

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

**CWP No.1402 of 2019(O&M)
Date of Decision: 12.05.2023**

Shamsher Singh and others

.....Petitioners

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Ravinder Malik (Ravi), Advocate
for the petitioners.

Mr. Naveen Singh Panwar, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioners have preferred this writ petition under Article 226/227 of the Constitution of India for the issuance of a writ in the nature mandamus, directing the respondents to step up the pay of the petitioners at par with their juniors by calculating their entire service rendered by them with the respondents with effect of their respective dates of enlistment in service for the purpose of granting ACP scales in terms of Assured Career Progression Rules, 1998 and revised Assured Career Progression Rules, 2008. The directions be also issued to refix the pay of the petitioners accordingly at par with their juniors with effect from the date the juniors of the petitioners are

getting the benefit along with arrears of the same by extending the benefit of entire length of service by treating the benefit of technical pay scale as functional pay scale in view of judgment passed in **CWP No.7767 of 2016** titled **Birender Singh and others Vs. State of Haryana and others** decided on 15.03.2018.

[2]. With reference to the order dated 17.03.2016 passed in **CWP No.17578 of 2013** titled **Shamsher Singh and others Vs. State of Haryana and others**, learned counsel for the petitioners submits that the petitioners earlier filed the aforesaid writ petition for claiming the benefits of stepping up the pay at par with their juniors, who were working three steps lower than the petitioners. The stand of the respondents in the said writ petition was that the pay of the petitioners have been stepped up at par with their juniors and with regard to arrears, the matter was pending consideration. As per judgment of this Court dated 25.03.2014 passed in **CWP No.8587 of 2012** titled **Sandeep Kundu and others Vs. State of Haryana and others**, the benefit of arrears of 38 months prior to 11.04.2013 was granted to their juniors with whom the petitioners claimed for parity and with whom the pay has been stepped up.

[3]. The aforesaid writ petition was disposed of with the direction to the respondents to calculate the arrears of 38

months prior to 11.04.2013 as per judgment passed in **Sandeep Kundu and others case (supra)** within a period of two weeks and thereafter, payment be released to the petitioners within a period of two weeks from the date of receipt of certified copy of that order.

[4]. In pursuance of the aforesaid judgment, the pay of the petitioners was fixed/stepped up at par with their juniors vide order dated 28.11.2013 w.e.f. 01.05.1990. Technical pay scale was granted to the juniors by treating the same to be functional pay scale.

[5]. Thereafter, the order of granting functional pay scale was withdrawn to the extent of granting benefit from the date of initial enlistment vide order dated 14.10.2015. The said order was assailed by the juniors in **Birender Singh and others case (supra)** and the said writ petition was disposed of vide order dated 15.03.2018 on the ground that there was a development during pendency of the writ petition and the respondents had accepted the claim of the petitioners and decision was given to award ACP scales to the petitioners therein with effect from their initial date of appointments.

[6]. In the light of judgment passed in case of juniors, the petitioners made a representation regarding grant of ACP from the date of enlistment on 09.08.2018. The representation filed

by the petitioners was considered in intra-departmental communication addressed by the Director General of Police, Haryana to Additional Chief Secretary for removal of anomalies in basic pay in the light of judgment rendered in **Birender Singh and others case (supra)**.

[7]. Vide letter dated 03.05.2017 issued by the Additional Chief Secretary to Government of Haryana, Home Department to the Director General of Police, Haryana, it was proposed that all cases of similarly situated personnel may voluntarily be reconsidered immediately on the same lines and if found defective, then the corrective measure be taken immediately so as to avoid unnecessary litigation.

[8]. Owing to in-action on behalf of the respondents, the present writ petition came to be filed for the relief that the grant of functional pay scale in place of technical pay scale w.e.f. 01.05.1990 be made applicable from the date of initial enlistment of the petitioners.

[9]. During pendency of the present writ petition, the issue has been deliberated by the authorities in terms of intra departmental communication issued from Superintendent of Police, Telecommunication, Haryana, Panchkula to Director General of Police, Haryana in the context of removal of anomalies in basic pay. In terms of the aforesaid intra departmental communication, it was submitted that stepping up

of pay of the employees, who were serving as Head Constable, ASI, SI and Inspector as on 01.05.1990 is required because they were not granted first, second and third ACP in the technical pay scale. As per the aforesaid communication, their pay has to be fixed according to their functional pay scale on non-technical pay scale. The consideration was also made to two categories i.e. 'A' Constable and 'B' HC, ASI and SI. The cases of the petitioners fell under the 'B' category i.e. Head Constable, ASI and SI. 'A' category constables were considered in terms of their initial date of enlistment on 20.01.1989 in the pay scale of Rs.950-1400/- and ultimately, on account of grant of their ACP after completion of 24 years in the pay scale of Rs.5200-20200, the basic pay was assessed to be Rs.62000/- as on 01.07.2018, whereas in case of 'B' category, the date of enlistment was considered to be 15.10.1985 in the pay scale of Rs.950-1400/- and as on 04.06.2013 in the pay scale of Rs.9300-34800/- with Grade Pay of Rs.3600/- and the basic pay was assessed to be Rs.53600/- as on 01.07.2018.

[10]. Keeping in view the aforesaid comparative chart of 'A' and 'B' category, the anomaly was found in the basic pay of both the categories as on 01.07.2018 i.e. Rs.62000/- in case of 'A' category and Rs.53600/- in case of 'B' category.

