

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

(1) CWP No. 7001 of 2013.
Date of Decision: 26.04.2018.

Daljeet Singh and others
... Petitioners
Versus
State of Punjab and others ... Respondents

(2) CWP No. 10322 of 2013.
Sham Singh and others
... Petitioners
Versus
State of Punjab and others ... Respondents

(3) CWP No. 10364 of 2013.
Gursewak Singh and others
... Petitioners
Versus
State of Punjab and others ... Respondents

(4) CWP No. 11109 of 2013.
Rashpal Singh and others
... Petitioners
Versus
State of Punjab and others ... Respondents

(5) CWP No.5927 of 2013.
Yashpal and others
... Petitioners
Versus
State of Punjab and others ... Respondents

(6) CWP No. 6334 of 2013.
Date of Decision: 26.04.2018.
Tejbir Singh and others
... Petitioners
Versus
State of Punjab and others ... Respondents

(7)

CWP No. 7213 of 2013.

Date of Decision: 26.04.2018.

Tarlok Chand and others

... Petitioners

Versus

State of Punjab and others

... Respondents

(8)

CWP No. 6346 of 2013.

Jasvir Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

(9)

CWP No. 24123 of 2013.

Jai Chand and others

... Petitioners

Versus

State of Punjab and others

... Respondents

(10)

CWP No. 6944 of 2013.

Lachhman Dass

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. R.K. Arora, Advocate,
for the petitioner(s) in CWP-7001-2013.

Mr. P.K. Goklaney, Advocate,
for the petitioner(s) (in other petitions).

Ms. Sudeepti Sharma, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned ten
civil writ petitions as common questions of law and facts are involved
therein.

The claim of the petitioners is to grant them the revised pay scales as per recommendations made by various Pay Commissions with regard to skilled and semi-skilled staff in the service of Punjab Government.

Keeping in view the large varieties of posts such as Blacksmith, Carpenters, Mechanics, Electricians, Fitters, Masons, Machineman, Plumbers, Turners etc., in the year 1968, the Pay Commission thought it expedient that these posts be categorized by linking their pay scales to academic and technical qualifications. The object of doing so was to end the multiplicity of pay scales. In view of the recommendations of the Pay Commission, the Government issued a letter dated 04.02.1969 (Annexure P-3) categorizing the Technicians into Category I to VI. Since the letter was not implemented by the Department of Water Supply & Sanitation, as such a few employees of the Department filed a CWP No. 10759 of 1990 titled as “Rajinder Paul Gautam and others vs. State of Punjab and others” wherein order dated 30.05.2008 was passed with following directions:-

“When the facts of the present case are examined in the light of the principles laid down by Hon'ble the Supreme Court it becomes evident that the category of Pump Operators cannot be picked up for hostile discrimination when all other categories with qualification of matriculation and ITI have been granted the pay scale of Rs.140-300. Accordingly the afore-mentioned pay scale of Rs.140-300 deserves to be granted to the petitioners provided they have qualification of two years diploma of ITI with matriculation.

In view of the above, the writ petition is allowed. The

petitioners who have qualifications of ITI of two years diploma course with matriculation and have been working on the post of Pump Operators are held entitled to the pay scale of Rs.140-300 w.e.f. the date they have joined the service. Their pay shall be fixed in the scale of Rs.140-300 from the aforementioned date but the arrears would be restricted to a period of 38 months preceding the date of filing of the petition which has been filed on 8.8.1990. We make it clear that those petitioners who do not possess the qualification of two years ITI diploma course and matriculation would not be entitled to the afore-mentioned relief.”

Against the above said judgment, the Government filed LPA No.44 of 2009 which was dismissed on 15.02.2010 with the directions that the State may pass appropriate order for grant of corresponding scales from the date of judgment, within one month without arrears. The relevant observation/directions contained in paragraph Nos.6 to 10 are reproduced as under:-

6. *Learned counsel for the respondent-writ petitioners supported the impugned judgment. However, after taking instructions from his clients, who were present in Court, learned counsel for the writ petitions stated that he does not press for the arrears and he has no objection if the pay scale is granted to the petitioners for future.*

7. *The question for consideration is whether on the basis of material on record writ petitioners have a right to the pay scale in question. Answer has to be in the affirmative for the reasons that follow.*

8. *It is not disputed that recommendations were made in the year 1967-68 i.e. more than 40 years ago. There is no reason for the State not to have taken any decision in the*

matter while granting the scale in question to similarly placed persons in categories other than Pump Operators. As per recommendations, Annexure P-206 dated 30.05.2003, the Chief Engineer also recommended acceptance of claim of the petitioners.

