

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

360

CM-3495-C-2022 in/and

RSA-5373-2018

Date of decision: 29.11.2022

Lala Ram

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. B.S. Mittal, Advocate for the appellant.

Mr. Rohit Arya, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

CM-3495-C-2022

Prayer in the application is for disposal of the appeal in terms of judgment dated 20.04.2022 (Annexure A-2) passed by this Court in RSA No.1457 of 2021 titled as 'State of Haryana through Collector, Sirsa and others Vs. Partap Singh' as the case of the appellant is covered by the aforesaid judgment.

For the reasons mentioned in the application, the same is allowed and the appeal is taken up on board for hearing today itself.

RSA-5373-2018

The appellant/plaintiff is assailing the concurrent findings recorded by both the Courts below vide which suit filed by him for declaration and mandatory injunction was dismissed.

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

In brief, the case as set out by the plaintiff may be noticed as thus. The plaintiff was an employee of Department of Transport,

Haryana wherein he was working as tyre man. The plaintiff joined on the post of helper in the office of respondent No.3 on 29.09.1981. Persons junior to the plaintiff, namely Bharat Bhushan, Gulshan Kumar and Ramji Lal who were also working as tyre men, were getting higher salary than the plaintiff. Bharat Bhushan and Gulshan Kumar had been working in the department since 01.11.1987 on regular basis in the office of respondent No.3. The above said three employees were in the pay band of Rs.3,600/- as against the pay band of the plaintiff which was Rs.3,200/- even though he was appointed prior in time. The plaintiff pleaded that being senior to the above three employees, he was entitled to step up his salary equivalent to his juniors. Grievance of the plaintiff was that denial by the defendants to step up his salary, equivalent to that of his juniors, was violative of principles of equal pay for equal work and Article 14 of the Constitution of India. Since, defendant department refused to admit his claim despite his repeated requests as well as a legal notice which was served by him upon the defendants, he was left with no other remedy but to file the suit in question.

On being put to notice, the defendant department submitted that as per Haryana Government Notification dated 11.03.2014, the Haryana (Abolition of Distinction of Pay Scale for Technical and Non-Technical Posts) Act, 2014 (for short, 'the Act') came into force and the Government instructions dated 30.03.1982, 23.08.1990, 26.07.1991 and 09.08.2010 by which the technical pay scale which had been given was withdrawn. It was submitted that if technical pay scale was given to the

plaintiff in the guise of stepping up of his pay similar to his juniors, this would be a violation of the provisions contained in the Act.

It was also submitted that as far as Ramji Lal, tyre man, was concerned, he had been given the technical pay scale as per decision of this Court in CWP No.770 of 2013 whereas the other two employees, Bharat Bhushan and Gulshan Kumar, tyre men, had been given the benefit of technical pay scale as per decision in CWP No.13632 of 2012. It was submitted that though the juniors were getting higher salary, however, the same could not be a norm for other employees to claim benefit since the above-mentioned employees had been given technical pay scale by virtue of the orders of this Court, as well as proviso to Section 4 of the Act.

From the evidence and other material on record, the Courts below dismissed the suit of the plaintiff on the ground that though three junior employees namely Bharat Bhushan, Gulshan Kumar and Ramji Lal had been no doubt held entitled to higher pay scale, however, it was pursuant to orders passed by this Court in CWP No.770 of 2013 and CWP No.13632 of 2012. The Courts below held that the plaintiff had failed to place on record any document to support his averments that he also deserved the same treatment as the other three employees who had been granted higher pay scale.

Learned counsel appearing for the plaintiff has at the outset submitted that the case of the plaintiff is squarely covered by the judgment rendered by this Court in RSA No.1457 of 2021 decided on 20.04.2022. He has further submitted that the SLP preferred by the

State of Haryana against the judgment rendered in RSA No.1457 of 2021, before the Hon'ble Supreme Court stands dismissed vide order dated 09.09.2022.

Furthermore, it has been vehemently argued that the plaintiff being senior to the above-mentioned employees has not been disputed by the defendant department. Learned counsel has submitted that the withdrawal of the instructions dated 30.03.1982, 23.08.1990, 26.07.1991 and 09.08.2010 by the defendant department vide which technical scale was given to other three employees would have no adverse effect on the case of the plaintiff because the right in favour of the plaintiff to salary equivalent to his juniors, had accrued on the day when his juniors were given the higher pay scale in the pay band of Rs.3,600/-. It was submitted that the plaintiff had never claimed technical pay scale but only was claiming parity of pay with his juniors.

Learned counsel appearing for the defendants department has reiterated his submissions and the stand taken before the Courts below. He has argued that the technical pay scale was given to the other employees only in pursuance to directions of this Court in CWP No.770 of 2013 and CWP No.13632 of 2012 preferred by them whereas plaintiff had no such document in his favour to substantiate his claim. Learned counsel has submitted that the plaintiff cannot claim benefit of technical pay scale given to the other employees because the distinction between technical and non-technical pay scale has since been removed by the State Government vide notification dated 11.03.2014 and technical pay scale given stands withdrawn.

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

It is a matter of record that three employees namely Bharat Bhushan, Gulshan Kumar and Ramji Lal who admittedly were junior to the plaintiff, were drawing more salary than him. It is settled law that a junior employee is not entitled to a higher salary than his senior particularly when the latter was in service when such benefit was given to the junior employees. No doubt, learned State counsel has reiterated that the benefit had been given to the three employees pursuant to the orders passed by this Court in various writ petitions, however, once the junior employees had been extended a higher pay scale, the same benefit could not have been denied to the plaintiff who admittedly had joined the defendant department prior in time. A Division Bench of this Court in ***Satbir Singh Vs. State of Haryana, (CWP No.4382 of 2002)*** ***decided on 21.03.2002*** has held that no employee can be deprived of the benefits which stand extended to other employees who are similarly situated with him merely on the ground that he had failed to approach any Court seeking 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.”

Learned State counsel has not been able to controvert the submissions made by the counsel opposite that the case of the plaintiff

is squarely covered by the judgment rendered by this Court in RSA No.1457 of 2021. He has also not been able to dispute that the SLP preferred by the State against RSA No.1457 of 2021 before the Hon'ble Supreme Court stands dismissed.

As a sequel to the above, the instant appeal is allowed and judgments and decrees passed by the Courts below are set aside. Defendant department is directed to treat the plaintiff at par with above mentioned three employees and grant him the pay scale equivalent to them.

29.11.2022

(MANJARI NEHRU KAUL)

Vinay

JUDGE

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