

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.3899 of 2013

Naresh Kumar and others ... Petitioners

Versus

State of Haryana and another ... Respondents

2. CWP No.1038 of 2018

Kherati Lal ... Petitioner

Versus

State of Haryana and another ... Respondents

3. CWP No.3196 of 2018

Harpreet Singh ... Petitioner

Versus

State of Haryana and another ... Respondents

4. CWP No.7240 of 2018

Sunil Kumar and another ... Petitioners

Versus

State of Haryana and another ... Respondents

Date of Decision: 25.10.2018

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

Present: Ms. Anu Chatrath, Senior Advocate,
with Mr. M.M. Pandey, Advocate,
for the petitioners in CWP No.3899 of 2013.

Mr. J.C. Malik, Advocate,
for the petitioner in CWP No.1038 of 2018.

Ms. Sonia G.Singh, Advocate,
for the petitioner in CWP No.3196 of 2018.

Mr. Parveen K.Kataria, Advocate,
for the petitioners in CWP No.7240 of 2018.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.3899 of 2013, *Naresh Kumar and others v. State of Haryana and another*, CWP No.1038 of 2018, *Kherati Lal v. State of Haryana and another*, CWP No.3196 of 2018, *Harpreet Singh v. State of Haryana and another* & CWP No.7240 of 2018, *Sunil Kumar and another v. State of Haryana and another*.

Prayer of the Petitioners:

2. In CWP No. 3899 of 2013 and CWP No. 1038 of 2018, petitioners have made twofold prayer, to direct the respondents to consider the petitioners for absorption into regular cadre of Junior Engineers as per letter of Government of India (P-6) and to grant the petitioners salaries at par with the salaries paid to the other Junior Engineers working in the same department or other government departments possessed the same qualifications and performed the same duties and the same responsibilities in view of the law laid down by the Supreme Court, whereas in CWP No. 7240 of 2018, the petitioners have prayed for parity in pay scales with Junior Engineers as aforesaid.

3. In CWP No. 3899 of 2013, notice of motion was issued on 26.02.2013 ***“confined only as regards the action of the State Government in denying to the petitioners the pay-scale admissible for the post against which they are discharging their duty”*** and in other two writ petitions, the notice was issued in view of the pendency of CWP No. 3899 of 2013. Vide

order dated 19.05.2014, the prayer made by the petitioners in application bearing CM No. 3378-79 of 2014 for impleading and restraining the Haryana Staff Selection Commission from proceeding with the selection and appointment to the post of Junior Engineers (Civil) in pursuance to the advertisement No. 2/2013 dated 20.12.2013 which application was dismissed on the ground that vide notice of motion order dated 26.02.2013, the claim on behalf of the petitioners have been restricted to grant of pay scale admissible for the post against which they are discharging their duty.

4. Therefore, in all the three cases, the sole issue which arises for the consideration of the court is whether the petitioners are entitled to the pay scales equal to pay scales of Junior Engineers working in Panchayats and Development Department or the other Government Departments as prayed for.

Case of the Petitioners:

5 For the sake of convenience, the facts are being extracted from CWP No. 3899 of 2013.

6. In the wake of the 73rd Constitutional Amendment, 1992, by which inter alia Article 243-G was inserted in the Constitution for devolving more powers on the units of Local Self-Government, Directive Principles of State Policy and the Haryana Panchayati Raj Act, 1994, it is the bounden duty of the State Government to provide dedicated manpower for execution of MGNREGA and others development schemes.

7. The petitioners being diploma holders, applied for the assignment of Junior Engineers in pursuance to the advertisement dated 23.08.2006 (P-1) and were selected and appointed on the said post on

various dates (Para 5 & 6 of the Petition/Pg 11).

8. As regards the allotment of work to the petitioners, it has been stated that no policy decision has been taken for allotment of work which has left everything to the whims and fancies of the Engineering Department of Panchayati Raj and the petitioners are not in a position to protest. It is further stated that Haryana Government has received funds to the tune of crores of rupees for execution of works under MGNREGA and development grants from the Centre which has also earmarked substantial amount of money for rural development but the manpower required to execute the works under MGNREGA and for other development schemes has not been streamlined to undertake the work.

