IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: April 18, 2022
CWP-12803-1991 (O&M)

Dharam Pal

….Petitioner

versus

The Haryana State and others

….Respondents

CWP-17821-2007 (O&M)

Dharam Pal

….Petitioner

versus

The Haryana State and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Nitin Kumar, Advocate for the petitioner.

Mr. Sharan Sethi, Additional AG Haryana.

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ARUN MONGA, J.

Vide this common order and judgment, I intend to dispose of the above-mentioned two writ petitions filed by petitioner-Dharam Pal since not only the facts are similar but the law points and the issue raised therein are also common.

2. **CWP-12803-1991** – Grievance of the petitioner herein is directed against an administrative order dated 08.11.1990 (Annexure P-4) vide which his representation seeking to revise his pay as Senior Instructor in the scale of Rs.225-500 w.e.f. 19.02.1972 and further to sanction him pay scale of Rs.600-1100 w.e.f. 01.02.1982, was rejected. Prayer has thus been made for issuance of a writ in the nature of Certiorari and/ or otherwise passing appropriate orders to quash the impugned order dated 08.11.1990 (Annexure P-4) with a further

prayer to pay arrears of pay accruing to the petitioner w.e.f. 01.04.1979 alongwith interest.

3. Claim of the petitioner essentially is premised on the contention that he has been meted out hostile discrimination in violation of the settled principle of Equal Pay for Equal Work.

4. Succinct facts first. Petitioner was selected by the then Subordinate Services Selection Board, Haryana as a Foot Wear instructor and he joined as such on 19.02.1972 in the Industrial Training Department, Haryana. He continued to serve as Foot Wear instructor till October 1982 when he was declared surplus as there were no admissions in the leather trade in Industrial Training Institute at Kaithal. After being declared as surplus, petitioner was adjusted as Assistant in the Industrial Training Department and he continued to work as such. On 23.03.1982, an administrative decision Annexure P-1 was taken by the Director, Industrial Training, Haryana and conveyed to the Principal/ Divisional Incharge instructors of Industrial Training Institutes at Haryana including respondent No.3 i.e. Principal, Industrial Training Institute, Kaithal where the petitioner was working. In Annexure P-1, it was stated that all instructors are to be given pay scales from 23.02.1962 (160-8-240/10-330); from 01.02.1969 (225-15-360/20-500) and from 01.04.1979 (525-1050).

5. Pursuant to the above removal of pay anomaly amongst the instructors and benefit of re-fixation of pay was given by the State alongwith arrears thereof to all the instructors w.e.f. 01.04.1979 as is borne out from letter dated 15.03.1982 (Annexure P-2) issued by the office of Commissioner and Secretary, Industrial Training Department, State of Haryana conveying as below:-

"*After careful consideration Government has decided that the pay scales of all the instructors appointed in the Indl. Training Institute irrespective of the trades to which they are appointed should be considered to have been revised in the year 1962, in accordance with the Government Memo No.19(153)-51-II-61/2752 dated the 23rd February, 1962. Accordingly, the pay of those instructors who had not been given the benefit of revision made in 1962 should be fixed in the following manner:-*

a) The pay of the Instructors should be fixed in the pay scales of Rs.160-8-240/10-330 assuming that their grades were also revised in the year 1962.

b) the pay should then be fixed in the scale of Rs.225-25-360/20-500 w.e.f. the date this scale came into force.

c) keeping the above two facts in view, their pay should be determined as on 31.3.1979 i.e. immediately preceding the revision of pay scales w.e.f. 1.4.1979.

d) Their pay then should be fixed in the pay scales of Rs.525-1050 revised w.e.f. 1.4.79.

3. Government has also decided that the instructor shall not be entitled to receive the arrears of pay on account of increasing their pay prior to 1.4.79. They shall, however, be entitled to receive the arrears of pay accruing to their w.e.f. 1.4.70 onwards."

