

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

CWP No.7179 of 2013 (O&M)

Date of decision: 12.09.2018

Gian Chand

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arora, Advocate for the petitioner(s).

Ms. Monica Chhiber Sharma, Sr. DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks quashing of order dated 11.02.2013 (Annexure P-13) whereby the claim of the petitioner for grant of benefit of higher pay scale on the basis of his qualification has been declined.

The petitioner is a motor man with the respondent-department and possesses the qualification of matric with two years course of ITI in the trade of electrician. The name of the post of petitioner in the respondent department is motor man, whereas, in the other departments, the name of the post held by the petitioner is pump operator, however, the duties of the both the posts are identical i.e. to operate and maintain the tubewells. The claim of the pump operators working in other department i.e. Department of Water Supply and Sanitation had been accepted by this Court in CWP No.10759 of 1990 and the LPA No.44 of

2009 and SLP(c) No.15225-2010 against the same stand dismissed. He further states that case of the petitioner is squarely covered by the ratio of law laid down by this Court in LPA-44 of 2009 titled as **State of Punjab & Ors. Vs. Rajinder Pal Gautam and others**, decided on 15.02.2010 (Annexure P-8). Learned counsel prays that the arrears may be restricted for 38 months from the date of judgment.

On the other hand, learned State counsel submits that the petitioner was appointed on the recommendation of Punjab Subordinate Service Selection Board, whereas, the respondents in LPA No.44 of 2009 were daily wagers. The State Government has not revised the grade of motor man on the basis of qualification, therefore, the petitioner cannot seek parity with the counterparts. Moreover, the grievance of the petitioner is hit by the doctrine of delay of laches.

Heard.

The petitioner, a motor man was appointed in the respondent department on 05.02.1999 and possesses the qualification of matric, senior secondary and two years course of ITI in the trade of electrician. The petitioner is seeking higher pay scale as has been granted to his other counterparts who are working on the post of pump operators in other departments of the State. A bare perusal of the record would reveal that the post of motor man and pump operator are having different nomenclature, however, the duties and responsibilities of the both the posts are same. In **State of Punjab & Ors. Vs. Rajinder Pal Gautam** in LPA-44 of 2009, decided on 15.02.2010 (supra), this Court observed as

under:-

“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.

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.

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 petitions for scale 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.”

It is not in dispute that the judgment in Rajinder Pal Gautam's case (supra) has attained finality. Since the duties and

responsibilities of motor man and pump operator are same, in that eventuality, the petitioner cannot be deprived of the benefit as had been allowed to pump operators with same qualification. The claim of the petitioner for fixation of pay in revised/corresponding pay scale cannot be denied on the ground of delay as pay fixation of an employee is a recurring cause of action and does not affect the rights of third party, as has been held by this Court in Saroj Kumari Vs. State of Punjab (1998) 120 PLR 123. However, the plea of learned counsel for the petitioner to pay arrears upto 38 months from the date of judgment is not acceptable in the light of judgment passed by this Court in Rajinder Pal Gautam's case (supra). Accordingly, the impugned order dated 11.02.2013 (Annexure P-13) is set aside. The respondents are directed to grant the higher revised pay scale to the petitioner from the date of his appointment with corresponding revised pay scale thereof from time to time. The pay of the petitioner be re-fixed notionally in the revised scale within a period of three months from the date of receipt of a certified copy of this order. However, the State is directed to pass appropriate orders with regard to arrears effective from today, in terms of Rajinder Pal Gautam's case (supra).

Disposed of.

12.09.2018
sumit.k

(JITENDRA CHAUHAN)
JUDGE

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