

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

(203)

CWP-1473-2014 (O&M)

Date of Decision: November 22, 2018

Sainik Welfare Field Staff Union, Punjab

..Petitioner

Versus

State of Punjab & others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Raman Sharma, Advocate, for the petitioner.

Ms. Anju Arora, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

The present writ petition has been filed by Sainik Welfare Field Staff Union, Punjab by which they are claiming the pay scale of 10300-13500, which was granted by the respondent-State to the post of Clerks, which was having a lower pay scale starting from the 3rd pay Commission onwards. It has been pointed out that the clerks were in a lower pay scale as compared to welfare employees and therefore on the grant of higher pay scale to the clerks by the State after 5th Pay Commission is bad and the welfare employees are also entitled for the same pay scale if not a higher pay scale then the same pay scale has been granted to clerks.

The factual matrix of the case is that there are post of Clerks, Welfare Employees, Field Officers, Stenographer, Superintendent Grade II in the respondent department. A detail hierarchy of the post have been given in Annexure P-4. From the said hierarchy, it can be safely said that the welfare employees were placed at higher pedestal as compare to staff, which includes clerks.

In order to buttress their claim that the welfare employees were on higher pedestal as compared to clerk, it has been averred in the writ petition that starting from the 3rd Pay Commission till the recommendation of 6th Pay Commission, clerks have always in a lower pay scale than that of welfare employees. 3rd Pay Commission granted a pay scale of 950-1800 to clerks and pay scale of 1200-2130 to welfare employees. Similarly in the 4th Pay Commission also, clerks were given a pay scale of 3120- 5160 whereas the welfare employees were given a higher pay scale of 4020-6200. Even the 5th Pay Commission, which is an expert body, granted a higher pay scale to the welfare employees, clerks were granted a pay scale of 5910-20200, 1900 grade pay i.e. 7810 whereas the welfare employees were granted 7480+2400 grade pay.

This position continue till the clerks make representation to the Government that keeping in view the duties which are being performed by them and on the basis of the increased qualifications for appointment as a Clerk, they should be granted a higher pay scale.

Keeping in view the representation so made, initially the Clerks were given the same pay as being given to the welfare employees i.e. 7480 with the grade pay of 2400. Thereafter, with effect from 01.12.2011, within a period of two months, the pay of the clerks and Steno-typist was increased to Rs.10,300-34800 with the grade pay of 3200. The said pay of the clerks was increased on the recommendation of Cabinet Sub Committee.

From October, 2011 onwards for the very first time, the pay scale of welfare employees became less than Clerks and Steno-Typist. It is this action, which is causing prejudice to the petitioner.

Petitioner started representing to the respondents that they are

entitled for same pay scale as that of Clerk if not a higher pay scale, Sainik Welfare Department have been forwarding their claim to the Government. Government, keeping in view the abovementioned matrix, which shows that the welfare employees were always in a higher pay scale, made recommendation that the welfare employees should be granted the same pay scale of clerk as the welfare employee are higher in status and has always remained in a higher pay scale starting from the 3rd Pay Commission onwards. In this regard, the petitioner has attached Annexure P-12 wherein the Directorate of Defence Services Welfare, Punjab recommended the grant of higher pay scale to the welfare employees. The case went up to the Chief Minister, Punjab and the same was sent to the finance department for approval.

Surprisingly, defence service welfare department passed an order on 02.01.2014 stating that the finance department has shown inability to grant the pay scale of Rs.10300-34800 per month grade pay to the welfare officer. No reasons was given for declining the request of the welfare officer. The said decision was again circulated on 06.01.2014 which also stated that the finance department has shown inability to accede the request of the welfare employees for the grant of higher pay scale as being given to Clerk. These orders dated 02.01.2014 and 06.01.2014 (Annexure P-15 colly.) are under challenge in the present writ petition.

Learned counsel for the petitioner, in order to claim the higher pay scale, has argued that once while making recommendation, the Pay Commission starting from the 3rd Pay Commission onwards, which is competent and expert body, has placed welfare employee in a higher pay scale then clerks, then there is no reason as to why, the Government while

granting a higher pay scale to a category of clerks, who were in a low pay scale, denied the said benefit to the welfare employees. Another argument which has been raised by counsel for the petitioner is that no reason has been given by the finance department by which the department has shown its inability to grant the pay scale, the order is totally encrypt and non-speaking and is liable to be set aside.