9. Reliance has been placed on letter dated 24.08.2012 (P-8) issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Development and Panchayats regarding execution of development works under various schemes by Panchayati Raj Institutions, wherein as per point No.16, a direction has been given to use the panel of JE/SDO already approved by District Level Committee wherever required, which means the work be allotted to the JEs (panel) for all schemes /development works, but in spite of that, no work is being allotted to the Junior Engineers (Panel).

10. As regards absorption in the respondent Department, it has been stated that even after preparation of panel of Junior Engineers by the District Level Committee in November 2006, there has been regular recruitment of Junior Engineers by the SS Board/HSSC in 2008 and in 2010 but the Junior Engineers (Panel) were not considered in the recruitment

made at both the times. The respondents have not taken any steps to absorb the petitioners as per Government of India letter dated 06.07.2011 (P-6) and have issued advertisements for appointment of Junior Engineers (Panel) for undertaking the work as a number of regular posts of Junior Engineers are still lying vacant.

11. It has been stated that a Junior Engineer is granted pay scale of Rs. 9300-34,800 with Grade Pay of Rs. 3600/-whereas the petitioners Junior Engineers are paid 2% of the work executed by each of them which can be termed as *begar* in violation of Article 23 of the Constitution.

Stand of the State in the Written Statement:

12. The Development and Panchayats Department has an Engineering Wing, namely Panchayati Raj to provide technical assistance/guidance to the Panchayati Raj institutions consisting of Gram Panchayats, Panchayat Samitis at each block level and Zila Parishads at each District level in implementing various development schemes of the State Government and that of Government of India. The Engineering Wing of the Department has 3- 6 Junior engineers in each block depending upon number of panchayats in a particular block, one Sub-divisional Engineer at each block level and one Executive Engineer at each District level under the supervision of Superintending Engineers at each revenue divisional level. At State headquarters, there is full-fledged Engineering cell for overall supervision over the field staff engaged in execution of development works.

13. The sanctioned posts of JEs are filled up by direct recruitment through Haryana staff selection commission only in accordance with statutory provisions.

14. The State Government framed the Haryana Panchayati Raj, Accounts, Budget and Finance including Works Rules in the year 1996 (amended from time to time) under the Haryana Panchayati Raj Act, 1994 which are followed by the respondent Department in execution of various development works under different schemes of the State Government/Government of India and the said rules are supplemented by various executive policies/guidelines issued by the Department from time to time in the interest of speedy execution of development works (P-2, P-3, P-4 & P-8).

15. Keeping in view the vacant position of JEs in the Department, it was decided to invite participation of willing private and retired Engineers in execution of development works offering them a reasonable remuneration/honorarium with the objective that their association would help in early completion of the projects, maintaining quality control, etc. Accordingly, willing Engineers were empanelled after inviting applications from the interested Engineers through advertisement in the newspapers.

16. A panel of senior retired Engineers was also finalised for third-party inspection of the development works whereas junior diploma holder Engineers were empanelled to prepare estimates and provide technical guidance/assistance in execution of development works to the Department/PRIs. The petitioners are among such empanelled junior diploma holder Engineers.

17. Vide advertisement dated 23.08.2006 applications were invited for **“Empanelment of Engineer for Panchayat Works”**. It was mentioned in the advertisement that for work at Panchayat level, besides Graduate

Engineers, the holder of Diploma in Engineering having 3 years' experience in civil works would be eligible to apply. For the work of this at state-level, graduate engineers having minimum 5 years' experience in civil works would be eligible. The service providing agency would be given 2% commission. The condition of the work will be formulated by the committee constituted at the District/State level.

