

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

**CWP No. 6836 of 2018
DATE OF DECISION: 10.07.2019**

Harmesh Lal and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.K. Arora, Advocate
for petitioners

Ms. Ambika Bedi, AAG, Punjab.

ARUN MONGA, J.

Challenge here is to an order dated 20.02.2018 (Annexure P-10), whereby the respondents have declined the claim of the petitioners for grant of pay scales at par with Radio Wireless Operators in terms of judgment rendered by a coordinate Bench of this Court in 'K.S. Bhardwaj and others vs. State of Punjab and others' reported as 2012 (3) SCT 438, decided on 16.01.2012 (Annexure P-3).

2. Short controversy here is that the petitioners have not been granted the same benefit, as has been granted to similarly situated persons in light of the judgment, *ibid*, implemented vide order dated 20.07.2012 (Annexure P-4).

3. Briefly the facts are that the petitioners are working as Class-III employees in the Punjab Home Guards and Civil

Defence department. They were appointed as Radio Wireless Mechanics and Radio Wireless Operators in December 2013, pursuant to advertisement dated 04.01.2012. Their service conditions are governed by the Punjab Home Guards and Civil Defence (Field) Class-III Service Rules, 1983. Despite similar duties and responsibilities, the petitioners are not being paid on par with Radio Wireless Operators. This Court, vide judgment, *ibid*, decided the issue of pay disparity between various employees in the Punjab Home Guards and Civil Defence department. The relevant is reproduced herein below:-

"4. Learned counsel for the respondents has vehemently argued that the petitioners could not be given same pay scale as to the pay scale of Wireless Operators because the reference sent to the Anomaly Committee was rejected by the Anomaly Committee.

5. While making reference to the Anomaly Committee State Government has admitted that Wireless Operators as well as Radio Wireless Operators are performing identical duties and qualification for both the posts is identical. Claim of the petitioners should not be rejected simply because Anomaly Committee has not accepted the recommendation.

6. Anomaly Committee nowhere says that duties and responsibilities of both the posts are different. Rejection of the claim of the petitioners on the ground they were appointed in the year 1978 on the agreed salary seems to be

unjustified; Applying the principle 'Equate posts and pay' petition deserves to be allowed.

7. Writ petition is allowed. Respondents shall fix the pay scale of the petitioners at par with Radio Wireless Operators w.e.f. 01.01.1986, the date of implementation of 3rd Pay Commission. Monetary benefits shall be released within six months."

4. Pursuant to the decision of the Court, the department implemented the outcome of the writ petition and granted pay parity between similarly situated persons to the petitioners and Radio Wireless Operators. However, the petitioners were not granted the benefit in an arbitrary and discriminatory manner. The petitioners made representation dated 04.12.2017 (Annexure P-5), for grant of the benefit of pay parity but the same was not adverted to. They then caused a legal notice dated 18.01.2018 (Annexure P-7), seeking mitigation of their grievance. Vide order dated 20.02.2018 (Annexure P-10), their claim was declined. Being aggrieved the petitioners have come before this court by way of the present writ petition.

5. Petitioners have averred that in light of the judgment of this Court, *ibid*, the department was bound to give pay parity as claimed by them and rejection of their claim is in violation of Articles 14, 16 and 39(d) of the Constitution of India. They further rely on the judgment rendered by a coordinate Bench of this Court in CWP No. 4328 of 2002 titled as 'Satbir Singh vs. State of Haryana', wherein directions were issued to Punjab,

Haryana and U.T. Chandigarh to implement orders of the Court without making the similarly situated employees approach this Court again and again for the same relief.

6. It is further stated that instructions dated 17.07.2002 (Annexure P-7) were issued by the Punjab Government pursuant to the orders of the Court in CWP No. 4328 of 2002. Here, the respondents have failed to follow the procedure laid down by the Court and have arbitrarily denied them the benefit of pay parity to which they are entitled as per the judgment rendered in K.S. Bhardwaj case, *ibid*.

