

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.16913 of 2016
Date of decision:20.02.2020

Gurcharan Singh and others ... Petitioners

Vs.

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. R.K.Malik, Senior Advocate with
Mr. D.S.Maan, Advocate
for the petitioners.

Mr. Vikas Mohan Gupta, Addl.A.G.Punjab.

SUVIR SEHGAL, J.

Petitioners have filed the instant petition *inter alia* for quashing letter dated 12.02.2013 (Annexure P-6) to the extent respondent No.1 has restricted their claim by not approving the pay bill as fixed by the Speaker of Vidhan Sabha and for issuance of a writ in the nature of mandamus directing the respondents to grant them revised pay scales equivalent to that of Record Restorers and Clerks w.e.f. 01.10.2011, the date from which the pay scales of both these categories were revised alongwith all consequential benefits. A further writ in the nature of mandamus has been sought for directing the respondents to grant pay scales to the petitioners as laid down in Punjab Vidhan Sabha Secretariat Service Rules, 2013 (Draft Rules), (hereinafter referred to as 'Draft Rules'), with a further writ of mandamus

directing respondents to grant approval for the pay scales of the petitioners as fixed by the Speaker, Vidhar Sabha, vide letter dated 10.07.2012 (Annexure P-5) so that the District Treasury can grant pay scales as granted earlier from 09.07.2012 to March 2013. Still further, writ of mandamus has been sought directing respondent No.1 to decide the legal notice dated 19.04.2016 (Annexure P-9) in accordance with the Draft Rules.

Facts leading to the filing of the present petition are that the petitioners are serving in the Punjab Legislative Assembly as 'Watch and Ward Assistants' in pay band of ₹5910-20200+1900 (grade pay). They have been working on their posts since the last 28 years. As per Punjab Civil Service (Revised Pay) (First Amendment) Rules 1998, the pay scales of the petitioners were equivalent to that of Record Restorers and Clerks. The 'Watch and Ward Assistants' i.e. the petitioners, Record Restorers and Clerks were given the same starting scales. The petitioners claim that as per the information received by them under the Right to Information Act, 2005, the pay scales of the petitioners and Clerks were same from 1986 till 2016 and that the respondent-department after 5th Pay Commission, had awarded pay scales to the petitioners as equivalent to the Clerks for the period from 09.07.2012 to March 2013. Thereafter, the department stopped giving revised pay scales as equivalent to that of Record Restorers and Clerks. Various representations were submitted by the petitioners including representation (Annexure P-2). The Speaker, Vidhan Sabha has full and exclusive administrative control and financial powers in respect of the

Legislature Secretariat and this power has been conferred upon him under Rule 15 of Draft Rules. A reference has also been made to Appendix 'D' where the pay of the Record Restorers and Watch & Ward Assistants has been kept as same. A recommendation (Annexure P-4) was made by the Speaker to grant pay scale to the petitioners as equivalent to that of Clerks.

Vide D.O. Dated 10.07.2012 (Annexure P-5), the Speaker had written to the Finance Minister to grant the pay scale to the petitioners equivalent to that of Record Restorers and Clerks. The Under Secretary, Department of Finance, vide its letter dated 12.02.2013 (Annexure P-6) addressed to the Secretary, Punjab Vidhan Sabha stated that the recommendations made in the letter, Annexure P-5, exceeded the recommendations of the 5th Pay Commission and the recommendations had been made by the Vidhan Sabha at its own level without consulting the Finance Department, therefore, the pay as recommended by the 5th Pay Commission be sanctioned. Thereafter, the Secretary, Vidhan Sabha, vide letter dated 05.03.2013 (Annexure P-7) wrote to the Finance Department regarding awarding financial benefits to staff working in the Punjab Legislative Assembly but no action was taken thereon. The District Treasury Officer, vide its letter dated 15.03.2013 (Annexure P-8), communicated that advice be obtained from the Finance Department and intimated that no bills be prepared without getting opinion. In such a situation, the petitioners served a legal notice dated 19.04.2016 (Annexure P-9) which was followed by a reminder dated 07.06.2016 (Annexure P-10). By its reply dated 04.07.2016 (Annexure P-11), the respondents took a

stand that qualifications of the posts of the petitioners were different from that of Clerks and the above matter has been referred to the Department of Finance.

Upon being served, the respondents filed a joint reply wherein it was denied that salary of the Clerks was equivalent to that of Watch and Ward Assistants. It was further submitted that academic qualification for the Clerks is higher as compared to Watch and Ward Assistants. Still further, the respondents submitted that 6th Pay Commission has been constituted by notification dated 24.02.2016 and the Chairman of the Commission has already been appointed and that the matter has been referred to 6th Pay Commission. All issues of anomaly in pay scales are to be considered by the Commission and the petitioners have to approach the 6th Pay Commission in this regard. It was further submitted that the recommendation for granting of higher pay scale to the petitioners had been made by the Punjab Vidhan Sabha in anticipation of approval by the Finance Department. However, the Finance Department did not agree to the same and therefore, the pay scale of the petitioners was reversed.

