

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18847 of 2016

Date of Decision: 01.11.2018

Baljit Singh and others

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Supriya Garg, Advocate,
for the petitioners.

Ms. Jasleen Kaur Sidhu, AAG, Punjab.

Mr. Naveen Gupta, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioners were recruited as drivers on the establishment of this Court in the year 2007 by way of direct recruitment. They earned their 1st ACP scale on December 01, 2011 on completion of 4 years of satisfactory service which took their grade pay from ₹2000 to ₹2400/-. Meanwhile, fresh recruits were inducted as drivers in March 2008. Likewise, these drivers earned their 1st ACP benefit in March 2012. The return filed by the High Court states that the juniors who were recruited in March 2008 firstly availed the pay band from ₹5910-20200+2000/- grade pay to ₹5910-20200+2400/- grade pay on December 01, 2011 by virtue of Punjab Government notification dated December 15, 2011 enhancing grade pay of various categories of employees including of drivers to ₹2400. The High Court follows the Punjab pattern pay scales for corresponding posts on its establishment.

2. With receipt of grade pay of ₹2400 the juniors on availing the benefit of ACP scale took their grade pay to ₹2800 in March 2012 on completion of four years of service as drivers under the Assured Career Progression Scheme. When this happened the three juniors started getting higher grade pay and, therefore, higher salary than the petitioners. This is how the dispute came into existence and as a result a case of pay anomaly.

3. Various interim orders have been passed in this case on the issue of stepping up and up-gradation of grade pay from ₹2400 to ₹2800 and even the Secretary, Department of Personnel, Government of Punjab, Chandigarh was called upon to appear in Court to explain the anomaly and how to resolve it. On December 21, 2016 the following order was passed:-

“Mr. R.K. Kaushik, IAS, Special Secretary, Home & Justice and Mr. Harsh Nayyar, IAS, Additional Secy. Personnel are present in Court. They have been heard together with Mr. Mann, Addl. AG, Punjab.

A short affidavit has been filed today which does not measure up to the query in the interim order dated 21.11.2016 where the Government had been asked to explain steps taken to resolve the issue. The present affidavit is inadequate in its response and both the officers assure the Court that they will take effective steps to coordinate between the Department of Personnel, the Department of Finance and the Department of Home & Justice to remove the discrimination in grade pay of drivers on the establishment of this Court where some are getting Rs.2400 while some others Rs.2800. Towards this end, they pray that some time may be given as they would have to convene a meeting of all the three departments concerned.

In order to facilitate coordination, a direction is

issued to the Administrative Secretaries to convene a preparatory meeting within one month from the date of receipt of certified copy of this order from the Court or from the petitioners, whichever is earlier.

On the adjourned date, Mr. Mann would file a status report of steps taken in connection with stepping up/upgradation of grade pay of petitioners at par with other drivers of this Court.

List again on 20.03.2017.”

4. On July 06, 2017 a statement was made by the State counsel Mr. Balbir S.Sewak, Addl. AG, Punjab that the grievance of the petitioners is under active consideration. In this regard, High Level Committee was constituted and a meeting was held in the month of February 2017. On December 12, 2017 this Court directed the Finance Secretary to appear in person and apprise the Court on the issue relating to discrimination in pay scale and grade pay amongst drivers so that the pay anomaly could be set right. Having filed the affidavit thereafter, the State has backtracked and now pleads that the proceedings pending on the reference will be decided by the 6th Pay Commission. This, if agreed to, would result in postponing rights to equal pay beyond the tolerance limits of Article 14 by turning a blind eye to unfair discrimination within a homogeneous class of drivers which vice is writ large and is thus required to be immediately remedied. The admitted position is that the petitioners are drawing less pay than their juniors while working in the same capacity and shoulder to shoulder.

5. It is well settled in law that seniors would not draw salary less than their juniors. In Union of India and others v. P. Jagdish and others, AIR 1997 SC 1783 : MANU/SC/1084/1997 the Supreme Court observed in somewhat similar situation that the principle of stepping up of pay prevents

violation of the principles of “equal pay for equal work”. Applying the same principle of law here, the Apex Court held that a junior on the same post cannot be allowed to draw salary higher than seniors because that would be against the ethos of Article 39 (d) of the Constitution which envisages the principle of equal pay for equal work. The Supreme Court held that granting of stepping up method is the only way out to remove the anomaly, which permits juniors to draw higher salary in the same rank than their seniors. The only way to remove discrimination in the matter of pay is to step up the salary of seniors. Any rule or provision which allows the said anomaly to exist and prohibits stepping up are violative of the principles of natural justice and equity, as also is indicated by the Division Bench of the Delhi High Court in Sh. Tejbir Singh Dagar and others v. Union of India and others, MANU/DE/0314/2014 applying the ratio of *P.Jagdish* case. Paras.10, 21, 28 and 30 are relevant to this case context and are reproduced below:-