18. The aforesaid advertisement was published in pursuance to the instructions dated 09.08.2006 (P-2/pg 56), by the government to streamline the working of the Engineering Wing of Panchayati Raj and the system of execution of Engineering Works being carried out under different schemes including HRDF, MPLAD scheme, IWDP etc. and works assigned to the Panchayati Raj Engineering Wing by other departments. Under these instructions, for works of outlay up to Rs. 3 lacs, the Panchayats have been allowed to engage services of qualified engineers from a panel prepared by the district administration and up to 2% of the cost of estimates shall be permissible to be paid for this purpose. For the works of above Rs. 3 lacs and up Rs. 50 Lacs, the District Level Committee can engage technically qualified personnel from reputed Engineering Colleges, Technical Bodies, senior retired Engineers are other professionally qualified persons to assist in preparation of designs, estimates, concurrent inspection, quality control etc and up to 2% of the cost of estimates shall be permissible to be paid for outsourcing these works. Similar provision has been made for outsourcing the technical consultancy for the works in the district above 50 lacs to be executed at the State level.

19. It has been stressed repeatedly that permitting Gram Panchayats

to engage private Engineers shall not dilute the responsibility of the engineering Wing of the Panchayati Raj institutions towards proper preparation of estimates, supervision of works during execution and verification of the MBs and in case the Gram Panchayat is not able to find suitable private Engineers ready to carry out these works within these charges, the same shall be carried out by the engineering Wing in a time bound manner. Engineering Wing shall carry out proper supervision and frequent inspection while the works are under execution and shall also follow all the guidelines being adopted by the B & R Department for supervising the works.

20. As per these instructions the Deputy Commissioners shall form panel of technically qualified persons in sufficient numbers who are willing to work in the rural areas. No block/village shall be assigned individually to any person. The panchayat shall be free to choose any of the persons on the panel. In case, it is found that there is misconduct on the part of a person in the panel in preparation of estimates/record, then he shall be blacklisted.

21. The instructions dated 09.08.2006 were further amended by instructions dated 17.04.2007 (P-3) to the extent that it was decided that for the works below the three_Lacs the payments to empanelled engineers will be made monthly up to Rs. 6000 keeping in view the services rendered by them as per guidelines already given and the work to be performed by then was also identified. For all the works above Rs. 3 Lacs, it was decided that the said works will be supervised by the Department by its Junior Engineers.

22. In view of the insufficient number of empanelled Engineers, the

instructions were further amended vide instructions dated 17.07.2007 to the extent that payment of 1 ½% was decided to be made to the empanelled Engineers out of the total consultancy provision and 2% of the estimated cost available in the estimate. The breakup of one and half percent of the estimate to be paid to them empanelled Engineers was also given. There is no maximum ceiling for remuneration for an empanelled Engineer prescribed under these instructions.

23. The petitioners were empanelled to assist the regular staff working in the Department including Engineering Wing of the Department due to vacant post of technical staff. Later on, the vacant posts were filled up and even 132 more regular posts of Junior Engineer were sanctioned by the government on 09.01.2009 increasing the total sanctioned strength to 522 and filled up in the year 2010 for undertaking these works. Thereafter, 87 more post of Junior Engineer were advertised by the Haryana Staff Selection Commission.

24. Heard counsel at length and perused the record.

Conclusions:

25. Reliance on Government of India's letter dated 06.07.2011 (P-6/pg 78) to claim absorption in the regular carders is misplaced. The said letter pertains to provision of dedicated manpower for the Gram Panchayats under MGNREGA and vide the said letter, a joint circular issued by Ministry of Panchayati Raj dated 12.11.2010 (P-5/pg 70) for providing one Panchayat Development Officer and one JE was modified, inter-alia, to the extent as regards the method of selection and recruitment the States may follow their own rules so long these are transparent and fair. Moreover, it is

the specific stand of the state in the written statement that the petitioners were never engaged against any post much the less on the post of JE and that the post of Junior Engineers is governed by statutory service rules, namely, Haryana Development and Panchayat Department (Group C) Field Offices Service Rules, 2012 and not by the Memo of Government of India dated 6.7.2011 (P-6) and as per the provisions of these Rules, recruitment to the post of Junior Engineer is made through Haryana Staff Selection Commission. Had the petitioners applied for the post of Junior Engineer, and declared meritorious and selected by Haryana Staff Selection Commission in the year 2008 in 2010, they would have been the members of service by now.