6. Petitioner was though working as an instructor since 19.02.1972 but his pay was fixed in the scale of Rs.160-400 instead of Rs.225-500 despite the pay anomaly instructions dated 23.03.1982 *ibid*. Resultantly, he felt discriminated against, kept pursuing his matters with the administrative authorities for the necessary corrections, but to no avail. Finally, he submitted a written representation dated 30.04.1990 (Annexure P-3) claiming as below:-

"*a. I had been worked from 19.2.72 to 8/81 that is a period of 9½ years, as Instructor Foot Wear. I was drawing pay scale of Rs.160-400 but Sh. Hira Lal Instructor who retired in 1980 and Sh. Surinder Kumar Instructor Stenography English now working in Industrial Training Institute, Ambala were getting the pay of Senior Instructors pay scale of Rs.225-500. It is worthwhile to mention here that in 1982 all the instructors were made at Par in the pay scale of Rs.225-500 retrospectively from 1962 and concerned instructors were paid arrears. But similar arrangement was not made in I.T.C. Cadre and disparity in pay scale of Seniors and Juniors Instructors continued. Therefore, I continue to draw pay in the scale of Rs.160-400 and on the other side Sh. Hira Lal and Surinder Kumar draw salary in the scale of Rs.225-500. Because of the disparity I had to suffer a loss to thousands of rupees which is unjustified and against the rules.*

3. Apart from this I have not been allowed benefit of Equal pay for Equal work in the pay scale of 600-1100 Equivalent to the Industrial Trianing Institute Instructors from 1.2.87 onwards though I had worked 19.2.1972 to 8.81 in I.T.C. Cadre and from 9/81 to 12/82 in another Institute/ R.A.T.C. Mahindergarh and Craft Instructor Foot Wear. I am deprived of the above said pay scale from 1.2.1981.

4. My basic pay should be determined from 19.2.72 onwards as under:-

Sr. No.	*Date*	*Pay Scale to be fixed.*
1.	*19.2.72.*	*225/500*
2.	*1.4.72*	*525/1050*
3.	*1.2.81*	*600/1100*
4.	*1.1.86*	*1400/2600.*"

7. However, his representation was rejected by Director of Industrial Training/ respondent No.2 vide impugned order dated 08.11.1990 (Annexure P-4) in the following terms:-

> "*2. In the year 1982 there was no admission in the Leather Trade, therefore Sh. Dharam Pal and four other Instructors were declared surplus and were adjusted against the post in accordance with the orders of the Government. Therefore, the demand of the petitioner/ applicant seeking pay scale equivalent to Instructors is not acceptable. You are requested to inform the employee about the case.*"

8. Petitioner filed a writ petition assailing the aforesaid rejection of his representation. In the return filed to the writ petition, the impugned order has been justified *inter alia* on the ground that "*the petitioner was appointed through Subordinate Services Selection Board, Haryana as Foot Wear Instructor in the grade of Rs.160-10-280/15-400 at Industrial Training Centre, Pundri and joined his duty on 19.2.72 A.N. There were two types of grades of Instructors in the department. One was for Industrial Training Institute Cadre and the other was for the Industrial Training Centres Cadres. Both cadres have different grades. Prior to 1.2.69, there were two types of grades of Instructors working in Industrial Training Institutes cadre, one was 120-200 for those who were working as Junior Instructors and second was 160-330 for those who were*

working as Senior Instructors. In the year 1982, the Government has revised the grades of all the Instructors working in the Industrial Training Institutes irrespective to their trades vide their letter No.1/17/80-IT dated 15.2.82 w.e.f. 23.2.62 and the pay scale of those Instructors was fixed accordingly as per letter attached P-2. The grade of the Instructors working in Industrial Training Centres was not revised according to the above cited letter. So, the petitioner was not entitled for grade, which were given to the Industrial Training Institute, Instructors."

9. In the course of earlier proceedings of the writ petition, following of the two orders were passed by my learned Brother Amol Rattan Singh, J. then seized of the matter, wherein certain observations were made which are relevant for the purpose of adjudication of the controversy in hand and are as under:-

Order dated 02.11.2017

"*Learned counsel for the State seeks time to take instructions and to place on record the statutory rules governing the service of the petitioner, both as an Instructor in the ITI Centres Cadre, as also as an Assistant in the ITI Cadre, at the relevant period of time.*

Adjourned to 23.11.2017.

