

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

Date of decision : 07.02.2018

Surjit Singh	(I) CWP-6786-2013 (O&M)
	...Petitioner(s)
	Versus
State of Punjab and others	...Respondent(s)
Sukhdev Singh	(II) CWP-21270-2011 (O&M)
	...Petitioner(s)
	Versus
State of Punjab and others	...Respondent(s)
Balkar Singh	(III) CWP-2631-2014 (O&M)
	...Petitioner(s)
	Versus
State of Punjab and others	...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. M.S. Joshi, Advocate for the petitioner(s)
in CWP Nos.6786 of 2013 and 21270 of 2011.

Mr. H.S. Saini, Advocate for the petitioner(s)
in CWP No.2631 of 2014.

Ms. Sudeepti Sharma, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

Three writ petitions, as noticed above are being disposed of by this common judgment as the issue involved herein, is the same. However, for brevity, the facts are being derived from CWP No.6786 of 2013.

It is worthwhile to mention here that the CWP No.6786 of 2013 was dismissed in limine on 01.04.2013. Feeling aggrieved petitioner-Surjit

Singh preferred LPA No.906 of 2013 which was decided on 27.11.2013.

The Division Bench held as under:-

“Since there are some of the judgments of this Court which have attained finality up to the Hon'ble Supreme Court have bearing on the issue, we are of the considered view that the writ petition ought not to have been dismissed in limine. It would be appropriate if the respondents are called upon to submit their response to the appellant's claim contained in the writ petition and then adjudicate the same in the light of these judicial precedents. Consequently, however, without expressing any opinion on merits. We allowed this appeal; set aside the order passed by learned Single Judge and remit the case to the learned Single Judge for fresh adjudication. The parties are directed to appear before the learned Singh Judge on 20.01.2014 as per roster. The respondents shall be at liberty to file written statement before the learned Single Judge on the above mentioned date and/or on the next date thereafter.”

The petitioner was appointed as Peon (Class -IV) employee in Government High School, Malkana, on 20.08.2001, whereas, he had been continuously performing the duties of driver with the District Education Officer, Bathinda, as is apparent from Annexures-P4 to P-11. It is further

the case of the petitioner that vide application dated Nil Annexure-P 12, he requested the DEO (SS), Bathinda to forward his case for promotion as driver to the higher authorities. On consideration of the prayer made, he was found suitable for promotion as driver by the District Education Officer, Bathinda, vide recommendation dated 27.02.2009 and his case was forwarded for promotion (Annexure-P13). However, till date no action has been taken on the said representation.

Learned counsel for the petitioners states that one Hardarshan Singh, Peon, who was also assigned the duties of a driver similar to the petitioners, approached this Court by way filing to CWP No.7323 of 1999, which was allowed by a Division Bench vide Annexure-P14 and ultimately said Hardarshan Singh, Peon, was promoted as regular driver w.e.f. 08.09.1992. The SLP filed was also dismissed by Hon'ble the Supreme Court on 10.02.2003, (Annexure-P14 B). Thus, it is contended that the case of the petitioner also deserves to be considered in the same manner as has been done in the case of Hardarshan Singh (ibid).

The State has opposed the claim of the petitioners on the ground that mere possession of valid driving licence does not render the petitioner eligible for promotion to the post of driver. It has been stressed upon that there is no provision in the service rules whereby a class-IV employee could be promoted to the post of driver. It is further submitted by learned State Counsel that the case of Hardarshan Singh is distinguishable on facts as he had rendered ten years' service as driver on continuous basis, whereas, the petitioners have worked as drivers considerably lesser period

and that too occasionally.

I have heard learned counsel for the parties and perused the case file.

In a recent judgment rendered by this Court in CWP No.25798 of 2014 decided on 18.03.2017, titled as ***Rajinder Parshad and others Vs. State of Punjab and others***, while dealing with a similar controversy, it has been held as under:-

“Needless to say, the duties of a driver are totally different from the nature of duties of a peon, carrying a higher responsibility and longer hours. The principle of 'equal pay for equal work' would certainly apply in the instant case. Denial of remuneration on account discharging work on a higher post would certainly be violative of Article 14 of the Constitution of India. Therefore, on a deep and thoughtful consideration of the matter above, it is held that the petitioners who are Class-IV employees have been discharging the duties of a driver which is Class-III post would be entitled to a 'special pay/salary at par with the minimum of the pay-scale of regularly engaged Government employees, holding the post of a driver.’”

From the perusal of the above, it is clear that the claim raised

by the petitioners herein cannot be said to be illegitimate or unfounded.

The other ground taken by learned State counsel in opposing the prayer made is that in Harvinder Singh's case (ibid) the petitioner therein had been performing the duties of driver continuously for the last more than 10 years, whereas, petitioner-Surjit Singh, in the instant case, has worked as driver occasionally (as asserted by learned State counsel) for the last five years. However, this contention has been noticed only to be rejected. It is a settled principle that in a matter of parity and discrimination no periods or boundaries are prescribed in Articles 14 and 16 of the Constitution of India and wherever exploitation exists, it must be removed. The petitioners are already in Government service and have only sought to be redesignated as a Driver in the higher pay-scale to perform duties of higher responsibility.

During the course of hearing, the original log books, maintained by the petitioners, summoned by this Court, were produced and retained. On perusal, it revealed that the log books had been filled in the hands of the petitioners on regular basis and not occasionally, as asserted by learned State counsel. The said record is ordered to be released back to the official concerned, through learned State counsel.

In the instant case, the petitioner has based his claim on the principle of 'equal work, equal pay', which has been dealt with by Hon'ble the Supreme Court in ***State of Punjab and others Vs. Jagjit Singh and others (2017) 1 SCC 148*** by holding thus:-

“60 Having traversed the legal parameters with reference to the application of the principle of 'equal pay

for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by learned Counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to

temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the Appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.”

Admittedly, there are no rules which would entitle the petitioner to be promoted to the post of a driver, however, by now, it is well settled that a person working against a higher post should be entitled to pay and status commensurate with that post.

In view of the above, the respondents are directed to promote/re-designate the petitioners as Driver as done in the case of

CWP-6786-2013
CWP-21270-2011
CWP-2631-2014

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Hardarshan Singh (supra) within a period of three months from the date of receipt of a certified copy of judgment and to release the Salary/Special Pay accordingly limited to 38 months salary from the period prior to the filing of the writ petition.

Disposed of.

07.02.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No