“10. Based on earlier anomaly, the respondents fixed the petitioners’ pay, once again lower than that of their juniors. The present pay of the petitioner No. 1 has been fixed in the pay band of Rs.9300/- 34800 with grade pay of Rs.4200/-. As against this Sh. Ram Chander, (who is junior to petitioner No. 1), has been given the same pay scale with a grade pay of Rs.4600/- 21. It does not appeal to the common sense of a reasonable man that Scheme which has been envisaged/formulated to benefit those employees who are stagnating in the same rank, either due to lack of promotion or failure to clear the departmental examination, by granting them financial up gradation to such stagnant employees, would prejudice meritorious and hardworking employees, who had

qualified the Limited Departmental Competitive Examination and climbed the ladder of success. They cannot be penalised for their efficiency in securing a promotion to next rank instead of stagnating in same rank. The scheme is a welfare scheme for those employees who stagnate. It is certainly not intended to prejudice senior personnel by compelling them to draw lesser salary than those junior and less meritorious than them. The Scheme certainly did not envisaged the disadvantage it was causing to its bright employees. Such working of the Scheme would result in rewarding those who did not succeed in the competitive examination.

28. In P. Jagdish case (supra), the Apex Court has observed that the principle of Stepping up prevents violation of the principle of “equal pay for equal work”. Applying the same principle of law here, a junior in the same posts cannot be allowed to draw salary higher than the seniors because that would be against the ethos of Article 39 (d) of the Constitution which envisages the principle of “equal pay for equal work”. Hence granting of stepping up is the only way out to remove the said anomaly, which permits juniors to draw higher salary in the same rank then their seniors. The only way to remove is the stepping up of salary of seniors.

The rules and provisions which allow the said anomaly to exist and prohibit the stepping up are violative of the principles of natural justice and equity; are contrary to Article 39(d) of the Constitution which envisages “equal pay for equal work” and contrary to the principles of law laid down by the Apex court in its pronouncements.

30. While issuing directions of stepping up the salary of seniors in order to bring it at par with that of juniors, this Court had duly considered all the

contentions of respondents; the relevant conditions of the ACP Scheme and relied on the principles enunciated by the Apex Court in P. Jagdish case (supra) for recording its findings. It therefore, cannot be said that the judgment in W.P.(C) No. 5867/2003 is 'per incuriam'. In view of above, the respondents are hereby directed to upgrade the pay of the petitioners from the date their juniors were given the higher pay in the same rank. The directions be complied with within 12 weeks from today and arrears shall also be paid within 4 weeks, failing which petitioners be entitled to simple interest @ 9% per annum after 16 weeks from today. The respondents are also directed to pay a sum of Rs.20,000/- towards costs to each of the petitioners."

6. Ms. Jasleen Sidhu has argued for the State of Punjab contending rather vehemently that financial matters of far reaching consequences should be best left to pay experts and the 6th Pay Commission to deliberate upon, on the issue and it is for them to find suitable solutions for the pay anomaly which has arisen in the case of the drivers. I can hardly conceive of any other solution except what is applied in P. Jagdish case. She further argues that the petitioners can get nothing more than the pay-scale and grade pay prescribed in the Notification dated December 15, 2011 for drivers, that is, ₹2400. This argument fails with the juniors holding a pay packet with grade pay of ₹2800 and continuing to do so.

7. I thus find no substance in the contentions put forth by the State even as I find no worthwhile reasonable classification to differentiate the cases of petitioners and the junior drivers to justify inequality of pay/grade pay on the same post. If the State pleads helplessness or throws up its hands and passes on the buck to the 6th Pay Commission, then this Court will not

be a silent spectator to unfair discrimination practised in its establishment in its cadre of drivers. Once a clear case of discrimination is made out nothing prevents this Court from restoring the equitable balance in the scales of Article 14 of the Constitution read with Article 39 (d) without any further loss of precious time. Article 14 confers not only power of primary review but a corresponding duty on the writ Court to assist in achieving the object of equality by upholding the Constitutional provision rather than violating it or letting it be violated by the State by its customary prevarication and indecisiveness be it in financial matters. Financial burden is not a fetter on Article 14 and Article 39 (d) when it is not the case that juniors' grade pay of ₹2800 was wrongly given to them. Their pay cannot by any means be downgraded as it was based on authority of law and a result of benefit of ACP scales. Thereby, all the actions and inactions of the respondent-State of Punjab in this case by keeping the claim of the petitioners pending for the manifestly wrong reasons have to be discarded as ill-conceived defences aimed only as a ploy to circumnavigate the active plea of hostile and invidious discrimination in the matter of pay. Equality of pay becomes only a natural consequence.

8. On the above principles, this petition deserves to be allowed.

9. The petition is accepted. The petitioners are held legally entitled to stepping up of their pay on par with their juniors as a matter of right from the dates their juniors were in receipt of ₹2800 grade pay in 2012. Consequential monetary benefits of arrears of difference of pay can be regulated accordingly and disbursed to them within reasonable time.

10. However, the case of petitioner No.2 can be processed after

expiry of the currency of punishment, i.e., July 2016.

01.11.2018
manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes