

301

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

**CWP-16100-1999 (O&M)
Date of decision: 18.04.2022**

Rajesh Kumar and others

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate for the petitioners.

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J.

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus commanding the respondents to rectify the pay anomaly *qua* the petitioners, working as Laboratory Technician (direct recruits) and grant them same pay scale as is admissible to the Laboratory Technician (Malaria) appointed by way of promotion.

2. Succinct facts first. Petitioners (four in number) were appointed as Laboratory Technician (Malaria) by way of direct recruitment being qualified for the said post. They joined as such w.e.f. 08.02.1999, 25.01.1999, 28.01.1999 and 01.02.1999, respectively. Earlier the post of Laboratory Technician (Malaria) used to be filled up by way of promotion from Sanitary Inspector now re-designated as Multi Purpose Health Supervisor (Male). Prior to 01.01.1986, pay scale of the post of Sanitary Inspector was Rs.420-600/-, and for the post of Laboratory Technician (Malaria), it was Rs.480-760/-. Later, w.e.f. 01.01.1986, pay scale for the post of Laboratory Technician was revised from Rs.480-760 to

Rs.1200-2040 and pay scale of the feeder post of Sanitary Inspector now re-designated as Multi Purpose Health Supervisor (Male) was revised to Rs.1400-2600. All the Laboratory Technicians (Malaria) who were appointed by way of promotion from the post of Sanitary Inspector were granted the pay scale of Rs.1400-2600 w.e.f. 01.01.1986. Subsequently, said benefit was however withdrawn. Being aggrieved, one Sh. Dina Nath, Laboratory Technician (Malaria) preferred a CWP-7753-1997 which was allowed by the Division Bench of this Court, vide order dated 10.11.1998 (Annexure P-1). Against the said judgment, respondent-State of Haryana filed an SLP and the same was dismissed vide an order dated 05.04.1999 (Annexure P-2). Accordingly, all the Laboratory Technicians (Malaria) who were appointed by way of promotion from the post of Sanitary Inspector were granted the scale of Rs.1400-2600 w.e.f. 01.01.1986 and the Laboratory Technicians (Malaria) who were appointed by way of direct recruitment were granted the scale of Rs.1200-2040. Pay scale of Rs.1400-2600 was further revised to Rs.5000-7850, while pay scale of Laboratory Technicians (Malaria) who were appointed by way of direct recruitment was revised from Rs.1200-2040 to Rs.4000-6000.

3. Aggrieved against the pay disparity, petitioners served a demand notice dated 04.10.1999 (Annexure P-3) raising grievance that the action of the respondents is arbitrary but their notice was to no avail claiming that no discrimination can be made in the pay scale between the persons who were appointed either by direct recruitment or by promotion, the petitioners filed the present petition.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioners would argue that no distinction can be made in pay scales between direct recruit and promotees, therefore, all

the Laboratory Technicians (Malaria) whether appointed by way of promotion or direct recruitment are entitled to the same scale.

6. On the other hand, learned State counsel would argue on the lines of stand taken in the pleadings and interim order. He contended that petitioners were appointed as Laboratory Technicians (Malaria), by way of direct recruitment, on 08.01.1999, 25.01.1999, 28.01.1999 and 01.02.1999, respectively. At the relevant time, the Haryana Health Department miscellaneous staff (Malaria) Group 'C' service Rules, 1998 (for short 'Rules of 1998') were applicable and as per Rule 9, there were two modes for recruitment to the said post and the same reads as under:-

- “(i) *by direct recruitment, or*
- (ii) *by transfer or deputation of an official already in the service of any State Govt. or the Government of India.”*

In the appendix 'A' of said Rules, pay scale of Rs.4000-6000 had been mentioned and the same was granted to the petitioners. He would argue that while applying for the said post, said pay scale was well within the knowledge of the petitioners and accordingly, they had applied for and accepted appointment too. Thus, the petitioners should be estopped by their own act and conduct. The pay scale of Laboratory Technicians (Malaria) was revised after keeping in view several facts which read as under:-

- “(i) *method of recruitment;*
- (ii) *level at which recruitment is made;*
- (iii) *the hierarchy of service in a given case;*
- (iv) *minimum technical and educational qualification required;*
- (v) *avenues of promotions;*
- (vi) *nature of duties and responsibilities;*
- (vii) *the horizontal and vertical relativities with similar jobs;*
- (viii) *public dealing;*
- (ix) *satisfaction level;*
- (x) *employer's capacity to pay etc.”*

While evolving the pay structure, for the Haryana Govt. employees, all the above mentioned factors had been considered. He would further argue that the post of Laboratory Technician (Malaria) was being filled by promotion form amongst the Sanitary Inspectors before 18.07.1990. It was re-designated as Multipurpose Health Supervisor. But after 18.07.1990, the post of Laboratory Technician (Malaria) is being filled up 100% by direct recruitment through Subordinate Service Selection Commission, Haryana. All the Laboratory Technician (Malaria) working in the Department are getting the same pay scale i.e. Rs.4000-6000/- w.e.f. 01.01.1996. Therefore, the present petition deserves to be dismissed.

7. Undisputedly all the Laboratory Technicians (Malaria) appointed by way of promotion were granted the scale of Rs.1400-2600 w.e.f. 01.01.1986 and the same was further revised to Rs.5000-7850 w.e.f. 01.01.1996. But the Laboratory Technicians (Malaria) appointed by way of direct recruitment were granted scale of Rs.1200-2040 w.e.f. 01.01.1986 and were further granted the scale of Rs.4000-6000 w.e.f. 01.01.1996. Even the respondents have not disputed that the qualification prescribed for direct recruitees is higher in comparison to the promotees. The qualification for the direct recruitee is Matriculate with Science and one year diploma in Medical Laboratory Technology while qualification for promotee is Matric and six month training of Sanitary Inspector. There is no difference in duties and responsibilities of direct recruitees and promotees. In this context, reliance may be had to Division Bench judgment of this Court in the case of **Krishan Chand Bhardwaj versus State of Haryana**, reported as 2002 (2) SLR 540 (Annexure A-2) wherein it is held that no distinction can be made in the scale for those appointed on the same post from two different sources i.e. direct recruits/promotees.