9. *In such circumstances, objection that recommendation of Pay Commission cannot be per se acted upon or that Court cannot go into the question of equation of pay, cannot be upheld. Recommendation of the Commission has been accepted by the State for other categories without holding that Pump Operators were a different class. Plea of financial implications is taken care of by statement of learned counsel for the petitioners not to press for arrears. The claim of the writ petitioners for scale corresponding to the scale of Rs.140-300, is thus, clearly made out. Since claim for arrears has been given up and is also held to be otherwise unacceptable, the State is liable to be directed to pass appropriate orders effective from today. The impugned judgment will stand modified accordingly. The State may pass appropriate orders for grant of corresponding scale from today, within one month from the date of receipt of a copy of this order.*

10. The appeal is disposed of accordingly.”

The State of Punjab filed SLP No. 15225 of 2010 which was also dismissed on 12.07.2010. Thereafter, on the basis of said judgment, the State of Punjab, Department of Water Supply and Sanitation vide decision dated 30.06.2011 (Annexure P-10) took a general decision to grant similar corresponding higher pay scale of Rs.140-300 to all those employees who possess qualification of matriculation with two years I.T.I. diploma. The department of Local Government has also taken a decision dated 16.04.2012 (Annexure P-11) with reference to the approval of the Finance Department dated

17.03.2012 to grant the same pay scale of Rs.140-300 to the employees who possesses qualification of matriculation plus two year's Diploma/Certificate from I.T.I without any arrears. The benefit was actually granted from 15.02.2010 as per memo dated 22.11.2012 (Annexure P-12).

In the present bunch of writ petitions, the petitioners are employees of various departments and are claiming that they should also be given the benefit of letter dated 04.02.1969 (Annexure P-3) in terms of **Rajinder Paul Gautam's case(supra)** and further the letter be implemented in toto in respect of all categories I to VI, whereas, the Department of Water Supply and Sanitation, Punjab and Department of Local Government, Punjab have implemented the letter qua category-IV only.

Learned counsel for the petitioners have argued that the letter dated 04.02.1969 be implemented in toto in the remaining departments as the same cannot be implemented in a piecemeal and the petitioners be given the pay scale according to their qualification category-wise from category I to VI, as the matter has been generalized qua Category-IV only, whereas, it should be implemented qua all the categories mentioned in the letter. The learned counsel for the petitioners have very fairly conceded that they are ready to relinquish the entire arrears and the same be given only from the date of filing the writ petitions.

On the other hand, on behalf of the State, it is

contended that there is inordinate delay in filing the writ petitions and further few departments have framed their rules. The petitioners were appointed under new rules and the petitioners have accepted their appointment with open eyes under the new rules framed by the departments. She has further argued that the judgment of **Rajinder Paul Gautam's case(supra)** relates to the employees who had joined the department from 1967 to 1980.

I have heard the learned counsel for the parties and have gone through the record very carefully.

It is not disputed that the judgment of **Rajinder Paul Gautam's case(supra)** has attained finality and the same stands implemented by the Department of Water Supply & Sanitation, Punjab. Even it has generalized the matter in the meeting held under the chairmanship of Chief Secretary, Punjab on 30.06.2011 (Annexure P-10) and has extended the benefit of judgment to all the employees, even to the non-petitioners and further the benefit has been also extended to the employees who were regularised recently by the Government and their pay has been fixed according to their qualification from the date of their appointment. Similarly, the Department of Local Government, Punjab has also generalized the matter by way of letter dated 16.04.2012 (Annexure P-11) and letter dated 22.11.2012 (Annexure P-12) and has extended the benefit of judgment to all the employees and their pay has been fixed notionally from the date of their initial appointment. The petitioners in CWP No. 7001 of 2013 have placed on

record certain documents/orders (Annexure P-13 to P-21) to show that the benefit of higher pay scale has been granted to various employees working on technical posts on the basis of subsequent directions given by this Court in several writ petitions. In response, the State has admitted the same but has denied the same benefit to the petitioners on the ground that they were not party to those writ petitions and now their claim is delayed. Once the petitioners are ready to relinquish their entire arrears as such delay will not come to their case. Even otherwise, in *Saroj Kumari vs. State of Punjab, 1998(3) SCT*, this Court has held that pay fixation of employee is a recurring cause of action and does not affect the rights of third party, the writ petition cannot be dismissed on the ground of delay, only arrears can be restricted, so the argument raised by the learned State counsel is meaningless, especially when the learned counsel for the petitioners are relinquishing the entire arrears. Since the petitioners are not claiming any arrears, their claim for fixation of pay in revised/corresponding pay scale cannot be denied to them on the ground of delay.

So far the argument raised by the learned State counsel that the judgment of *Rajinder Paul Gautam's case(supra)* applies only to employees appointed from 1967 to 1980, is misconceived on the ground that the Department of Water Supply & Sanitation, Punjab and Department of Local Government, Punjab have generalized the matter and the benefit has been extended to all the employees, even to the non-petitioners as well as to the employees

whose services have been regularised recently by the Government, even otherwise, this condition has also been withdrawn by the Government in its letter dated 31.03.2011 (Annexure P-9). So far as the arguments raised by the learned State counsel that a few departments have framed rules after the issuance of letter dated 04.02.1969 and the petitioners have been appointed under the new rules, this argument is totally misconceived and if the letter dated 04.02.1969 had been implemented by all the departments at that time, certainly, in that eventuality, the new rules would have been framed accordingly, and the employees would have received corresponding scales so, the argument raised by the learned State counsel cannot be accepted, especially when the matter has been generalized by few departments and the benefit has been released to all the employees irrespective of their date of appointments.

Accordingly, the writ petitions are allowed and the respondents are directed to implement the letter dated 04.02.1969 in toto and the pay scales of the petitioners be fixed notionally according to their qualifications category-wise in terms of aforesaid letter from category I to VI from the date of their appointments. Needful be done within a period of three months from the date of receipt of copy of this judgment. The arrears will be paid from the date of filing of the writ petitions.

A photocopy of this order be placed in the file of

other connected case(s).

26.04.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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