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

(106) **CWP-22295-2018**
Date of Decision: May 22, 2019

Rittu Bala Budhiraja and another **.. Petitioners**

Versus

Punjab State Power Corporation Limited **.. Respondent**

(2) **CWP-17165-2017**

Avtar Singh and others **.. Petitioners**

Versus

Punjab State Power Corporation Limited **.. Respondent**

(3) **CWP-16005-2017**

Jaswinder Singh and others **.. Petitioners**

Versus

Punjab State Power Corporation Limited **.. Respondent**

(4) **CWP-8283-2017**

Inderjit Singh and others **.. Petitioners**

Versus

Punjab State Power Corporation Limited **.. Respondent**

(5) **CWP-12548-2018**

Bikram Singh and others **.. Petitioners**

Versus

Punjab State Power Corporation Limited **.. Respondent**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Saravpreet S. Gurna, Advocate,
for the petitioner(s) in all the writ petitions.

Ms. Monica Chibber Sharma, Advocate,
for the respondent in CWP-22295-2018.

Mr. Akshay Rawal, Advocate,
for the respondent in CWP-17165-2017.

Mr. Sehaj Bir Singh, Advocate,
for the respondent in CWP-16005-2017,
CWP-8283-2017 and CWP-12548-2018.

HARSIMRAN SINGH SETHI, J.(ORAL)

By this common order, five writ petitions, which involve the same question of law and similar facts, the details of which have been given in the heading, are being disposed of. For the sake of convenience, the facts are being extracted from CWP No.22295 of 2018.

In the present writ petition, the claim which is being made by the petitioners is to grant the petitioners equivalent pay scale as granted to the Head Clerks in the respondent-Corporation along with subsequent revision starting from 01.01.1986.

As per the facts mentioned in the writ petition, the petitioners joined the respondent-department as Internal Auditors on various dates. It is averred in the petition that the post of Internal Auditor is one of the four posts in Group XII and other posts includes post of Head Clerk, Sub-Fire Officer and Head Clerk cum Divisional Accountant. It is averred in the petition that the feeder category for promotion to the post of Internal Auditors and Clerks is Circle Assistant/ Assistant Revenue Accountants, which enjoy a common seniority and on the basis of said fact, a claim has been made that there cannot be any differentiation between the post of Internal Auditors and Head Clerks for the grant of pay scale as the feeder cadre for promotion to these post is same.

Some similarly situated personnel as the petitioners, filed the writ petition being CWP No.10117 of 1992 claiming the benefit of equal pay as being granted to the Head Clerks. During the pendency of the writ petition, another writ petition being CWP No.9294 of 1993 was also filed by some of the officers, who were working as a Sub-Fire Officer, who were also claiming the parity equivalent to the post of Head Clerks. The said writ petition i.e. CWP No.9294 of 1993 came to be decided by this Court on 21.01.2010 and a Coordinate Bench of this Court held that the Sub-Fire Officers are entitled for the grant of the same pay scale as that of Head Clerks.

Against the said decision of the learned Single Judge in CWP No.9294 of 1993, decided on 21.01.2010, respondent-Corporation filed Letters Patent Appeal being LPA No.713 of 2010, by an order dated 28.09.2010, the Division Bench upheld the order passed by the learned Single Judge and the Letters Patent Appeal was dismissed. That as the claim of the Sub-Fire Officer, who had filed CWP No.9294 of 1993 was allowed, the writ petition which was filed by the Internal Auditors being CWP No.10117 of 1992 was also allowed by the learned Single Judge on 11.11.2011 in terms of the order passed in CWP No.9294 of 1993.

Once again, the Corporation filed a Letters Patent Appeal against the said decision being LPA No.264 of 2012, which was also dismissed by the Division Bench of this Court on 23.02.2012. Even the review petition filed against the said order, was also rejected by the Division Bench. Against the decision in CWP No.10117 of 1992 by the learned Single Judge dated 11.11.2011, which was upheld by the

LPA Bench in LPA No.264 of 2012, an SLP No.35109-35112 of 2012 was filed by the respondent-Corporation before the Hon'ble Supreme Court of India challenging the grant of same pay scale to the Internal Auditors as being enjoyed by the Head Clerks. The said SLP, which was converted into Civil Appeal No.195-198 of 2019, came to be decided by the Hon'ble Supreme Court of India on January 08, 2019 and the grant of benefit of equal pay to the Internal Auditors as being granted by this Court to the Head Clerks, was held to be erroneous. The relevant paragraph of the said judgment is as under:

> *"39. The only ground urged by respondents-Internal Auditors is that parity of pay scale between the Head Clerks and the Internal Auditors was maintained by the appellant-Board for more than two decades and while so, disturbing the parity is arbitrary and illegal. The Court has to keep in mind that a mere difference in service conditions, does not amount to discrimination. Unless there is complete identity between the two posts, they should not be treated as equivalent to claim parity of pay scale. No doubt, Internal Auditors were earlier placed in the same group namely Group XII; but educational qualifications for the post of Head Clerk and mode of recruitment are different. As submitted by the learned Senior Counsel for the appellant-Board, that in the year 1980, there were only four posts in Group XII but subsequently some posts were added to Group XII and the total fourteen posts which were added to Group XII are:- Punjabi Teacher, Drawing Teacher, Hindi Teacher, D.P.Ed. Teacher, Master/Mistress, Science Teacher, Security 29 Inspector, Modeller Divisional Head Draftsman, Prosecuting Inspector (now Law Officer), Law Officer Grade II, Medical Assistant, Librarian and Fire Officer, etc. For all*

these posts, source and mode of recruitment, qualifications and nature of work are entirely different. If the contention of the Internal Auditors for claiming parity of pay scale with that of Head Clerks merely on the ground that the post of Internal Auditor was placed in Group XII, then if such parity of pay scale may have to be extended to all other posts, it would have huge financial implication on the finance of the Board which is a service-oriented institution owing to the consumers. As held in ***Union of India and Another v. Manik Lal Banerjee*** *(2006) 9 SCC 643, "it is now a well settled principle of law that financial implication is a relevant factor for accepting the revision of pay."*

40. The learned Single Judge proceeded under the erroneous footing as if the case of Internal Auditors is covered by the case put forth by Sub Fire Officers. The learned Single Judge did not keep in view the counter statement filed by the appellant-Board before the High Court pointing out various distinguishing features of Internal Auditors and Head Clerks on account of which no parity could be granted to the Internal Auditors with the Head Clerks. The High Court also did not keep in view that the Pay Anomaly Committee did consider the demand of Internal Auditors and had not accepted the demand in view of different nature of duties and various other relevant factors. The learned Single Judge erred in recording that the respondents were in the same category of "Sub Fire Officers" within the same group which have been decided by the earlier judgment dated 21.01.2010.

41. As discussed earlier, merely because various different posts have been categorized under Group XII, they cannot claim parity of pay scale as that of the Head Clerk. All the more so, when the Internal Auditors are appointed 55% by direct recruitment and 45% by

> *promotion from Circle Assistant/Assistant Revenue Accountant. The High Court did not keep in view that the duties, nature of work and promotion channel of Head Clerks and Internal Auditors are entirely different and that option to seek promotion apparently as Internal Auditors was the "conscious exercise of option", the impugned judgment cannot be sustained and is liable to be set aside.*
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> *42. In the result, the impugned judgment dated 23.02.2012 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No.264 of 2012 and Order dated 04.05.2012 in the review petition are set aside and these appeals are allowed. No costs.*

Learned counsel for the petitioners admits that question of law raised in the present writ petition stands settled upto the Hon'ble Supreme Court of India as noticed above, against the claim of the petitioners as raised in these writ petitions but states that there is a review petition, which has been preferred against the order passed by the Hon'ble Supreme Court of India dated 08.01.2019.

It is admitted by learned counsel appearing on behalf of the petitioners that no order has been passed on the review petition so far and the order passed by the Hon'ble Supreme Court of India dated 08.01.2019 still hold good as of now.

Once, counsel for the petitioners very fairly has admitted that the controversy stands covered by the decision of the Hon'ble Supreme Court of India in Civil Appeal No.195-198 of 2019, decided on 08.01.2019, the claim made in the present writ petitions is not maintainable and is liable to be rejected.

The writ petitions are accordingly dismissed with no order as to costs.

As the petitions are being dismissed in view of the order passed by the Hon'ble Supreme Court of India dated 08.01.2019 and as informed by counsel for the petitioners that there is a review petition which has already been preferred, petitioners will be free to approach this Court if need so arises in view of any order passed by the Hon'ble Supreme Court of India in the said review petition, rather it will be expected that in case the Hon'ble Supreme Court of India modifies the order dated 08.01.2019 in any manner by granting any relief to the similarly situated employees as the petitioners herein, the same will be extended to the petitioners as well.

(HARSIMRAN SINGH SETHI)
JUDGE

May 22, 2019
harsha

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