The rules pertaining to the service of Instructors in the ITI Cadre, would also be produced in Court on the next date of hearing.

A photocopy of this order be placed on the file of the other connected case."

Order dated 24.11.2017

"*Pursuant to the order dated 02.11.2017, a set of rules has been produced by the learned State counsel, which are seen to be notified on 12.02.1998.*

The petitioners' claim being for the period 1972 to 1982, in terms of the instructions Annexures P-1 and P-2, even if there were no statutory rules notified under the proviso to Article 309 of the Constitution prior to 1998, obviously there would have been some set of executive instructions on the basis of which appointments were made in a particular pay scale, in different cadres in the respondent department.

Learned State counsel would produce in Court the relevant instructions showing that, as a matter of fact, there were two different cadres, i.e. the Industrial Training Centre and the

> *Industrial Institutes cadres, in which Instructors were paid different pay scales, as is contended before the Court.*
>
> *Adjourned to 10.01.2018.*
>
> *A photocopy of this order be placed on the file of the connected case.*"

10. In this background of the case, I have heard the rival contentions of the learned counsels which are more or less on the lines of the pleadings. I shall now proceed to render my opinion hereinafter alongwith the reasons thereof.

11. First and foremost, let us advert to the intent and content of the administrative instructions dated 23.03.1982 vide which pay anomaly of the different pay-scales being granted to the same set of instructors was removed. It would be rather apposite to reproduce the same in verbatim as below:-

> "*A copy is sent to all Principal/ Division Incharge Instructor, I.T.Is Haryana.*
>
> *In the year 1962 pay scale of Instructors working in different trades were increased which created disparity in the pay scale of Instructors.*
>
> *The disparity were removed by the aforesaid order of the Government and it is to be understood from 1962 that pay scale of all the Instructors have been settled in the grade of 160-8-240/10-330 and with this the disparity in the pay scale which continued upto 25.11.75 also ends. Therefore the instructors are to be given pay scale as mentioned below against the representative dates:-*
>
> | | | |
> |---|---|---|
> | *1.* | *23.2.62* | *160-8-240/10-330* |
> | *2.* | *1.2.69* | *225-15-360/20-500* |
> | *3.* | *1.4.79* | *525-1050.* |
>
> *Copy of the letter of the year 1962 by which the pay scale were determined 160-330 is enclosed herewith. All Institute in the state of Punjab are ordered to give revise the pay scale. The orders granting revise pay scales with effect from 1.2.69 and 1.4.79 by the Government are already with the Institutes.*
>
> *As mentioned above the pay of all the Instructors has been settled in the revised pay scale dated 23.2.1962, 1.2.69 and 1.4.79. Therefore, all the instructors relating to the pay scale w.e.f. 1.4.79 are to be paid arrears.*
>
> *You make it sure that the pay scale of the concerned Instructors is determined accordingly and their case be sent to the Accounts Officers in the directorate. It should be kept in mind that the pay scale are to be settled properly and no unnecessary delay should be therein deciding the case.*"

12. A perusal of the above would reveal that difference in the pay-scale of all the instructors was removed and they were all equated and put at par *qua* their salaries.

13. Further careful reading of the removal of pay anomaly instructions would reveal that there is no distinction between one set of instructors who belong to Industrial Training Institute (ITI) cadre and the other set who belong to Industrial Training Centre (ITC) to justify the action of the respondents in not granting the benefit of removal of the pay anomaly to the petitioner despite his being an instructor in ITC on parity with the instructions working in ITI.

14. Furthermore the record would reveal that the respondents do not deny that the nature of duties discharged by the petitioner were similar to those of instructors in it is in the same Department i.e. Department of Industrial Training. As such, I am of the opinion that there was no intelligible differentia so as to have any reasonable nexus with the justification resorted by the respondents to deny pay parity to the petitioners for working in Industrial Training centre vis-à-vis the ones working in Industrial Training institutes. The stand of the respondents is that there are two types of pay grades for the instructors working in the same Department i.e. Department of Industrial Training. As noted above, despite specific directions vide order dated 02.11.2017 as reproduced hereinabove, commanding the respondents to produce the relevant Rules pertaining to the service of instructors in ITI cadre and ITC cadre at the relevant time when the petitioner was serving as instructor in ITC, no such Rules have been produced. On the contrary, respondents produced a set of Rules which were notified on 12.02.1998. Clearly, the same are not relevant to the petitioner's claim for the period 1972 to 1982. It was in this background that vide a subsequent order dated 24.11.2017, respondents were once again

directed to produce the relevant instructions, if there were no Rules so as to show that their factual assertion was correct to the extent that there were two different cadres i.e. Industrial Training Centre and Industrial Training Institute, and further to show that the instructors working in these two cadres were paid different pay-scales. However, the respondents despite ample opportunity, have not produced any such instructions and/or Rules or any notification or any administrative order showing that there were two different pay-scales. In the absence thereof, this Court is left with no choice but to draw an adverse inference in favour of the petitioner.

15. As regards seeking pay parity on the principle of Equal Pay for Equal Work, the petitioner has also made a specific averment in Para 6 of the writ petition that all the instructors who were performing the same duties along with the petitioner had got their arrears of pay accrued to them w.e.f. 01.04.1979. All of them had got their pay fixed according to the Government letter dated 23.03.1982 (Annexure P-1), but the arrears of pay accruing to the petitioner w.e.f. the same date were not paid despite the fact that he had performed the same duties as the other instructors in the Department of Industrial Training. In response, in the corresponding para of the written statement, the respondents have not denied the said specific averment of the petitioner, but have only stated that the grade of the instructors working in the ITI cadre were revised and not the instructors who were appointed in a separate cadre i.e. ITC and thus, the petitioner was held not entitled to any arrears. As already noted hereinabove, the respondents have failed to establish that there were indeed two separate cadres and/ or different pay-scales for the instructors working in the ITI and ITC. Therefore, the stand taken in the written statement

is a complete moonshine in the absence of any supporting Rules or administrative orders and is held to be legally not sustainable.

16. There is another aspect of the matter, which leads to the conclusion that the stand taken by the respondents in their written statement flies in the face of the administrative instructions dated 23.03.1982 (Annexure P-1). The said instructions while removing the pay anomaly do not talk of their being two sets of instructors nor there is even a remote mention that pay anomaly was being removed only with respect to instructors working in the ITI and not ITC. On the contrary, said instructions clearly choose the word "instructors" repeatedly working in different grades and even the copy of the said instructions was conveyed to all the concerned be it Industrial Training Institutes or Industrial Training Centres wherever the instructors were working in the same Department of Industrial Trainng in the State of Haryana.

17. As an upshot of the above discussion, writ petition is allowed. Impugned order dated 08.11.1990 (Annexure P-4) is quashed. Respondents are directed to accord the petitioner the benefit of fixation of his pay in the pay-scale of Rs.225-500 w.e.f. 01.04.1979 on parity with the counterparts who were working as instructors in the Department of Industrial Training. As noted above, the anomaly of pay was removed vide instructions dated 23.03.1982. Keeping this in view, it is directed that arrears of the pay to the petitioner be paid alongwith interest at the rate of 5% per annum from the due date till payment except interest upto 30.06.1982. Necessary exercise be carried out within a period of two weeks from today.

18. **<u>CWP-17821-2007</u>**

Petitioner, in this writ petition, is seeking quashing of impugned orders (Annexures P-3, P-4, P-12, P-13 and P-14) dated 03.12.1996, 03.12.1996, 26.07.2007, 08.01.2007 and 14.02.2007, respectively, passed by respondent No.4, vide which his pay has been wrongly fixed and his pension/ retiral benefits reduced and recovery has been ordered. Further prayer has been made seeking issuance of a writ in the nature of Mandamus directing the respondents to correctly fix/compute his retiral benefits/pay.

19. Vide orders dated 03.12.1996 (Annexures P-3 and P-4), the petitioner was granted 1st higher standard scale w.e.f. 01.01.1994, i.e. of Rs. 1600-2660 (revised to Rs. 1640-2900 w.e.f. 01.04.1995), by respondent No.4, counting his service to be more than 10 years but less than 20 years from 1982 i.e. the date on which the petitioner was absorbed as Assistant in the respondent Department. The respondent department did not count the service of the petitioner rendered as Footwear Instructor from 19.02.1972 to 07.10.1982 with the same department for reasons best known to them. If this period of service was counted the petitioner had rendered more than 20 years of service in the identical scale and thus would have been entitled to 2nd higher standard scale of grade Rs. 1640-2900 w.e.f. from 01.01.1994. This grade of Rs. 1640-2900 was revised to Rs. 2000-3200 w.e.f. 01.04.1995. The Principal, Industrial Training Institute, Sirsa, vide letter dated 06.09.1995 (Annexure P-2), had written to respondent No. 4 to fix the pay scale of the petitioner by giving him 2nd higher standard scale w. e. f. from 01.01.1994. The relevant instructions for grant of higher standard scale of grade are Annexure P-5.

20. Aggrieved by the illegal and arbitrary action of the respondents in not granting him 2nd higher standard scale of grade Rs. 1640-2900 w.e.f. from 01.01.1994 and of Rs. 2000-3200 w.e.f. 01.04.1995, the petitioner submitted representation dated 07.03.1997 (Annexure P-6). No response was received to this representation, despite many reminders.

21. Petitioner superannuated on 30.11.2006 as Superintendent (Class-II) (Gazetted Post), after putting in 34 years 9 months and 11 days of service. During his entire tenure of service the petitioner did his work honestly, diligently and to the satisfaction of his officers.

22. After retirement on 30.11.2006, the petitioner was illegally and arbitrarily not paid his pension and retiral benefits and the respondents did not fix his pay after giving him benefit of 2nd higher standard scale of grade Rs. 1640-2900 w.e.f. from 01.01.1994 and of Rs. 2000-3200 w.e.f. 01.04.1995. The petitioner made further representations dated 15.12.2006 (Annexure P-7), 24.04.2007 (Annexure P-8), and also served two legal notices dated 12.05.2007 (Annexures P-9 and P-10), 15.07.2007 (Annexure P-11) to the respondents to release pension and other retiral benefits after giving him 2nd higher standard scale from 01.01.1994. On the representations of the petitioner fresh Pay Fixation orders dated 26.07.2007, 08.01.2007 and 14.02.2007, Annexures P-12, P-13 and P-14, respectively were passed by wrongly fixing his pay without giving him benefit of 2nd higher standard scale of grade Rs. 1640-2900 w.e.f. from 01.01.1994 and of Rs. 2000-3200 w.e.f. 01.04.1995, which led to filing of instant CWP No.17821 of 2007. Notice of motion in the writ petition was issued on 26.11.2007 and recovery was ordered to be stayed. Vide order dated 14.10.2009, the writ petition was admitted.

23. Written statement dated 28.07.2008 was filed by the respondents claiming that fresh pay fixation order dated 15.07.2008 has been passed. The said pay fixation order dated 15.07.2008 had also been passed without giving the benefit of 2nd higher standard scale of grade Rs. 1640-2900 w.e.f. from 01.01.1994. Consequently, the writ petition was amended to include the challenge to the fresh pay fixation order dated 15.07.2008 (Annexure P-14B). Amended writ petition was filed on 10.3.2009. Written Statement to the amended writ petition was filed by the respondents on 16.07.2019.

