

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

Date of decision: March 29, 2022

(1) CWP-27127-2016 (O&M)

Vijay Kumar

....Petitioner

versus

State of Haryana and others

....Respondents

(2) CWP-4576-2018 (O&M)

Vijay Kumar

....Petitioner

versus

State of Haryana and others

....Respondents

(3) CWP-29597-2017 (O&M)

Om Parkash

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Deepak Sonak, Advocate and
Mr. Parminder Singh, Advocate for the petitioner(s).

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Vide this common order, I intend to dispose of the aforesaid mentioned writ petitions, as common issues and facts are involved therein. For the sake of brevity, facts are being taken from CWP No.29597 of 2017.

2. Petitions herein, *inter alia*, are for issuance of a writ in the nature of Certiorari for setting aside the impugned order dated 25.10.2017 (Annexure P-

10) read with office note dated 29.09.2015 (Annexure P-7) pursuant where to the pay of the petitioners was reduced/re-fixed as a consequence of withdrawing the technical pay-scale of Rs.1200-2040/-, which was earlier granted to them w.e.f. 01.08.1995.

3. Succinct facts first. The petitioner was appointed on the post of T-mate on work charge basis with the respondent-Department w.e.f. 24.07.1978. He was promoted to the post of Electrician w.e.f. 29.12.1985. One Sh. Dharampal who was senior to the petitioner preferred a Civil Suit against the promotion of the petitioner on the ground that he was senior but ignored at the time of promotion. Said suit was decreed with a direction to the authorities to promote him w.e.f. 23.07.1984. State of Haryana as well as the petitioner filed appeal before learned Additional District Judge, Sonapat and vide judgment dated 10.12.1998, judgment & decree of the trial Court was modified. Said Dharampal approached this Court by filing RSA-1034-1993 and RSA-1044-1993. The same was allowed vide order dated 01.04.2014 and Dharampal had been held entitled for promotion to the post of Electrician w.e.f. 26.12.1985. Consequently, petitioner was reverted to the post of T-mate vide order dated 03.07.2015. Respondent No.4 had also issued a proposed office note dated 29.09.2015 vide which pay of the petitioner was re-fixed. Revised pay-scale of Rs.1200-2040/- was also withdrawn due to which petitioner started getting pay lesser than his juniors. Said office note was challenged vide CWP-22764-2015, which was disposed of vide order dated 19.04.2017 with a direction to the respondents to pass final order of re-fixation of the pay of the petitioner after receiving his explanation. Petitioner submitted a detailed representation dated 08.05.2017 (Annexure P-9) but the same was not accepted and respondent No.3

vide impugned order dated 25.10.2017 (Annexure P-10) rejected the representation. Hence, the present petition.

4. The position *qua* pay of the petitioners vis-a-vis their counter-parts who are stated to be junior to them emerges thus as below:-

<i>“Name</i>	<i>Date of Joining/ Post</i>	<i>Date of Promotion/ Post</i>	<i>Number in Seniority list</i>
<i>1. Petitioner (Om Parkash)</i>	<i>24.07.1978 as T-Mate</i>	<i>2.8.2006 as Electrician</i>	<i>Sr. No.37 & revised basic pay + GP 9940 + 2400 = 11340</i>
<i>2. Roshan Lal Yadav</i>	<i>29.05.1979 as T-Mate</i>	<i>20.03.2007 as Electrician</i>	<i>Sr. No.85 & revised basic + GP pay is Rs.21280</i>
<i>3. Raj Kumar</i>	<i>4.7.1981</i>	<i>10.07.2009</i>	<i>Sr. No.103 & revised basic pay + GP is Rs.21280</i>
<i>4. RajinderParsad</i>	<i>11.11.1985</i>	<i>9.5.2011</i>	<i>Sr. No.134 & revised basic pay + GP is Rs.18930</i>
<i>5. PurshotamDass</i>	<i>22.10.1991 as T-mate</i>	<i>Not promoted till date</i>	<i>Basic pay + GP Rs.18240</i>
<i>6. Ram Mehar</i>	<i>1.11.1991 as T-Mate</i>	<i>Not promoted till date</i>	<i>Basic Pay + GP is Rs.18240”</i>

5. Perusal of the aforesaid comparison of the salary of the petitioners vis-à-vis their juniors reflects that after re-fixation of their salary on reversion from the promotional post of Electrician to T-Mate resulted in their drawing lesser salary than their counter-parts/ juniors appointed later than the petitioners on the post of T-Mate. Concededly, it is not disputed that the petitioners’ date of appointment as T-Mate is prior to their counter-partswho are/ were drawing higher salary at the time of reversion of the petitioners as T-Mate.

6. In the return filed by the respondents, petition have been opposed primarily on the ground that reduction in the salary of the petitioners is their

own doing in as much as their having acquiescence to the reversion notices which were impugned by them in an earlier round of litigation vide CWP-8281-1994 which was since unequivocally withdrawn by them. The order passed therein while disposing of the petition as infructuous on the statement of learned counsel for the petitioners, is as below:-

*“Learned counsel for the petitioners submitted that in view of the judgment and decree passed by this Court in RSA-1034 of 1993 titled as Dharam Pal Vs. State of Haryana and others decided on 01.04.2014, nothing survives in the present petition and the same may be disposed of as having become infructuous.
Ordered accordingly.”*

7. It is pertinent to note here that the judgment rendered in RSA-1034-1993 mentioned in the aforesaid order had since attained finality inasmuch as promotion granted to Dharam Pal by the Department was upheld as a consequence of which the claim of the petitioners to continue on the promotional post stood rejected. As a consequence thereof, petitioners acquiesced to their reversion upon withdrawal of the writ petition and in terms thereof, they were reverted to the feeder post of T-Mate from which they had earlier been promoted as Electrician.

8. Learned State counsel strenuously argues that once they had acquiesced to their reversion as a natural consequence thereof their salary had to be re-fixed/reduced and they have accordingly, been assigned lesser pay-scale and it is too belated and does not lie in their mouth, at this stage, to re-agitate the reduction in the salary upon reversion.

9. In principle, the arguments canvassed by the learned State counsel cannot be faulted with and it is a reasonable justification that the salary of the petitioners, as a consequence of reversion, would be reduced and the petitioners were fully aware of the same while acquiesced to their reversion at the time of

filing of the writ petition. However, what seems to be reasonable is while reducing their salary, they were meted out with hostile discrimination creating unnecessary heartburn vis-à-vis their junior/ counter parts who were concededly appointed later than the petitioners on the post of T-Mate and yet under the rules where technical pay was admissible, they were given higher salary than the petitioners notwithstanding that the petitioners were also on the same post and were entitled to the technical pay-scale. In this connection, ***Section 4 of the Haryana (Abolition of Distinction of Pay Scale Between Technical and Non-Technical Posts) Act 2014***, is also relevant, which is reproduced hereinbelow:-

4 Withdrawal of instructions.- The entry at serial number 3 under 'common category posts' in the annexure to instructions bearing No. 1/54/2PR(FD)-82, dated 30-03-1982, at serial number 40 in annexure A to instructions bearing No. 6/23/3PR(FD)-88, dated 23-08-1990, No. 6/23/3PR(FD)-88, dated 26-07-1991 and No. 6/83/2009-3PR(FD), dated 09-08-2010 are hereby withdrawn and shall be deemed to have been withdrawn with effect from the date of their coming into force:

Provided that all those persons who had already been granted unconditionally the up-graded pre-revised pay scale and drawing the same before date of notification of the Haryana (Abolition of Distinction of Pay Scale between Technical and Non-technical Posts) Ordinance, 2013 (Haryana Ordinance No. 6 of 2013), viz the 10th December, 2013, shall continue to draw these pay scales, as a measure personal to them.

10. Perusal of the above section would reflect that regardless of the admissibility of the technical pay-scale even otherwise, petitioners on the ground of being on parity with their counter-parts are entitled to step up of their pay-scale.

11. Be that as it may, that part of controversy need not to be gone into as what has already been expressed by my learned Brother Augustine George Masih, J. who speaking for this Court in another similar case CWP-2023-2011 decided on 25.04.2012 where petitioners were similarly situated held as below:-

“The fact that petitioners were working on the post of Trade-man Mate prior to 01.05.1990 is not a dispute. Prior to the said date, there was no qualification, as such, prescribed for appointment to the said post. Petitioners being non-metric without ITI diplomas were, therefore, eligible and appointed on the said posts. Therefore, vide instructions dated 02.07.1991, pay scales were revised and modified T-Mates were denied this benefit. Similarly placed T-mates claimed the pay scale of Rs.1200-2010 w.e.f. 01.05.1990. The aspect with regard to the grant of technical grade to the employees who were working as T-mates was considered by a Division Bench of this Court in Raj Karan Vs. State of Haryana and others, 2003 (1) RSJ 119 against which an SLP preferred by the State was dismissed vide order dated 31.07.2007 and this Court relying on the judgment of this Court in Raj Karan’s case (supra) and the judgment of the Supreme Court in the case of B.N. Saxena vs. New Delhi Municipal Committee and others (1990) 4 SCC 205 proceeded to hold in Ved Parkash case (supra) (Annexure P-2) that employees appointed to the post prior to amendment prescription of a qualification as per the rules, if any, cannot be denied the benefit of pay fixation and pay revised of the said post on the basis of such amendment of the rules or prescription of rules after their appointment to the said post. The claim of the petitioners is covered by the ratio in Ved Parkash’s case (supra) and thus, the petitioners are entitled to the technical pay scale.

The judgments which have been relied upon the counsel for the respondents do not pertain to the same issue. The claim of the petitioners being covered by the ratio of the judgment of this Court in Ved Parkash’s case (supra) against which the SLP preferred by the State has been dismissed as also by the Division Bench of this Court in Raj Karan’s case (supra), which dealt with T-mates, the petitioners are entitled to the same benefit as has been granted in the said case.

Resultantly, these writ petitions are allowed in the same terms. Petitioners shall be entitled to the grant of technical pay scale w.e.f. 01.05.1990. Their pay be fixed accordingly. However, payment of arrears are restricted to 38 months prior to date of filing of the writ petition. Consequential benefits accruing be released to the petitioners within a period of one month from the date of receipt of certified copy of this order.”

12. It is not disputed that the facts in the present case are also similar to the ones observed in the aforesaid round of litigation by my learned brother. I see no difference as to why I should not allow the writ petitions accordingly, on parity with the petitioners in CWP-2023-2011. As against the aforesaid Single Bench judgment, an intra-court appeal was also filed which was dismissed

followed by the SLP which met the similar fate. To that extent since Single Bench judgment has since attained finality, writ petitions are allowed in the aforesaid terms. Petitioners shall also be entitled to monetary benefits restricted to 38 months' prior to filing of the writ petition.

13. As an upshot of the above discussion, impugned order is set aside with consequence to follow as already noted above. Arrears of salary be paid within a period of three months from today.

14. Photocopy of this order be placed on the connected case files.

15. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 29, 2022
vandana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No