

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

CWP No.13995 of 2013 (O&M)
Date of Decision:15.1.2019

Satyapal

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ravinder Malik (Ravi), Advocate for the petitioner

Mr.Harish Rathee, Sr.DAG, Haryana

RAJIV NARAIN RAINA, J.

1. The petitioner is a Mason serving in the Police Department in Class IV service. He holds a technical post, but does not possess the ITI Certificate. He claims technical pay scale of Rs.4000-6000 w.e.f. 8.9.1998 i.e. the date of appointment.

2. The Government of Haryana have issued instructions by letters dated 23.8.1990 and 26.7.1991 by which the pay of technical posts in the running scales of Rs.750-940, 775-1025, 800-1150, 950-1400, 950-1500 were modified by clubbing them be entitled to the pay scale of Rs.1200-2040 w.e.f. 1.5.1990 and which pay scale was further revised to Rs.4000-6000 w.e.f. 1.1.1996 for technical posts in various departments for which the minimum educational qualification prescribed is Matric with ITI Certificate/Polytechnic. Later on, the State Government issued instructions vide letter dated 9.8.2010 granting the benefit of pay scale of Rs.1200-2040 notionally w.e.f. 1.5.1990 and actually from the date of issuance of the said letter. This pay scale

became applicable to those employees who did not possess the qualification Matric with ITI and were appointed prior to 1.5.1990 on a technical post. The petitioner was appointed as Mason on 8.9.1998 which is after 1.5.1990. It is not disputed that at the time of appointment, there were no statutory rules framed for the post of Mason. The rules pertaining to Class IV employees were framed in the year 2000 and notified on 11.8.2000. In these rules, the category of Mason for the purpose of pay scales was divided in three categories:-

I) Middle Pass with Hindi at least six month experience as Mason;

II) Under Matric with ITI Diploma

III) Matric with ITI Diploma.

3. The petitioner falls in the first category. He holds Matriculation qualification without any diploma from ITI. Thus he was granted pay scale of Rs.2650-65-3300-EB-70-4000 and the same was accepted by him without any objection.

4. Several writ petitions were filed between 1991 and 1993 with lead case i.e. CWP No.18754 of 1991 (Gurdev Singh and others vs. State of Haryana and others decided on 18.1.2010). The common question raised in these petitions was for grant of pay scale of Rs.1200-2040 irrespective of whether the petitioners held the prescribed qualification of Matric with ITI. The revised pay scale claimed by them had been granted to employees working on technical posts irrespective of their status and pay scale and also notwithstanding whether they possess qualification of Matric with ITI or not. It was contended by them that the only requirement under the revised rules was that they must be working on the posts for which minimum educational qualification prescribed is Matric with ITI. It had been decided that future recruitment

of non-matric be stopped. It was urged that the qualification under the rules was made necessary for grant of revised pay scale for future recruitment against the post and those employees, who were already working against the post for which minimum educational qualification prescribed is Matric with ITI, the pay scale of Rs.1200-2040 has to be granted notwithstanding that the employee is possessed of the prescribed qualification or not. The State resisted the petition. They supported the decision to withdraw the benefit of revised pay scale as the petitioners were not entitled to the same. Even though the petitioners were Matric with ITI, they qualified ITI in different trades than the posts they were working against. The State referred to the amendment made to Rule 40 of the Revised Pay Rules, 1986. The amendment was made on 26.7.1991 and Rule 40-A had been introduced after Rule 40 in Annexure A to the Govt. Instructions dated 23.8.1990. By this amendment, the existing scales were modified to Rs.950-1400 by clubbing the previous four pay scales of Rs.750-940, 775-1025, 800-1150 and 950-1400.

5. On a consideration of the case, learned Single Judge held that the petitioners, if working on technical posts, cannot be deprived of the revised pay scales of Rs.1200-2040 either on the ground that they are non-matric or that they are ITI or not or even they have trade certificate of a different trade. According to Memo No.5/1988 noticed in Labh Singh's judgment- three years experience in the trade was also to be considered as equivalent to ITI. On these premises, the writ petition was allowed. The order of the learned Single Judge attained finality with the dismissal of Civil Appeal No.7155 of 2005 filed by the State Government before the Supreme Court in case *State of Haryana and others vs. Raj Karan*. It is worthwhile to notice that the present petitioner

was not party to the above said cases. In this background, the petitioner set up his case for revised technical pay scale of Rs.4000-6000 as per Government of Haryana Notification dated 11.8.2000 w.e.f. 8.9.1998 as further revised from time to time. Since the benefit was not granted to the petitioner, he filed the earlier petition being CWP No.1397 of 2013 which was disposed of on 24.1.2013 with a direction to the respondents to consider the claim of the petitioner and to take a final decision on his representation dated 5.11.2013.