[11]. Having admitted the anomaly, office of Director General of Police further wrote to Additional Chief Secretary,

Government of Haryana vide letter No.3037 dated 26.04.2019 for removal of anomalies of pay between juniors and seniors in the light of pendency of the present writ petition.

[12]. Despite the aforesaid opinion formed by the competent authority, needful in the context of removing the anomaly in basic pay was not done.

[13]. Notice of motion was issued on 18.01.2019 when the learned counsel for the petitioners placed reliance upon the decision dated 15.03.2018 passed in **Birender Singh and others case (supra)** and other connected matters. In the aforesaid writ petition, the petitioners therein who were not granted technical pay scale after being appointed as Wireless Operators filed the aforesaid writ petition and the Court was pleased to disposed of the writ petition and thereafter, the respondents accepted the claim of those writ petitioners and passed the necessary orders.

[14]. The present writ petition has been directed firstly for the relief regarding stepping up the pay of the petitioners at par with their juniors by granting them ACP scale by counting the entire length of service from the date of their initial enlistment. In case of juniors, this benefit was granted w.e.f. 01.05.1990 and thereafter, it was withdrawn. The juniors successfully assailed the action of the respondents and in **Birender Singh and**

others case (supra), the benefit was ultimately restored to the juniors, thereby granting the benefit with effect from the date of their initial enlistment.

[15]. In view of intra departmental communication dated 09.05.2019, proposing to remove the anomalies in basic pay and recommendation made thereafter for issuance of guidelines for removal of the aforesaid anomalies, the petitioners have brought on record the aforesaid documents as Annexures P-22 and P-23 along with CM No.7292-CWP of 2019. It appears from the record that the respondents are not averse to the grant of aforesaid relief, but the respondents have not finalized the issue at their own level so far.

[16]. This Court vide order dated 18.01.2023 passed the following order:-

“Perusal of Annexure P-16 letter memo dated 03.05.2017 issued by the Additional Chief Secretary to Government of Haryana, Home Department to the Director General of Police, Haryana would indicate that all cases of similarly situated personnel may voluntarily be reconsidered immediately on the same lines and if found defective, the corrective measure so suggested be employed so as to avoid unnecessary litigation. The aforesaid observations were made, particularly in the light of observations made by the Finance Department to determine the ACP settlement of the personnel by counting their regular and satisfactory service from the date of their initial entry into service as per HCS(ACP)

Rules 1998 or/and 2008 as the case may be considering the functional pay scale of the post to be Rs.1200-2040/- as on 01.05.1990 and its general revision accordingly in successive general pay revision. The aforesaid letter appears to have been seconded vide memo No.12545/CRC-1 dated 09.04.2019 issued by the Superintendent of Police, Telecom, Haryana, Panchkula to Director General of Police Haryana, endorsing the same incriminating information for consideration of the competent authority. Short reply has been filed to the main petition as well to CM No.9952-CWP of 2021. The subject matter of the aforesaid Annexures P-16 and P-22 has not been adequately responded to. Reply to CM No.9952-CWP of 2021 would indicate that Annexure P-22 is an internal communication between the respondents and the respondents did not consider it to be replied.

Filing of short reply without adverting to the para-wise pleadings is strongly deprecated. No further opportunity needs to be given to the respondents to deny the averments made in the petition, particularly in the light of the fact that the writ petition was filed in the year 2019 and till date, pleadings are not complete.

It appears that the respondent No.1 has not taken any decision in the context of Annexure P-22.

Let a specific stand be taken by the office of respondent No.1 in the context of Annexure P-22 by the adjourned date. No further adjournment shall be granted in any eventuality.

Adjourned to 16.03.2023.”

[17]. Respondent No.1 was required to show any specific

decision taken in the context of Annexure P-22 i.e. intra departmental communication dated 09.04.2019 between the Superintendent of Police, Telecommunication, Haryana, Panchkula and the Director General of Police, Haryana. Annexures P-22 and P-23 are the documents showing the tentative decision of the respondents for removal of anomalies as shown in the tabulated version given in Annexure P-22 itself.

[18]. In compliance of order dated 18.01.2023, the respondents have not pointed out any such stand taken in pursuance thereof, except a letter produced by the learned State counsel during course of hearing to show that the Director General of Police vide memo dated 08.05.2023 has requested the Government of Haryana, Finance Department and the Director Treasuries and Accounts, Haryana to look into the aspects and to constitute a committee and this process may take time.

[19]. Perusal of the aforesaid letter would show that the authorities at the helm of affairs is not inclined to take any such action of its own. It also appeared from the record of this writ petition that the respondents are waiting for some orders to be passed in this writ petition even after considering anomaly in basic pay of 'A' and 'B' categories with reference to material available with them. The claim of the juniors has already been accepted by the respondents for grant of benefit with effect from

the date of their initial enlistment. There is no ground to create any divergence from the claim of the juniors and the cases of the petitioners are to be considered on parity with their juniors for considering the benefits from the date of their initial enlistment. The technical pay scale is required to be considered as functional pay scale with effect from their initial enlistment.

[20]. For the reasons recorded hereinabove, this writ petition is allowed. The directions are issued to the respondents to consider and grant the benefit of fixing of pay of the petitioners at par with their juniors with effect from the date of their initial enlistment by treating the technical pay scale to be the functional pay scale for all intents and purposes. The needful in the context of releasing consequential benefits shall be done with a period of two months from the date of receipt of certified copy of this order.

[21]. All pending applications are accordingly disposed of.

12.05.2023	(RAJ MOHAN SINGH)
<i>Prince</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No