

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

RSA-666-2020 (O&M)
Date of decision: 20.04.2022

State of Haryana through Collector, Sirsa and others Appellants

versus

Naresh Kumar Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rohit Arya, DAG, Haryana.

Mr. B.S.Mittal, Advocate
for the respondent.

Manjari Nehru Kaul, J.(Oral)

The appellants-defendants are assailing the judgment and decree dated 31.08.2018 passed by the First Appellate Court vide which the appeal filed by the plaintiff was allowed and the appellants-defendants were directed to pay the arrears along with all consequential benefits with interest @ 12% per annum from the date of filing till its actual realization.

For the sake of convenience, the parties to the lis hereinafter would be referred to by their original position in the suit.

2. The case in brief as set out by the plaintiff may be noticed as thus. The plaintiff joined the respondent-Department as a Helper on 01.12.1979. He was promoted as a Mechanic on 05.07.1999 before retiring from service on 30.06.2016 on attaining the age of superannuation. At the time of his superannuation, the plaintiff was working under defendant No.3-General Manager, Haryana Roadways Sirsa. The plaintiff instituted the suit

in question for declaration and mandatory injunction to the effect that he was entitled to step-up his pay equivalent to that of his juniors and thus, entitled to get his salary re-fixed alongwith arrears etc. The defendant-department did not consider his claim and later on refused to admit the claim of the plaintiff. Hence, the principle that senior employee cannot be paid less than his/her junior as it will be violative of Article 14 of the Constitution of India since he was given less pay than his juniors, namely Vinay Kumar, Nand lal, Surjeet and Palwinder who too were working as mechanics under defendant No.3.

3. On being put to notice, the defendants submitted that according to the Haryana Abolition of Distinction of Pay Scale between technical and non-technical post Ordinance, 2013 and the notification dated 11.03.2014, the plaintiff-respondent was not entitled to the technical pay. It was submitted that any technical pay given after the aforesaid Ordinance and notification would be in violation of law.

4. On the basis of material and evidence led, the trial Court dismissed the suit of the plaintiff. However, in appeal the learned Appellate Court reversed the findings recorded by the trial Court and held that the plaintiff was entitled to step up of his salary equivalent to his juniors and was also entitled to get his salary fixed accordingly. The Appellate Court also directed the defendants to pay the arrears along with all consequential benefits with interest @ 12% per annum from the date of filing till its actual realization.

5. Learned Counsel for the defendants have reiterated the

submissions made and stand taken by them before the Courts below. It has been submitted that the plaintiff could not have been given the technical pay scale as the grant of the pay scale would have been violative of law in view of the Haryana Abolition of Distinction of Pay Scale between technical and non-technical post Ordinance, 2013 and notification dated 11.03.2014. He has further submitted that since the plaintiff had not approached any Court for the grant of technical scale like the other employees with whom he is seeking parity, the trial Court had rightly dismissed the suit filed by the plaintiff.

6. Learned Counsel for the plaintiff while reiterating his pleaded case before the Courts below has submitted that it is an admitted case of the defendant-department that the employees namely Vijay Kumar, Nand Lal, Surjeet and Palwinder were junior to the plaintiff as they were admittedly appointed on a later date but were still drawing more salary than him. He has further submitted that the defendant-department could not stop him from claiming parity in pay with the other employees as admittedly when his juniors were granted the benefit of higher pay scale, the plaintiff was still in service. Besides this, it has also been urged that the appeal filed by the appellant deserves to be dismissed on the ground of unexplained and inordinate delay of 410 days.

7. I have heard the learned counsel and perused the relevant material on record.

8. It is a matter of record that four employees namely Vijay Kumar, Nand Lal, Surjeet and Palwinder, who were appointed on a later

date than the plaintiff, were drawing more salary than him. Still further, it has not been disputed rather admitted by the State counsel that when higher pay scale was given to those four employees in the year 1991 and 1992, when the plaintiff was still in service. As per the settled law, no junior employee is entitled to a higher salary than his senior, more specifically if the senior employee was still in service when such higher salary was granted to his juniors. Still further, this Court does not find force in the submissions made by the State Counsel with respect to the plaintiff not being entitled to the higher salary as he had failed to approach this Court for the redressal of his grievance.

8. It needs to be reiterated as has also been held by this Court in ***Satbir Singh vs. State of Haryana, (CWP No.4382 of 2002) decided on 21.03.2002*** that no employee can be deprived of the benefits, which stand extended to other employees, who are at par with him, merely on the ground that he had not approached any Court for a similar relief. It would be apposite to reproduce the relevant extract from the said judgment, which is as under:

“15. The cumulative effect of the above settled principles is that the State must avoid discrimination in grant of service benefits to the members of the same cadre identically situated. If the employees had not approached the Court but the judgments otherwise pronounced relating to the same matter have attained finality, the State must show its grace and in fact carry out its implicit duty to grant benefit to the other members of the cadre.”

9. As a sequel to the above, this Court finds no reason to differ

with the findings recorded by the Lower Appellate Court. Accordingly, the present appeal being devoid of any merit, stands dismissed. The judgment and decree passed by the Appellate Court is affirmed.

Since the main appeal stands dismissed no separate order is required to be passed in the application for condonation of delay. All pending applications stands disposed of.

20.04.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No