8. Even otherwise, granting of scale of Rs.4000-6000 w.e.f. 01.01.1996 to the direct recruitee Laboratory Technicians (Malaria) appears to be per se arbitrary, since at the relevant time the feeder post for Laboratory Technicians (Malaria) was Multipurpose Health Supervisor and the higher pay scale of Rs.1400-2600 w.e.f. 01.01.1986 and scale of Rs.5000-7850 w.e.f. 01.01.1996 was provided for Laboratory Technicians (Malaria). Pay scale of higher post cannot be less than the scale of the feeder post. In **Dina Nath's case (supra)** appended as Annexure P-1 while allowing the petition, following observation was made by this Court: -

“It cannot be appreciated as to how the Laboratory Technicians which was a promotional post from the post of Multipurpose Health Supervisor, would be placed in the scale lower than Multipurpose Health Supervisor (Male). For the foregoing reasons, we allow this petition and quash the order dated 0805.1997 (copy Annexure P-5).”

9. In light of the aforesaid, if Multipurpose Health Supervisor which is a feeder post for Laboratory Technician (Malaria) is getting the scale of Rs.5000-7850 w.e.f. 01.01.1996, then there is no justification to grant a lower pay scale of Rs.4000-6000 w.e.f. 01.01.1996 to the Laboratory Technicians (Malaria) appointed by way of direct recruitment. If the Laboratory Technicians (Malaria) appointed by way of promotion are getting the scale of Rs.5000-7850 w.e.f. 01.01.1996 then the direct recruitee Laboratory Technicians (Malaria) are also entitled to the scale of Rs.5000-7850 w.e.f. 01.01.1996 onwards. Reliance may also be had on the judgments rendered in the case of **Sunder Lal Jain versus State of Haryana**, reported as 1995 (1) SCT 564 expressing the same view that pay scale of higher posts should be higher in comparison to the feeder post.

10. Not to grant the same scale which is admissible to the feeder post is on the face of it arbitrary and unreasonable. In somewhat similar **CWP-3737-1997** titled as **Vipin Kumar and others** versus **Sant Longowal Institute of Engineering & Technology**, the controversy was that all Technicians appointed prior to 01.09.1993 were granted scale of Rs.1400-2600 and those who were appointed after 01.09.1993 were granted scale of Rs.1400-2300. This Court held that this classification was arbitrary and unreasonable and all the Technicians whether appointed prior to 01.09.1993 or thereafter, were entitled to same scale. Relevant part of the said judgment dated 27.8.2013 is reproduced herein below:-

“On due consideration of the matter, I am of the view that the stand of the respondents is highly unjust. In the affidavit submitted, they have sought to justify the admissibility of the pay-scale of R.1400-2600 on the ground that the petitioners are not having the qualifications at par with the Technicians of the NIT. At the same time, they have sought options from the Technicians who were similarly situated. The persons with equal qualifications were permitted the change of pay-scale and were granted central scale. If that be so, then it is not understandable as to why the petitioners having similar qualifications and performing the same functions are being denied the pay-scale as admissible to similarly situated employees. It is not the case of the respondents that the functions performed by the petitioners are in any way variable from the ones being performed by the employees getting a distinct pay-scale than the petitioners. Thus there seems to be no justification in denying the claim of the petitioners.

That apart, the whole stand of the respondents is illogical. Firstly, they create a discrimination between the employees/Technicians who were given employment prior to 1.9.1993 and those appointed subsequent to 1.9.1993. Subsequently, the situation was further worsened by the Government of India by initially saying that the pay-scales of the employees of the Institute are having different qualifications than the ones working in the NIT, but at the same time by giving options to them, they permitted them higher pay-scale without even any remote reference to the difference in qualifications which they now insist upon to deny the petitioners their claim.

It is evident that within the very same Institute, the respondents have carved out an artificial distinction for the employees having similar qualifications and performing the same functions on the question of admissibility of pay-scales which is clearly hit by Article 14 of the Constitution of India. Being

discriminatory, such an action is therefore, unsustainable in the eyes of law.

Consequently, the impugned action of the respondents is declared to be unsustainable being not based on an intelligible differentia. The petitioners are held entitled to the pay-scales as admissible to the Technicians who had been appointed prior to 1993. The petitioners are thus held entitled to the pay-scales as was being made admissible to the employees of the Institute appointed prior to 1.9.1993 i.e. Rs.1400-2600.”

11. Judgment dated 27.08.2013 rendered therein was upheld vide Division Bench judgment dated 10.03.2014 (Annexure A-5). Subsequently, Supreme Court dismissed the SLP as well which had been filed to assail the Division Bench judgment of this Court.

12. As an upshot it is held that the direct recruitee Laboratory Technicians (Malaria) are entitled to the same scale as admissible to the Laboratory Technicians (Malaria) appointed by way of promotion.

13. To that extent, the writ petition is allowed and the respondents are directed to accord the benefit of same pay-scale to the petitioners w.e.f. the date, it was made applicable to the promotee Laboratory Technicians. The benefit shall be allowed to the petitioners from the dates they assumed charge of their respective posts. Arrears of the salary to the petitioners be paid alongwith interest at the rate of 6% per annum from due date till payment. Needed exercise be carried out within a period of 60 days from today.

(ARUN MONGA)
JUDGE

April 18, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No