

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

CWP No.7920 of 2013.

Date of Decision: 01.02.2018.

Manmohan Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. K.S. Dadwal, Advocate,
for the petitioners.

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

JITENDRA CHAUHAN.J.

This petition has been filed under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to remove the anomaly operating in the pay scales of the petitioners and to grant the pay scale of Rs.10,300-34,800/- plus grade pay of Rs.32,00/-.

It is contended that the petitioners have been working as drivers in various departments under the control of State of Punjab and are performing arduous nature of duties. Initially, the pay scale of the petitioners was higher to the Patwaris and Clerks and in the successive pay revisions, the petitioners were kept at higher pedestal than the Patwaris and Clerks. However, in the pay revision implemented with effect from 01.12.2011, the pay scale of the petitioners was not revised.

In the reply filed on behalf of respondent Nos. 1, 2 and 6, it has been pleaded that the petitioners are in the Health department are not at par with the Clerks of other departments. The qualification, nature of duties and responsibilities, promotional channel and facilities of the petitioners vis-a-vis Clerks and Patwaris are quite distinct. As per the notification dated 10.02.2009 Annexure R-1, the qualifications for the post of Clerks had been changed whereas, the qualifications for the post of Driver remained unchanged. The petitioners are not only paid extra amount in view of overtime duties but also they are given uniform and special pay. Besides the service rules, even the nature of duties of these posts are different. There is no parity in these posts and consequently, there is no anomaly in the pay scales of the petitioners with that of Clerks or Patwaris.

Heard.

To understand the alleged discrimination, it is apposite to tabulate the successive pay commission reports respecting Drivers of Heavy/Light/Commercial Vehicles and Staff Cars (petitioners) and Patwaris:-

Category	01/01/68	01/01/78	01/01/86	01/01/96	01/01/06	01/10/11	01/12/11
Drivers of Heavy/Light/Commercial Vehicles and staff cars		400-600	950-2100+300	3330-6200	6910-20200+ GP: 2000	--	
Patwari	110-180	400-600	950-1800	3120-5160	5910-20200+ GP 1900		10300-34800 G.P. 3200

A bare perusal of the afore-stated chart reveals that the drivers were initially drawing pay scale of 400-600 in the year 1978 and in the year 1986 their pay scale was at a higher pedestal than the Patwaris. Similar was the position in the year 1996 as also in 2006. However, the recommendations made by the Pay Commission in 2011 brought about anomaly in the pay scales to be granted to the drivers. Intriguingly, Patwaris, who were drawing lower pay scale were granted pay scale of Rs.10,300-34,800/- plus grade pay of Rs.32,00/- as against the drivers (petitioners) who were not granted the revised pay scale in 2011. This anomaly has to be redressed. Admittedly, the petitioners being drivers are performing arduous duties but have been drawing lesser pay than the Patwaris. The changed pay scales adverse to the petitioners are not justifiable in the background explained above. They are legally entitled for the pay scale of Rs.10,300-34,800/- plus grade pay of Rs.32,00/- as is being drawn by the Patwaris. The State being a model employer cannot act arbitrarily and in a discriminatory manner to the prejudice of one class of its employees. From the inception till date, the nature of job has substantially remained unchanged. This fact itself is suggestive of the fact that the deviation in the original pattern of pay scale is not substantiated by any logic nor any material in support of the fact that both the cadres have undergone any change has been brought on record by the State. Therefore, it is inherently illogical to discriminate against one set of employees of the State as against their counterparts who were at the same footing at the time of inception of

the process.

In **K.T. Veerappa and others vs. State of**

Karnataka and others (2006) 9 SCC 406 it was held as under:-

*“13. He next contended that fixation of pay and parity in duties is the function of the Executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance in the case of State of Haryana and another vs. Haryana Civil Secretariat Personal Staff Association, 2002(3) SCT 674 and Union of India and another vs. S.B. Vohra and others, 2004(1) SCT 788. There is no dispute nor can there be any to the principle as settled in the case of **State of Haryana & Anr. v. Haryana Civil Secretariat Personal Staff Association** (supra) that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well-settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.”*

Further in **G.K. Nagpal vs. Punjab State Electricity**

Board 1998(1) SCT 694 it was held as under:-

“5. It is undoubtedly true that the posts of Laboratory Assistants are different from those of Line Superintendents etc. It is also correct that they carry different qualifications as well as different duties. However, the fact remains that all these posts had been treated as 'equal' initially. They were even treated as 'equal' even at the time of the revision of the pay scales. If at a subsequent stage they were to be treated differently, some reason should have been disclosed. The respondent-Board has not disclosed any reason in the written

statement. This is in spite of the fact that various officers of the Board have repeatedly opined that the duties of the posts are analogous, the qualifications are similar and as such the plea for parity of treatment in the pay-scales should have been granted. Why the respondent-Board treated the appellants differently ? Neither in the written statement nor by any other document the reason has been disclosed in the Court. Even at the hearing, no one has appeared on behalf of the respondent-Board to justify this action.

6. We are conscious of the fact that a differential treatment in the matter of pay scales on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of employees are treated as equal initially, they should continue to be so treated unless a differential treatment is justified by some cogent reason. In a case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continue to be identical or as they were initially laid down, then the Court shall be slow to accept the action of the authority in according a differential treatment unless some good reason is disclosed. In the present case, the only reason pointed out in the written statement is based on the qualifications and the job requirements. There has been admittedly no change in either of the two parameters. That being so, no new ground for creating a classification was made out.

7. In view of the above, we allow the appeal. The appellants shall be entitled to be placed in the scale of Rs. 700-1200 with effect from January 1, 1978. We are not awarding any costs as no one has appeared on behalf of the respondent-Board to contest the claim.

Appeal allowed.”

The upshot of the above discussion leads to the

conclusion that the anomaly deserved to be removed and the present writ petition succeeds. The petitioners are held entitled to the revised pay scale of Rs.10,300-34,800/- plus grade pay of Rs.32,00/- though, not at a higher pay scale but at least at par with the Patwaris with effect from 01.12.2011. The State is directed to fix the pay of the petitioners accordingly within a period of three months from the date of receipt of certified copy of this judgment. The arrears of the pay etc. be also released in their favour within three months thereafter.

01.02.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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