6. In pursuance of the aforesaid order, the Superintendent of Police, Jhajjar passed an order dated 22.3.2013 recommending grant of benefit of technical pay scale Rs.1200-2040 w.e.f. 8.9.1998 i.e. from the date of his appointment. The Director General of Police, Haryana by his order dated 17.5.2013 has decided to the contrary without reference to the order of his subordinate and denied the claim of the petitioner by passing a speaking order. Aggrieved by the order of the Director General of Police, Haryana, the petitioner has approached this Court in the present petition filed on 2.6.2013.

7. This petition was taken up for preliminary hearing on 4.7.2013 and notice of motion was issued and the operation of the impugned order dated 17.5.2013 (Annex. P-9) was stayed. On 10.12.2013, Haryana Government notified the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-technical Posts) Ordinance, 2013 (Haryana Ordinance No.6 of 2013) abolishing the distinction between pay scales prescribed for Technical and Non-Technical posts. The Ordinance was converted into the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-technical Posts) Act, 2014 (for short “the Act of 2014”) repealing the

Ordinance and bringing the legislative law in force. The previous Government instructions dated 30.3.1982, 23.8.1990, 26.7.1991 and 9.8.2010 were withdrawn, which had granted higher pay scales to persons with technical qualifications. On 23.1.2015, the learned counsel appearing for the petitioner made a statement at the Bar that he would not be pressing the instant writ petition. The petition was disposed of accordingly. Thereafter, CM No.6059 of 2017 was filed for recalling the order dated 23.1.2015. Notice was issued on the application on 2.5.2017 and the same was decided on 15.12.2018. The following order was passed:-

“Present: Mr. Ravinder Malik (Ravi), Advocate for the
applicant/petitioner.
Ms. Nidhi Garg, AAG, Haryana.

The instant application has been filed under Section 151 CPC for recalling of the order dated 23.01.2015, in terms of which CWP No.13995 of 2013 had been disposed of in the following terms on 23.01.2015:-

*Learned counsel appearing for the petitioner
makes a statement at the bar that he would not be
pressing the instant writ petition.*

Disposed of.

Notice had been issued in the instant application and a reply to the same on behalf of the State of Haryana has been placed on record.

Having heard the counsel for the parties this Court is inclined to accept the prayer made in the application.

It may be noticed that the writ petition had been filed by the applicant seeking quashing of an order dated 17.05.2013 passed by the Director General of Police, Haryana and whereby the benefit of technical pay-scales granted to the applicant vide an earlier order dated 22.03.2013 were withdrawn. At the stage of preliminary hearing of the writ petition and while issuing notice of

motion on 04.07.2013, this Court had been pleased to stay the operation of the impugned order dated 17.05.2013.

It would be apposite to take note that during the pendency of the writ petition, the State Government enacted the Haryana (Abolition of Distinction of Pay-Scale between Technical and Non-Technical Posts) Act, 2014.

Since the grievance of the petitioner as per counsel stood redressed as per provisions of 2014 Act, a request was made before this Court on 23.01.2015 that he would not be press the prayer made in the writ petition. Accordingly, the writ petition had been disposed of.

It transpires that the respondent-authorities without even examining the aspects as regards entitlement of the petitioner/applicant to the technical pay-scale as also protection granted under 2014 Act, a stand has been taken that the benefit of technical pay-scale would not be granted only on account of the statement made by counsel on 23.01.2015 and in pursuance to which the writ petition has been disposed of.

In the considered view of this Court the issue with regard to the claim of the petitioner for grant of technical pay-scales as per mandate of the 2014 Act, would require to be examined on merits.

Accordingly the order dated 23.01.2015, passed by this Court is recalled. Writ petition is directed to be restored to its original number and the same be set down for hearing on 15.01.2019 as per roster.

Application disposed of.”

8. The order has been recalled and the writ petition restored to its original number and that is how this petition has come up for hearing today.

9. I have heard learned counsel for the petitioner and the law officer for the State.

10. At the outset, proviso to Section 4 of the Act of 2014 deserves to be noticed since it makes an exception in favour of those persons who have already been granted unconditionally the up-graded pre-revised pay scale and are drawing the same before the date of notification of the Ordinance, namely, the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-technical Posts) Ordinance, 2013 (Haryana Ordinance No.6 of 2013) viz. the 10th December, 2013, and they shall continue to draw these pay scales, as a measure personal to them. Proviso to Section 4 of the Act of 2014 is reproduced below:-

“Provided that all those persons who had already been granted unconditionally the up-graded pre-revised pay scale and drawing the same before date of notification of the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-technical Posts) Ordinance, 2013 (Haryana Ordinance No.6 of 2013) viz. the 10th December, 2013, shall continue to draw these pay scales, as a measure personal to them.”

11. The proviso comes to the rescue of persons who have already been granted 'unconditionally' the up-graded pre-revised pay scale and 'are drawing' the same before 10.12.2013. Only such persons shall continue to draw these pay scales as a measure personal to them. The petitioner relies on this proviso in protection of his technical pay scale.

12. The order of the Superintendent of Police, Jhajjar dated 22.3.2013 (Annex.P-8) has been passed purportedly in compliance of the directions of this Court in the petitioner's earlier CWP No.1397 of 2013.