7. Another contention raised by the petitioners is that the impugned order dated 20.02.2018 (Annexure P-10) has been passed by Junior Staff Officer (Administration), who is not the competent authority to issue such an order. Even otherwise, the impugned order has not been passed giving proper reasons for rejection of their claim. Further no reason has been assigned to the non-applicability of the judgment rendered in K.S. Bhardwaj case, to the case of the petitioners.

8. The respondents, by way of short affidavit, have controverted the stand of the petitioners. It is averred that the pay scale being sought by the petitioners pertain to the pay scales applicable in the year 2006. On constitution of the 6th Punjab Finance Commission, the department forwarded the grievance of the petitioners to the Finance Commission. As per the decision of the Finance Commission, the petitioners have now

been recommended implementation of the 6th Punjab Pay Commission under which the petitioners will be placed in a higher pay scale than the one they are seeking by way of this writ petition.

9. I have gone through the pleadings and have heard learned counsel for the respective parties.

10. Vide letter dated 20.02.2018 Annexure P-10, in reply to the legal notice of petitioner Harmesh Lal, the reasons given for rejection of the claim were firstly that his cadre of Radio Wireless Mechanic was different from the cadre of Radio Wireless Operator (Sergeant) and secondly that the judgment in CWP No. 13856 of 1990 was not applicable in his case.

11. In my opinion, both these reasons are amply negated and repelled by the reasons, observations and conclusions recorded in paras No.4 to 7 (reproduced in the earlier part of the order) of the judgment of this Court in CWP No. 13856 of 1990. Without once again repeating them, I hold that the reasons put forth by the respondents in letter dated 20.02.2018 Annexure P-10 for denial of parity to the petitioners with the Radio Wireless Operators are not tenable.

12. In the reply to the instant writ petition, the stand taken by the respondents is that the demand of the petitioners relates to pay scales of 2006; that the same was referred to the State Government, but no such case can be referred to the Finance Department in view of that Department's instructions

dated 19.12.2017 providing that as the 6th Punjab Pay Commission has already been constituted and all proposals of revision of pay scales and allowances of Government employees are being considered by the 6th Punjab Pay Commission and therefore, no such case should be referred to the Finance Department. Further, it has been pleaded by the respondents that the demand of the petitioners and some other categories of employees has already been recommended to the 6th Punjab Pay Commission to grant them the pay scale of Rs.10300-34800 with Grade Pay of Rs.3200/- which is much higher than the grade pay (Rs.2400/-) being demanded by the petitioners in the present writ petition.

13. Learned counsel for the petitioner submits and learned counsel for respondents does not dispute that whatever revised pay scales would be given to the State Government employees on the recommendation of the 6th Punjab Pay Commission would be effective at the most from 01.01.2016.

14. It is still in the realm of speculation what revised pay scale for the petitioners' category would be recommended by the 6th Punjab Pay Commission and granted by the State Government from 01.01.2016. The petitioners herein are seeking parity with Radio Wireless Operators for grant of pay scale of 5910-20200+ Grade Pay of Rs.2400/- with effect from the dates of their joining service in December, 2013 as specified in Annexure P-1. In my opinion, mere proposal of the Department to the Pay Commission for recommending the revised pay scale of Rs.10300-34800 with

Grade Pay of Rs.3200/- from 01.01.2016 for the petitioners' category does not in any way deal with, let alone, meet the petitioners' claim herein for parity with Radio Wireless Operators and grant of pay scale of 5910-20200+Grade Pay of Rs.2400/- from December, 2013.

15. It is abundantly clear that the petitioners are entitled to the grant of revised pay scales on parity with the pay scales of Radio Wireless Operators in light of the judgment rendered by this Court in K.S. Bhardwaj Case, *ibid*.

16. In the light of above discussion, this writ petition is allowed in terms of the judgment dated 16.01.2015 Annexure P-3 of this Court in CWP no.13856 of 1990 and the respondents are directed to grant to the petitioners pay scale of 5910-20200+Grade Pay of Rs.2400/- with effect from the dates of their joining service in December, 2013 as specified in Annexure P-1. The consequential monetary benefits shall be paid to the petitioners within three months from the date of receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

JULY 10, 2019
shalini

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