Replication to the written statement was filed by the petitioners wherein they reiterated their stand and further relied upon the pay scale of the Record Restorers to submit that the pay scale of the petitioners is equivalent to that of Record Restorers.

Learned senior counsel appearing for the petitioners has argued that pay scale of the petitioners was equivalent to that of Record Restorers and Clerks throughout from 1986 to 2011 and even 5th Pay Commission had

awarded equivalent pay scales to the petitioners for the period from 09.07.2012 to March 2013. In such a situation, on the basis of the recommendation of the 5th Pay Commission, the equivalence in the pay scale could not be disturbed. He has placed reliance upon Division Bench judgments of this Court in **Haryana State Biologists Association Vs. The State of Haryana 1994(4) RSJ 444** and **Ram Pal Vs. State of Punjab 1996(4) RSJ 549** to contend that once parity in pay scales had been granted and had been continuing since a long time, the same could not be disturbed. His further argument is that the Speaker had full and exclusive administrative and financial powers in respect of the State Legislature under the Draft Rules and once recommendation had been made by him, the same was binding and had to be given effect to.

Per contra, State counsel has argued that there was no parity in the pay scale of petitioners with that of Clerks and the essential education qualification of Clerks was higher than that of Watch and Ward Assistants. A further submission was made that 6th Pay Commission has now been constituted and the matter has been referred to it. He has made a reference to the judgment of the Hon'ble Supreme Court in **State of West Bengal and another Vs. West Bengal Minimum Wages Inspectors Association and others 2010(5) SCC 225** to submit that the principle of 'equal pay for equal work' is not a fundamental right and the same depends upon the nature of job and duties etc.

I have considered the rival submissions.

The issue of grant of parity in pay scale is no longer *res integra* and stands settled by the Hon'ble Supreme Court in number of judgments. In **Mew Ram Kanojia Vs. All India Institution of Medical Sciences and others 1989(2) SCC 235**, the Hon'ble Apex Court had held that in coming to the conclusion as to whether the same pay scale has to be granted for two posts, regard has to be had, not only on the duties and functions but also on the educational qualifications prescribed for the two posts. It would be apt to reproduce here the observations of the Hon'ble Apex Court:-

“7. Even assuming that the petitioner performs similar duties and functions as those performed by an Audiologist, it is not sufficient to uphold his claim for equal pay. As already observed, in judging the equality of work for the purposes of equal pay, regard must be had not only to the duties and functions but also to the educational qualifications, qualitative difference and the measures of responsibility prescribed for the respective posts. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of 'Equal Pay for Equal Work' would not apply.”

In **Government of West Bengal Vs. Tarun K. Roy and others 2004(1) SCC 347**, the Hon'ble Supreme Court held that Article 14 read with Article 39(d) of the Constitution of India envisages doctrine of

'equal pay for equal work' but the doctrine does not contemplate that only because the work is same, irrespective of educational qualifications or other relevant considerations, it would apply automatically. The Court further held that holders of higher educational qualification can be treated as a separate class, it amounts to reasonable classification on the basis of different educational qualifications. Equality clause as contained in Article 14 will have no application where persons are not similarly situated or where the classification is based upon reasonable differentia.

In the case of **State of West Bengal (supra)**, the Hon'ble Supreme Court was of the opinion that in case at an earlier point of time two posts were carrying the same pay scale, it would not mean that after the revision of pay scale, the parity in the pay scale should necessarily be maintained. It was further held that the benefit of higher pay scale can be claimed only upon establishing that person holding the post were discharging similar duties, functions, had same responsibilities and educational qualifications etc. It has been held by the Hon'ble Supreme Court in para 17, as under:-

“17. It is now well-settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those

categories of posts. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust. The respondents have neither pleaded nor proved that the holders of post of Inspectors (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) were discharging duties and functions similar to the duties and functions of Inspector-AMW. Hence,

the prayers in the original writ petition could not have been granted. In fact, that is why the learned single Judge rightly held that whether the posts were equivalent and whether there could be parity in pay are all matters that have to be considered by expert bodies and the remedy of the respondent was to give a representation to the concerned authority and the court cannot grant any specific scale of pay to them.”

