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

CWP No. 7434 OF 2013

DATE OF DECISION: 17.11.2022

Sandeep Wadhwa and others
Versus

...Petitioners

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Deepak Saini, Advocate and
Ms. Vibha Nagar, Advocate
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioners herein, *inter alia*, seek issuance of a writ in the nature of Certiorari for quashing order dated 18.02.2013 (Annexure P-7), vide which their claim for grant of pay scale of Group 'C' from the date of their regularization as claimed in the legal notice dated 28.06.2012 has been rejected, purportedly by ignoring judgment dated 15.07.2010 (Annexure P-2) passed by this Court in RSA No. 1688 of 2010. Further prayer has been made for issuance of a writ in the nature of mandamus directing the respondents to grant pay scale of Group 'C' post i.e., Rs.950-1500/- from the date of regularization.

2. Petitioner No. 1 was appointed as Pump Attendant on 01.10.2003, as he was already working on daily wage basis since March, 1995. Later, his post was converted into Bill Distributor and thereafter, designated as Laboratory Attendant on 16.6.2008. Petitioner No. 2 joined as Laboratory Attendant on daily wage basis on 01.02.1989 and petitioner

No. 3 joined on the same post on 01.04.1992. However, services of petitioners No.2 and 3 were regularised with effect from 01.02.1996 in the pay scale of Rs.700-940/-.

3. One Raj Kumar, who was also working on the post of Laboratory Attendant filed a civil suit seeking revised pay scale of Rs.950-1500/- from the date of regularization of his services from 01.04.1993. The said suit was decreed vide judgment and decree dated 24.12.2008. Feeling aggrieved, State went into appeal and vide judgment and decree dated 08.04.2009 (Annexure P-1), the judgment and decree passed by the trial Court was confirmed. Aggrieved against the said judgment/decreed, State preferred appeal vide RSA No. 1688 of 2010 which was also dismissed vide judgment dated 15.07.2010 (Annexure P-2) upholding the judgments and decrees passed by both the Courts below. Relying upon the said judgment, the petitioners then moved representation dated 21.01.2011 (Annexure P-3) seeking revised pay scale of Rs 950-1500/- from the date of regularization of their services as per Haryana Revised Pay Scale Rules, 1887. Petitioners filed CWP No. 16271 of 2012 which was disposed of vide order dated 27.09.2012 (Annexure P-6) with a direction to decide the Legal notice dated 28.06.2012 (Annexure P-5) within a period of four months. Vide impugned order dated 18.02.2013 (Annexure P-7), their claim has been rejected. Hence, the instant petition.

4. In the return filed by respondents no. 2 and 3, following stand has been taken:

“1. xxx

The service or the post of Pump Attendant and bill Distributor are governed under the Haryana Public works Department, Public Health Branch Circle Cadre mechanical

Establishment (Group D) service Rules, 1995 (hereinafter called as Rules, 1995).

The Rule 7 of Rules 1995 prescribed the qualification for the post of Pump Attendant, Lab Attendant and Bill Distributor as per Annexure-B of the rules, 1995 the qualification for the Post.

(a) Qualification for direct recruitment: - Compulsory knowledge of Hindi and English Physically fit and field test.

(b) Qualification for appointment other than direct recruitment:- Compulsory knowledge of Hindi and English Physically fit and field test.

The post of Pump Attendant, Lab Attendant and Bill Distributor is Group D post which are having, different pay scale to the Group C Posts. As such the pay scale of Rs. 950-1500 meant for the Group C Post cannot be granted to the Group D Post. Copy of Rules 1995 is attached as Annexure R-I.

2. That the services of all 3 nos. Petitioners were regularized w.e.f. 01/10/2003, 01/02/1996 as Pump Attendant and Lab Attendant respectively in the pay scale of 750-940 under Haryana Public Works Department (Public Health Branch Circle Cadre Mechanical (Group-D)) Services Rule 1995. The Post of Pump Attendant, Lab Attendant & Bill Distributor is Group -D Post which are having pay scale of Rs.750-940. As such the pay scale of Rs. 950-1500 is meant for the Group-C Posts and cannot be granted to the Group- D posts. Hence the present suit is not maintainable and liable to be dismissed.

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4. That the fact of the case of Sh. Raj Kumar, Lab Attendant are distinguish with the present case as the Services of Sh. Raj Kumar, Lab Attendant were regularized w.e.f. 01/04/1993 prior to the notification of Haryana Public Works Department, (Public Health Branch Circle Cadre Mechanical (Group-D)) Service Rule 1995 notified vide notification dated 24/11/1995 whereas the services of Petitioners were regularized w.e.f. 01/10/2003 and 01/02/1996 as Pump Attendant, Lab Attendant respectively. Hence, the present suit is not maintainable and liable to be dismissed on this ground above.”

5. In the aforesaid background, order dated 23.09.2013 was passed by Rajiv Narain Raina, J. (as he then was in this Court), being relevant, same is reproduced herein below:

“Heard Mr. Saini and Mr. Nehra at considerable length on the issues arising for consideration of this Court.

It appears rather strange that 38 posts have been put mechanically grouped together in one lot in Appendix-A to the Haryana Public Works Department, Public Health Branch, Circle Cadre Mechanical (Group-D) Service Rules, 1995 in the same pay scale but may each justify different pay scales with reference to work/job content and nature of duties and responsibilities which perhaps may justify grant of higher or lower pay scale maybe with minor variations.

Mr.Saini, learned counsel for the petitioners points out that among 38 designated posts mentioned in Appendix-A at Sr.Nos.1 to 4 are those of Sweeper, Sewer Man, Sewer Man-cum-Chowkidar and Sewer Helper which carry the same pay scale as that of Laboratory Attendant, but with special pay of Rs.65 making them draw higher salary. The special pay to the four categories may be justified for reasons of arduous nature of duties they have traditionally performed working with offal. I do not think the petitioners can complain of that nor they do so in this petition. But it is equally hard to believe that sweepers must compulsorily have knowledge of English required by prescription of essential qualifications laid down in the rules blindly without thinking consciously.

That apart it also appears rather hard to appreciate or understand that the academic qualifications and experience for direct recruitment and promotion to all the 38 posts are worded identically. All posts require compulsory knowledge of Hindi and English, apart from physical fitness and "Filed Test" which may be a legislative slip for "Field Test". Mr.Saini submits that the total cadre of Laboratory Attendants in the respondent- department is three who are before this Court. There is one post of Laboratory Attendant (Matric) at Rohtak which is occupied by Raj Kumar who was regularized on 1.4.1993 before the promulgation of the 1995 Rules on 24.11.1995. Learned counsel submits that there are a large number of posts of Lab. Attendant in different departments, including in the Department of Health and Family Welfare, Haryana etc. who enjoy the higher pay scale of Rs.950-1500. As a result of decision of this Court, Ram Kumar is in the pay scale of Rs.950-1500 whereas the petitioners are in the lower pay scale of Rs.750-940 which scale is applicable to all 38 posts, and therefore, there are two scales operating in the same department although all the four Lab. Attendants perform the same duties and responsibilities. However, it needs examination by the rule making authority whether Lab. Attendants in the Department of PWD Public Health, Haryana discharge the same duties and responsibilities of their counterparts in other departments in their degrees of performance. This anomaly may itself require a re- examination/re-visit of the 1995 Rules and especially with respect to Appendices A and B and on the question inter alia of parity of pay scales resulting from the decision of this Court in the case of Raj Kumar and

to ease heartburn. The rules appear to be a product of poor legislative debate and drafting which ultimately lead to choking this Court. Let all these issues be carefully and consciously examined by the respondents or through a committee set up for the purpose and the result of deliberations be placed on record of this case on or before the next date of hearing.

Adjourned to 20.11.2013.

Copy of this order be given dasti to the learned counsel for the parties under the signatures of Bench Secretary of this Court”.

6. In compliance of orders of this Court, a Committee was constituted to examine the issue vide order dated 25.10.2013 passed by respondent No2/Engineer-in-Chief (Haryana), Public Health Engineering Department, Panchkula. Pursuant thereto, an affidavit of Shri M. K. Bansal, Superintending Engineer, Public Health Engineering Circle, Ambala Cantt. was filed wherein following stand has been taken:

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2. That the meeting of the Committee was held on 7.11.2013 and 15.11.2013. The above said Committee submitted its report to the Engineer-in-Chief, Haryana, Public Health Engineering Department, Panchkula on 15.11.2013. The Committee submitted the comparison of qualification and pay scales of the post of Lab Attendants in Public Health Engineering Department, Animal Husbandry, Higher Education Haryana, Higher Education College Cadre and Health Department. The Committee pointed out that the service rules of four departments have been framed separately by each department with their own knowledge and experience, so it needs no rectification at this stage. (Annexure-A)

3. That there exists a clear difference in the qualification and nature of the work of the said post in the various departments. Lab Attendant is Group-D post in Public Health Engineering Department. The qualification described in service rules of Public Health Engineering Department is as per necessity of circumstances under which these categories of officials have to work. The pay scales of all the Group-D posts and qualification thereof are the same service rules in Public Health Engineering Department. It has been decided that there is no need to rectify the service rules and pay scales given to post of Lab Attendants. The pay scale

given to petitioner is in order and at par with other Group-D employees in the department.”

7. Consequently what emerges thus is that the petitioners herein were initially appointed in Group ‘D’ and their services were also regularized subsequently in Group ‘D’. Albeit, by virtue of length of service in Group ‘D’ they were also accorded promotion in Group ‘C’. Naturally, they have been granted the benefit of higher pay scale in Group ‘C’ with effect from respective dates of their promotion. The claim of petitioners that they ought to be granted the group ‘C’ pay scale from the date of regularization would amount to regularizing their services in higher category than the one they deserve. Same is impermissible as per the regularization policy. In any case, as it would create uneven level playing field for the counter parts, who have not been accorded any such benefit. It is not a case of hostile discrimination, neither is it so pleaded nor is it even the argument.

8. In the premise, no ground for interference by this Court is made out.

9. Dismissed.

NOVEMBER 17, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No