26. The letters regarding appointments of the petitioners as panel engineers are annexed with the petition from Annexure P-10 to P-15 (Pg 93-99). The subject of all these letters is **“Appointment or Empanelment of Engineers or Empanelment of Engineers for Panchayati Level Works’**. In all the engagement letters, amongst the other terms and conditions, the amount of remuneration/honorarium to be paid to the panel Engineers @ 1.5% of the estimated cost out of the consultancy/contingent provision @2% of the estimated cost available in the estimate as per the policy applicable at that time (P-2 to P-4), is also mentioned. The petitioners accepted these terms at the time of empanelment which are binding on them.

27. Though in none of the writ petitions filed by the petitioners, there is any pleading as regards the work performed by the panel Engineers (Junior and Senior) or by regular Junior Engineers of the respondent Department, the Court had vide an order dated 15.01.2018 directed the

respondent Department to file an affidavit disclosing the nature of the job being performed by regular JEs and the empanelled JEs. In compliance of the aforesaid order, an affidavit dated 13.03.2018 was filed by the Director, Development and Panchayat Department, Haryana wherein the stand taken in the written statement was reiterated and it was stated in view of the vacant posts of JE's in the Department in the year 2006, willing engineers were empanelled after inviting applications from the interested Engineers through advertisement in the newspapers and a panel of senior retired Engineers was also finalized for third-party inspections of the development works whereas Junior diploma holder Engineers (not JEs) were empanelled to prepare estimates and provide technical guidance of the assistance in execution of development works to the Department/Panchayati Raj institutions. A chart was given in Para 7 of the affidavit explaining the work of the regular Junior Engineer and an empanelled Engineer of which Sr. No. 3 to 6 are relevant.

28. Prior to the aforesaid affidavit, another affidavit dated 05.01.2018 was also filed in compliance of the order dated 13.11.2017 wherein the details of the projects assigned to the petitioners since the date of their initial engagement/empanelment and the remuneration paid to them have been given in a chart and it has also been stated that the petitioners work on project-wise basis and are paid accordingly and they are free to take any other project or assignment elsewhere since they are assigned projects being empanelled Engineers.

29. The very claim of the petitioners for pay scales equal to that of regular Junior Engineers employed in the respondent Department itself is

fallacious for the reason that the petitioners were never engaged against any post in the respondent Department. They were empanelled for providing technical assistance/guidance in execution of development works executed by Panchayati Raj institutions and were paid under the relevant policy instructions on project-wise basis. Therefore, their status is not of an ad-hoc, daily wager, casual labour, temporary employee or a part time employee. Rather, their engagement/appointment letters (P-10 to P-15) clearly show that they undertook to provide services in a scheme of a type different from the regular Junior Engineers working in the department full time with administrative duties and responsibilities attached to the post which the petitioners do not perform and, therefore, they do not fall within the parameters laid down by the Supreme Court in paragraph 42 of the Judgment in State of Punjab vs Jagjit Singh, 2017(1) SCC 148 to claim pay or the minimum of the pay scale or be compared with regular JEs working in the departments of Government. The claim for equal pay is held to be unjustified and misconceived. The two sets are unequal in every way. And it is not far to see that persons who are unequal cannot be treated equally.

30. The following principles culled out from paragraph 42 of *Jagjit Singh* case (supra) [the judgment relied upon by the petitioners] can be aptly quoted against them to guide us in this case on a claim based on parity of subject engagement [not post] and the reference posts. The petitioners are in an engagement or assignment from Panel and are not holders of posts. Some of those tests of the many indicated in the judgment as are relevant here are noticed as under:

... “The ‘onus of proof’ of parity in the duties and responsibilities of the subject post with the reference post,

under the principle of ‘equal pay for equal work’, lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post”...

...“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.”...

...“For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale”

Decision:

31. For what has been said before, these petitions are liable to be dismissed. It is ordered accordingly.

25.10.2018

manju

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No