In Hukum Chand Gupta Vs. Director General, ICAR and others AIR 2013 (SC) 547, the Apex Court held that there cannot be any 'straightjacket formula' for holding that two posts having the same nomenclature would be given the same pay scale. It further held that prescription of pay scales on particular posts is a complex exercise and requires the assessment of the nature and quality of the duties performed, responsibilities involved, even though the posts may be referred to by the same name. The Hon'ble Supreme Court was of the view that these are the matters which are to be gone into by the expert bodies like the Pay Commission and the Courts were not equipped to undertake such an exercise.

In the backdrop of the above settled position of law, the facts of the present case deserve to be examined. The petitioners claim that their pay scales have been at par with Clerks from 1986 onwards and to fortify this fact, they have placed reliance upon the information Annexure P-1 received by them under RTI. An examination of the information given in Annexure

P-1 as well as the stand taken by the respondents in the written statement shows the position which emerges is as follows:-

Date	Clerk	Watch and Ward Assistant
01.01.1986	950-1800 Initial start Rs.1000/-	950-1800
01.01.1996	3120-5160/- Initial start Rs.3220/-	3120-5160
01.01.2006	5910-20200+1900 Grade Pay. Initial revised Basic Pay 7890/-	5910-20200+1900 Grade Pay. Initial revised Basic Pay 7810/-
01.10.2011	5910-20200+2400 Grade Pay. Initial Start 9850/-	
01.12.2011	10300-34800+3200 Grade Pay	

An examination of the table reproduced above shows that the pay scales of the petitioners were never at par with that of Clerks, rather the initial start of Clerks was always higher than that of petitioners. In other words, Clerks have always been placed higher than the Watch and Ward Assistants, in so far as the grant of pay is concerned.

In the replication, the petitioners have relied on the pay scales of Record Restorers to claim parity with them but even this will not advance the case of the petitioners in view of the position of law noticed above. There is no pleading to the effect that the nature of job, duties and responsibilities, educational qualification, experience, the mode of recruitment etc. of the Watch and Ward Assistants is similar to that of Record Restorers and Clerks. Not only this, even if the pay scale of two posts were same at one point of time and had continued to be so over the years, even on revision, the parity in pay scales does not necessarily have to

be maintained. In this view of the matter, there is no merit in the claim of the petitioners.

Counsel for the petitioners had relied upon a Division Bench judgment of this Court in **Haryana State Biologists Association (supra)**. The petitioners in the said petition had claimed parity with members of HCMS-II and Dental Surgeons. The Division Bench had relied upon a decision taken by the Government to provide parity in the pay scale of the employees of two categories and accordingly, it had been held that when the pay scale of one category was revised, the other category of employees could not be deprived of the higher pay scale. This judgment was followed by another Division Bench in **Ram Pal (supra)**. The petitioners in Ram Pal's case and their counterparts were appointed in the same selection process and after selection, some persons had been posted in the Agriculture Department and others in Economics and Statistical Organisation and yet some in the Fisheries Department. That is how the Division Bench had come to the conclusion that the parity in the pay scale of all the three categories deserves to be maintained. That is not the situation in the instant case, rather the factual position as has emerged from the facts noticed above is totally different.

The assigning of the pay scale to a particular post is matter which has to be dealt with by a body which comprises of experts like the Pay Commission. The Writ Court does not have the necessary expertise to go into such an elaborate exercise of equation of pay scales. As observed by

the Hon'ble Supreme Court in **State of West Bengal (supra)**, it is always open to the petitioners to submit a representation to the Pay Commission for granting of pay at par with the posts of Clerks/Record Restorers.

The next argument raised by senior counsel for the petitioner is that reference made by the Finance Department in its letter dated 12.02.2013 (Annexure P-6) to the Punjab Vidhan Sabha Secretariat Service Rules, 2007 is misplaced as these rules were quashed as ultra vires Article 187 of the Constitution of India by a Division Bench of this Court in **Smt. Shashi Mishra and others Vs. Punjab Vidhan Sabha, Chandigarh and others 2013(1) SCT 426**. It was submitted that Speaker has full administrative and financial powers in respect of the Legislature Secretariat. Reliance was placed upon the Draft Rules. The admitted position is that Draft Rules have not been notified. There is nothing on the record to show that there is any intention on the part of the Government to enforce these Rules in future. Therefore, recourse cannot be taken to the Draft Rules. In such a situation, no reliance can be placed by the petitioners upon the Draft Rules to contend that the Speaker has wide powers or for that matter even on the Annexures to the Draft Rules to say that higher pay scales had been granted to the petitioners thereunder.

As the 6th Pay Commission has now been constituted and its recommendations are awaited, the petitioners can always avail the remedy of submitting a representation to it. The writ petition is accordingly

disposed of leaving it open to the petitioners to submit a comprehensive representation to the Pay Commission making out a case for seeking pay equivalent to that of Clerks or Record Restorers.

(SUVIR SEHGAL)
JUDGE

February 20, 2020
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes