitioners) who were granted 5910-20200 grade pay of Rs.3000/- with initial start of Rs.11470/-. The anomaly has to be redressed. The State being a model employer cannot act arbitrarily and in a discriminatory manner to the prejudice of one class of its employees. From the inception till date, the nature of job has substantially remained unchanged. This fact itself is suggestive of the fact that the deviation in the original pattern of pay scale is not substantiated by any logic nor any material in support of the fact that both the cadres have undergone any change has been brought on record by the State.

In view of above, the present writ petition is allowed.

The petitioners are held entitled to the revised pay scale of Rs.10,300-

34,800/- plus grade pay of Rs.3200/- with initial pay of Rs.13,500/- though, not at a higher pay scale but at least at par with the Clerks with effect from 01.12.2011. The State is directed to fix the pay of the petitioners accordingly within a period of three months from the date of receipt of certified copy of this judgment. The arrears of the pay etc. be also released in their favour within three months thereafter.

13.12.2018.

SN

(JITENDRA CHAUHAN)
JUDGE

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