A perusal of the aforesaid order dated 22.3.2013 (Annex. P-8) reveals that it is a recommendation or advice to the higher authority competent to take the decision as it is recorded that the pay scale of the petitioner “may kindly be fixed in the Technical Pay Scale of Rs.4000-6000 and Revised Pay Rule-2008 Rs.5200-20200+GP Rs.2400 from the date of appointment i.e. w.e.f. 8.9.1998”. The Superintendent of Police was only a recommendatory authority as compliance of the directions of this Court in the order dated 24.1.2013 had to be made by the Director General of Police, Haryana. The Director General of Police, Haryana has passed the order dated 17.5.2013 (Annex.P-9) whereby the claim of the petitioner for grant of technical pay scale has been declared not to be covered under the government instructions. The relevant part of the order dated 17.5.2013 is reproduced as under:-

“The brief facts of the case are that Shri Satyapal was appointed as Mason on 8.9.1998 in the Police Department having educational qualification matric pass without ITI certificate. He has claimed the technical pay scale of Rs.4000-6000 w.e.f. 8.9.1998 i.e. the date of appointment.

According to Govt. instructions issued vide letter no.6/23/3PR (FD) 88 dated 23.8.1990 and dated 26.7.1991, the pay scales of Rs.750-940, 775-1025, 800-1150, 950-1400, 950-1500 were modified to pay scale of Rs.1200-2040 w.e.f. 1.5.1990 and further revised to pay scale of Rs.4000-6000 w.e.f. 1.1.1996 for technical posts in various departments for which a minimum educational qualification prescribed is Matric with ITI Certificate/Polytechnic. However, the State Govt. have also issued instructions vide letter no.6/83/2009-3PR (FD) dated 9.8.2010, in which, it has been decided to grant the benefit of pay scale of

Rs.1200-2040 notionally w.e.f. 1.5.1990 and actually from issuance of the letter i.e. 9.8.2010 to those employees whose qualification was not matric with ITI and they were appointed prior to 1.5.1990 on technical post having qualification Matric with ITI under the provisions of service rules/draft service rules/qualification prescribed otherwise.

Shri Satyapal was appointed as Mason on 8.9.1998 i.e. after 1.5.1990, having educational qualification of Matric without ITI Certificate. He does not possess the prescribed educational qualification i.e. Matric + ITI Certificate/polytechnic required for grant of technical pay scale of Rs.4000-6000.

Therefore, the claim of the petitioner for grant of technical pay scale of Rs.4000-6000 w.e.f. 8.9.1998 is not covered under Govt. Instructions as mentioned above. Hence, the claim of petitioner is hereby rejected being devoid of any merit.

A copy of this order shall be supplied to the petitioner free of cost.

Sd/-

(Shriniwas Vashisht)

Director General of Police,
Haryana

Panchkula

Date: 17.5.2013”

13. The question which falls for consideration is whether the order dated 17.5.2013, declining the prayer of the petitioner for grant of technical pay scale on the ground that the petitioner does not possess the prescribed educational qualification i.e. Matric + ITI certificate/Polytechnic required for grant of technical pay scale of Rs.4000-6000 w.e.f. 8.9.1998 as he was appointed on the aforesaid date, is legal and valid and whether the Proviso to Section 4 of the Act of 2014 gives protection to the petitioner. I now proceed to answer the question.

14. The fact of the matter is that the petitioner approached this Court in January, 2013 and directions were issued to decide his representation dated 5.11.2012 and before that time he had not actually been granted “unconditionally” the upgraded pre-revised pay scale and was drawing the same before the appointed date viz 10.12.2013. The order of the Superintendent of Police was not the final order and it is the order dated 17.5.2013 passed by the Director General of Police, Haryana which is the final order settling rights as far as the department is concerned. Can it be said then that the petitioner is protected by the proviso to Section 4 of the Act. The order of the Director General of Police is prior to 10.12.2013, the relevant date. The plain language of the proviso shows that the benefit would not be vested as an accrued right on the petitioner to receive the technical pay scale which can be enforced by a mandamus. Therefore, the only question which deserves examination is the decision of the Director General of Police, Haryana on merits. On a perusal of the order of the Director General of Police, Haryana dated 17.5.2013 I do not find any palpable error of reasoning in its conclusion although there is no pointed reference to the provision. But all the same, the petitioner was appointed after 1.5.1990 and he did not hold the prescribed qualification i.e. Matric with ITI Certificate/Polytechnic nor does which is requisite to grant of technical pay scale of Rs.4000-6000. The Act has brought about a sea change on the rights to technical pay scales. It cannot be said that the petitioner is entitled in law as a matter of right to the technical pay scale claimed as he has not been unconditionally granted the pay scale to be protected as a measure personal to him. The order passed by the Superintendent of Police, Jhajjar has merged into the order of the Director General of Police,

Haryana and is rendered non-existent and surplus. Previous case law would thus be of no help in the changed scenario, the field being occupied by the letter of the law in the Act.

15. For the foregoing reasons, I do not find any merit in this petition which is accordingly dismissed.

15.1.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>No</i>