

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.900 of 2018 (O&M)

Date of Decision: October 18, 2019

Lahana Singh & others

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. S.S.Hira, Advocate,
for the petitioners.

Mr. Harish Nain, AAG, Haryana,
for the State.

Mr. Pawan Kumar, Advocate for
Mr. Nitin Thatai, Advocate,
for respondent No.5.

AMIT RAWAL, J.

CM No.7971 of 2019

Prayer in the application is for placing on record the replication. Allowed subject to just all exceptions.

CM stands disposed of.

CWP No.900 of 2018

Grievance of the petitioners in the present writ petition is plain and simple. Having been appointed on different dates, petitioners are claiming parity of service vis-a-vis respondent Nos.4 to 8, who have been appointed much later to them. Relevant particulars of the petitioners and as well as respondent Nos.4 to 8 are given below:-

Particulars of the petitioners

<i>Name of the employee</i>	<i>Name of post</i>	<i>Date of birth</i>	<i>Date of joining</i>	<i>Salary (2016-17)</i>
<i>Lahana Singh</i>	<i>Carpenter</i>	<i>09/02/59</i>	<i>17.04.1986</i>	<i>Rs.51,392/-</i>
<i>Randhir Singh</i>	<i>Carpenter</i>	<i>01/09/60</i>	<i>01/05/92</i>	<i>Rs.46,269/-</i>
<i>Mohinder Kumar</i>	<i>Uphostler</i>	<i>02/01/60</i>	<i>14.11.1979</i>	<i>Rs.47,545/-</i>

Particulars of respondent Nos.4 to 8:

<i>Name of the employee</i>	<i>Name of post</i>	<i>Date of birth</i>	<i>Date of joining</i>	<i>Salary (2016-17)</i>
<i>Mahabir Singh</i>	<i>Electrician</i>	<i>05/04/59</i>	<i>03/04/85</i>	<i>Rs.60,710/-</i>
<i>Raj Singh Singh</i>	<i>Carpenter</i>	<i>06/05/58</i>	<i>01/05/92</i>	<i>Rs.50,405/-</i>
<i>Narinder Kumar</i>	<i>Blacksmith</i>	<i>05/10/70</i>	<i>27.04.1990</i>	<i>Rs.60,710/-</i>
<i>Raj Singh</i>	<i>Tyreman</i>	<i>16.11.1960</i>	<i>10/02/86</i>	<i>Rs.60,710/-</i>
<i>Balwan Singh</i>	<i>Welder</i>	<i>08/08/64</i>	<i>15.03.1985</i>	<i>Rs.60,710/-</i>

The petitioners and the private respondents are working as Carpenters, Uphostler, Electrician, Blacksmith, Tyreman and Welder. Petitioners had earlier approached this Court vide CWP No.14884 of 2017 claiming the relief, which was disposed of vide order dated 13.07.2017 with direction to the competent authority to decide the case of the petitioners, resulting into passing of the impugned order (Annexure P-5) dated 18.10.2017 and the reasons assigned in Para 4 of the same read thus:-

“Hereby it is also clarified that before payment of technical pay scale, promotional benefits has not been granted to the respondent No.4 to 8 and in compliance of the Finance Department directions No.2/22/2014/3PR (FD) dated 27.08.2014, technical pay scale treated as functional pay-sale as a personal measure, 3rd ACP benefit has been granted. Due to this reason, the said employee salary is higher than the petitioners

It is clarified by the Haryana Government vide directions No.2/33/2011-4/PR (FD) dated 28.06.2011 that:-

When an employee got one financial up gradation in the form of promotion, then the official is entitled for two ACP up

gradation as ACPs.

As per the said rule, employee has granted one promotion and two ACP benefits. Apart from that, it is also clarified that as per ACP Rule 2006, Rule 12:-

If the service rules provides for or circumstances warrant filling up of a post through direct recruitment as well as through promotional, benefits of stepping up of pay band & grade pay shall be admissible to the direct recruited senior govt. servant if the junior promoted govt.servant junior to him is drawing salary in higher pay band and grade pay on the basis of the benefit of ACP up gradation. However, the benefit of stepping up shall not be admissible to a promotee if he has already got three financial up gradations as provided under these rules in his service career.

So, keeping in view above mentioned instructions, the claim of Sh.Lahana Singh & others are rejected. It is also clarified that vide letter No.4668/EA/ACV dated 21.07.2017 this office has replied to the legal notice of the counsel of the petitioners, in which the said claim has already been rejected as per rules.”

Respondents, in response to the reply, have taken a preliminary objection that once the petitioners have been granted benefit of 3rd ACP, ACP Rules do not provide any financial up-gradation, cannot be granted the benefit. Para 2 of the reply reads thus:-

“2. That it is further respectfully submitted that the contents of ACP Rule 2006, Rule-12:-

If the service rules provide for or circumstances warrant filling up of a post through direct recruitment as well as through promotional, benefits of stepping up of pay band & grade pay shall be admissible to direct recruited

senior govt.servant if the junior promoted govt.servant junior to him is drawing salary in higher pay band and grade pay on the basis of the benefit of ACP up gradation. However, the benefit of stepping up shall not admissible to a promotee if he has already got three financial up gradation as provided under these rule in his service career.”

Learned counsel for respondent No.5 supported the arguments of the learned State counsel.

I have heard the learned counsel for the parties and appraised the paper book.

Para 4 of the impugned order reflected that the private respondents have also been given the benefit of 3rd ACP, whereas there is disparity in the pay scale of the petitioners, who are discharging similar duties. Law of equal pay for equal work is no longer *res integra*. In support, relied upon the ratio decidendi culled out in **Ishwar Chand Walia Versus State of Haryana, 2001(2) SCT 809**. The justification in the reply and as well as in the impugned order does not stand the touchstone of any explanation or reasonability, thus, fall within the purview of judicial review. It is complete violation of provisions of Articles 14 and 16 of the Constitution of India. The impugned order, thus, is not sustainable and hereby set-aside. The official respondents are directed to grant same pay scale to the petitioners via-v-vis that of respondent Nos.4 to 8. Let this exercise be undertaken within a period of three months from the date of receipt of certified copy of this order.

It is made clear that in case the needful is not done within three

months, there shall be costs of ₹ 25,000/- to be paid to the petitioners.

October 18, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No