

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

**CWP-11830-2015 (O&M)
Date of Decision: 11.12.2018**

Bhajan Singh

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Manu K. Bhandari, Advocate,
for the petitioners.

Ms. Deepali Puri, Addl.A.G., Punjab.

JITENDRA CHAUHAN J.

CM-18796-CWP-2018

CM application is allowed as prayed for subject to all just exceptions and replication appended therewith is taken on record.

Main case

The petitioners, *inter-alia*, seek issuance of a writ of certiorari quashing order dated 13.02.2014 (Annexure P-11), thereby, rejecting the request of the petitioner for grant of pay scale equivalent to Junior Engineer.

It is contended that the petitioner is working as Assistant Conservator. The 4th Pay Commission in its report recommended that the post of Assistant Conservator should be put in the pay scale of ₹1800-3200/- and the post should have pay parity with the post of Junior Engineer in the PWD. The 5th Pay Commission continued to

maintain parity between the pay scales of the Junior Engineers working in the PWD B&R and the Assistant Conservator. The grouse of the petitioner is that vide notification dated 01.12.2011, the Junior Engineers working in the State of Punjab were redesignated as Assistant Engineer and were granted revised pay scale of ₹10300-34800 with grade pay of ₹4800/- whereas, the Assistant Conservator continued to be in the pay scale of ₹10300-34800 with grade pay of ₹3800/-.

About 75% posts of Junior Engineer in various departments in State of Punjab are filled by way of direct recruitment with a qualification of Matriculation plus three years Diploma Course from a Polytechnic.

Historically, there has been parity of scales of pay between Assistant Conservator and Junior Engineers. The 4th and 5th pay commission, recommended same scales of pay for Assistant Conservator and Junior Engineer. The 5th pay commission had recommended pay scale of Rs.10300-34800 plus grade pay of Rs.3800/- for both the posts in question. However, on 01.12.2011 while the grade pay of Junior Engineers was increased to Rs.4800/-, the corresponding increase of the grade pay of the petitioner was not carried out and it remained unchanged.

It is contended that when the pay scale of one category is revised then propriety and fairness demands that the pay scale of the other category is also revised. Since 1996, the Junior Engineer and

Assistant Conservator had been receiving the same scale of pay and allowances. Lastly, he states that the payment of arrears may be restricted to 38 months as has been held in **Saroj Kumari vs. State of Punjab CWP No. 14874 of 1995 decided on 04.05.1998.**

On the other hand, the stand of the respondents is that the fixation of pay is exclusively within the domain of the state policy and function of the expert body like Pay Commission. Equation of pay cannot itself be made the basis by comparing with the other posts whose qualifications, experience and nature of duties are totally different.

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.3200/- 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.3200/- 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.

The Government of Punjab vide notification dated 19.05.1998, issued on the basis of the recommendations of the 4th Pay Commission, placed the Assistant Conservator in the pay scale of ₹1800-3200/- which were equivalent to the post of Junior Engineer in the PWD. Even in the report of 5th Pay Commission, the Assistant Conservator and the Junior Engineer were drawing similar pay.

However, the revision made by the State Government with effect from

01.12.2011 caused an anomaly as the grade pay of the Junior Engineer was revised to Rs.4800/-. 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 empirical report or reasoning 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 petitioner is held entitled to the revised pay scale of Rs.10,300-34,800/- plus grade pay of Rs.4800/- with effect from 01.12.2011. The State is directed to fix the pay of the petitioner 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 his favour within three months thereafter. However, the petitioner is held entitled to arrears of pay upto 38 months in view of the judgment rendered in *Saroj Kumari's case (supra)*.

11.12.2018.
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No