24. In reply to the amended writ petition, it has been submitted that the pay scale of Rs. 1600-2660 meant for the post of Deputy Superintendent was modified to Rs. 1640-2900 w.e.f. 01.04.1995 vide government instructions dated 14.06.1995. The said benefit could not be granted to the petitioner and other similarly situated Deputy Superintendents. After detailed examination of the instructions dated 14.06.1995, the modified scale of Rs. 1640-2900 w.e.f. 01.04.1995 has been granted to the petitioner as well as to other similarly situated Deputy Superintendents vide department letter dated 29.05.2008, which was further revised to Rs. 5500-9000 w.e.f. 01.01.1996. The petitioner was promoted on the post of Superintendent on 14.06.1999 in the pay scale of Rs. 6500-10500. It has also been submitted in the reply that all the retiral benefits have already been received by the petitioner. It was found that an excess amount of Rs. 38,257/- is liable to be recovered from the petitioner, out of which a sum of Rs. 20,957/- with withheld from his gratuity.

25. It was admitted that prior to the speaking order dated 15.07.2008, the pay of the petitioner was fixed in contravention to the provisions of Service Rules/ Government Instructions. However, now the same has been re-fixed in accordance with the Rules/ Instructions.

26. It has also been mentioned in the reply that service rendered by the petitioner as Footwear Instructor from 19.02.1972 to 01.08.1982 was not taken into account while granting the benefit of higher standard scale. The post of Footwear Instructor was declared surplus due to closure of RATC Scheme. It was pointed out in the reply that there were two types of Instructors (i) regular appointed Instructors in ITI Cadre and (ii) Instructors appointed under RATC Scheme. The petitioner was appointed under the RATC Scheme. The terms and conditions of both these sets of appointment were altogether different. After closure of RATC scheme the post of Footwear Instructor was no more in existence. However, the petitioner was adjusted on the post of Assistant keeping in view the fact that the pay scale of the Footwear Instructor and that of Assistant were identical. Since it was a fresh entry of the petitioner in the cadre of Assistant, he was placed at the tail in the seniority list of Assistants. Hence, the question of counting of past service of the petitioner on the post of Footwear Instructor does not arise. However, the service rendered by the petitioner on the post of Footwear Instructor has already been counted for the purpose of pension and other retiral benefits. The prayer is for dismissal of the writ petition as all the benefits to which the petitioner was entitled under the provisions of Rules/ Instructions, have already been granted to him and clarified vide order dated 15.07.2008.

27. From the conceded factual position, it emerges that the petitioner's grievance is twofold as under:-

A. Wrong fixation of his pay and seeking correction of anomaly thereof.

B. Quashing of the recovery orders which were passed pursuant to the re-fixation of his pay.

28. As regards the relief at 'A', I have already rendered my opinion in CWP-12803-1991 as above and to that extent, the grievance of the petitioner already stands mitigated and no further indulgence is required. Respondents have already been directed to pass appropriate orders for fixation of petitioner's pay in accordance with the directions issued in the said writ petition.

29. *Qua* the relief at 'B', I am of the opinion that the recovery orders were passed pursuant to the correction carried out by the administrative authorities *qua* the salary of the petitioner when he was serving in Class-III or Group 'C' employee. As envisaged in ratio rendered by Apex Court in **State of Punjab and others versus Rafiq Masih AIR 2015(SC) 696** to the extent of period of service as Class-III or group 'C' employee, no recovery can be made from him. In view of the law laid down in **Rafiq Masih's case (supra)**, no recovery can be effected in such a case, provided, of course that the employee belongs to either Class III or IV service. Relevant extract from the same is reproduced hereunder:

> "*It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we made, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' Service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> *(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as*

> *would far outweigh the equitable balance of the employer's right to recover.*"

30. As an upshot, since admittedly, there is no misrepresentation, concealment or fraud on the part of petitioner, impugned recoveries cannot be effected in view of the law laid down in **Rafiq Masih's case (supra)**, petitioners being Class-III employees.

31. In the aforesaid premise, CWP-17821-2007 is allowed and the impugned recovery orders to the extent the same are sought to be implemented retrospectively quashed. CWP-12803-1991 stands allowed in terms of Para-17 above. Respondents are required to pass appropriate administrative orders for re-fixation of petitioner's pay accordingly.

32. Disposed of.

(ARUN MONGA)
JUDGE

April 18, 2022
vs/mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No