Counsel for the respondents has argued that once the qualification for the post of clerk was increased from matriculation to graduation and the clerks were also required to have the knowledge of the computer, they were granted the higher pay scale. Further, in support of order Annexure P-15, by which the claim of the petitioner were rejected by the finance department, counsel for the respondent states that it was decided by the Government in the year 2013, henceforth, all the matter relating to the anomalies will be put before the next Commission for their consideration and the same cannot be decided by the State now and therefore the claim which has been made by the petitioner for the grant of higher pay scale as being granted to the post of clerk is liable to be rejected.

Learned counsel for the petitioner rebuts the arguments which has been raised on behalf of the respondent to state that even the welfare employees are graduate and have already undergone six months computer course and therefore, the artificial difference which is being created by the Government to grant a higher pay scale to clerk, is factually incorrect.

I have heard learned counsel for the parties.

From the factual position, which has been given in the preceding paragraph, it is clear that the welfare employees have always been placed at a higher pay scale then that the clerks in all the recommendations

of the Pay Commission. Even the department is not in position to controvert the said factual position. Further, the Pay Commission is an expert body, which takes into consideration all the relevant facts which includes the qualifications, the duties which are to be discharged by a particular cadre before recommendation a particular pay scale for the said cadre. Once starting from the 3rd Pay Commission onwards, the Pay Commission has always recommended a higher pay scale for the welfare employees then that of clerks, it can be safely presumed that the welfare officers are at a higher pedestal as compare to clerks. It is only the State Government (Cabinet Sub Committee) while considering the representation filed by the clerks granted them a higher pay scale than that of welfare employees. The reasons which have been given for the grant of higher pay scale is that the educational qualification for recruitment as clerks were increased from matriculation to graduation with 124 hours course in computer. There is no averment that there is a change in the nature of the duties which are to be discharged by the clerks. Therefore once the duties which were being discharged by the clerks earlier on, remains the same and there is no averment that after the qualification were enhanced, clerks were required to perform extra duties, argument raised by the respondents to deny the benefit of higher pay scale to the petitioner is liable to be rejected. Therefore, once the duties of the clerks remain the same as they were discharging at the time when the recommendations were made by 5th Pay Commission, which had put the clerks on a lower pedestal as compare to welfare employees, the Government on its own cannot cause prejudice to a higher category cadre by granting the lower category of clerk a higher pay scale.

Further, it has been mentioned that the clerks were asked to perform duties under the Right to Information Act. In fact, there is no specific duty which is provided under the RTI Act to be performed by the clerks. Only the information which is with the department, is to be supplied. No extra duty is envisaged or performed by clerks in this regard.

Further, Annexure P-15 by which the case of the petitioner has been rejected, is totally cryptic and non-speaking. Not even a single reason has been given as to why the case of the petitioner for enhancing their pay scale is liable to be rejected. Once, an authority is given power to decide, the decision needs to be supported by reason. So that the other party should come to know what was in the mind of the authority which has passed an order either accepting or declining their claim. The speaking order is must under the rules of natural justice.

In this regard reliance can be placed on judgment rendered by our High Court in **Pawan Kumar Vs. State of Haryana and another, (1995) 110 PLR 506** wherein it was observed that:-

“It is one of the settled principles of administrative law that every quasi-judicial authority must pass a speaking order. The duty to act judicially is integral part of exercise of quasi judicial functions by every public authority. Such authority is under an obligation to demonstrate that it has acted judicially and fairly. This is possible only when its decision is reasoned one, i.e. the order passed by such authority contains reasons. Requirement of recording of reasons and communication thereof has been treated as an essential feature of the concept of natural justice. This proposition of law can be treated as well

settled in the light of the decisions of the Supreme Court in:-

- 1. Madhya Pradesh Industries Ltd. v. Union of India, A.I.R. 1966 S.C. 1669.*
- 2. Mohindra and Mohindra Ltd v. Union of India, A.I.R. 1979 S.C. 789.*
- 3. S.N. Mukherjee v. Union of India, (1990) 4 SCC 94.*

In the present case, the order Annexure P-15 is totally cryptic and non-speaking order. It does not give the reasons which have been projected by the counsel for the respondents while arguing the case which have been dealt in hereinbefore.

In view of the above, order Annexure P-15 cannot be sustained and is liable to be set aside. A direction is given to the respondents to consider the claim of the petitioner again. A thoughtful consideration should be given to each and every aspect and fresh order should be passed by the respondents within a period of three months from the receipt of copy of this order.

The writ petition stands allowed, in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

November 22, 2018
harsha

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