

**223 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 9627 of 2015.
Date of Decision: 13.12.2018**

Raj Kumar and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Girish Agnihotri, Sr. Advocate with
Mr. Kshitij Sharma, Advocate,
for the petitioners.

Ms. Bhawna Gupta, DAG, Punjab.

JITENDRA CHAUHAN J.

The petitioners seek quashing of order dated 19.03.2015
(Annexure P-9) vide which the claim of the petitioners for removal of
anomaly in their pay had been rejected.

The petitioners are working as heavy/vehicles bus drivers
with the Department of Transport, Government of Punjab. Initially, on
01.01.1976 all the five categories i.e. Head Constable, Junior Scale
Stenographer, Technical Assistant, Field Assistant and Head
Warden/Matron and the petitioners had the same pay scale of Rs.450-
750/-. Thereafter, till the pay commission report of 01.01.2006 all of
them enjoyed the same pay scale. However, on 01.12.2011 while the
pay scale of above-mentioned five categories was increased to
Rs.10,300-34,800+grade pay of Rs.3600/- with initial start of
Rs.14,430/-, vide orders Annexures P-1 to P-5, but the pay of the
petitioners was not increased. Besides, nine other categories of

employees viz. Clerk, Patwari, Constable, Photostat Machine Operator, Gram Sewak, Gram Sewika, Fireman, Artist, Teleprinter Operator, Cinema Operator, who were drawing less pay than the petitioners were also given higher pay scales. The petitioners had to file CWP No. 23455 of 2012. The writ petition was disposed of with a mandate to the respondents to consider the controversy and take a final decision regarding rectification of the anomaly. Thereafter, vide impugned order dated 19.03.2015 (Annexure P-9), the claim of the petitioners was rejected by the respondents.

It is contended that when the pay scale of one category has been revised then fairness demands that the pay scale of the other categories in the same pay bracket should also have been revised. It has been ignored that while the pay of five categories of posts was revised in the year 2011, the petitioners' category of heavy vehicle drivers was ignored so much so that pay of nine categories of posts which were drawing lower pay scale was revised in the year 2011. Even the car drivers happen to be the feeder cadre post to the post of Heavy Vehicles/Bus drivers as per the rules of 1977 and were also getting a lower pay scale of Rs.3330-6200 as compared to heavy vehicle drivers/bus drivers who were getting pay scale of Rs.4020-6200 yet the car drivers have been given an equivalent scale with only Rs.150 extra as special pay to the petitioners. However, the positive case of the petitioners is that in fact the car drivers are given a special pay of Rs.1400/- which is evident from Annexure P-10.

It is further contended that the duties of the petitioners are much stringent as compared to other categories. It needs to be appreciated that a bus driver drives a 50 seater or above vehicle for approximately 500 kms a day. The driver may also have to drive to neighbouring states and there are no duty hours as such because the day may begin early and end late at night. There is no gazetted holiday and hence the driver gets rest only after 6 days and most of the time, the drivers are away from their families even in the times of need. Most of the buses are non A/C.

On the other hand, the stand of the respondents is that the the fixation of pay is exclusively within the domain of the state policy and function of the expert body like Pay Commission. If the writ petition is allowed, it will effect 1000 employees (drivers) of the whole State which are similarly situated or their salaries are being drawn in the same scales. It will cause a huge financial burden on the state exchequer. The State will have to arrange huge finance, which can be used for other developmental scheme for the general public. Equation of pay cannot itself be made basis by comparing with other posts whose qualifications, experience and nature of duties are totally different. The petitioners have already been given the benefit of extra grade pay of Rs.150/-. The petitioners had the remedy to approach the Anomaly Committee constituted by the Finance Department immediately after the recommendation of Fifth Pay Commission, a sub committee headed by the Deputy Chief Minister was also constituted

to resolve the scale related issues but the petitioners have failed to put up their claim before these committees hence they are estopped by their own act and conduct.

Heard.

This Court in CWP No. 7920 of 2013 titled as “Manmohan Singh and others vs. State of Punjab and others” decided on 01.02.2018 has held as under:-

“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 the present case, the petitioners were drawing pay scale of Rs.4020-6200 before 5th pay commission and after 5th pay Commission they were drawing 5910-20200 + grade pay of Rs.2400/- with initial start of Rs.9880/- which was at par with Head Constables, Junior Scale Stenographers, Technical Assistants, Field Assistants, Head Warden/Matron. However, the revision made by the State Government with effect from 01.12.2011 caused anomaly as the pay scales of the petitioners were not revised. The aforesaid five categories of employees who were drawing equal pay scale to the petitioners were granted pay scale of Rs.10300-34800 with grade pay of Rs.3600 with initial start of Rs.14430/- but the pay scale of the petitioners was not revised. The anomaly has to be addressed. 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.

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

The petitioners are held entitled to the revised pay scale of Rs.10,300-34,800/- plus grade pay of Rs.3600/- with initial pay of Rs.14430/- 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. also be released in their favour within three months thereafter.

13.12.2018.

SN

(JITENDRA CHAUHAN)
JUDGE

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