

**CWP-1842-2005 (O&M)
and other connected cases**

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2023:PHHC:066359

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

**CWP-1842-2005 (O&M)
and other connected cases
Reserved on : 21.04.2023
Date of decision: 08.05.2023**

Ranjit Singh and others

....Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S.Bal, Senior Advocate with
Mr. Dilshad Singh Gill, Advocate
for the petitioner (s) in CWP-1842-2005 (except
petitioner no.1) and CWP-7622-2010 & 18924-2012

Mr. P.K.Goklaney, Advocate and
Mr. Ashish Goklaney, Advocate
for the petitioner (s) in CWP-6889-2005 and
14627-2011

Mr. Kapil Kakkar, Advocate
for the petitioner (s) in CWP-1842-2005

Mr. Sunil Agnihotri, Advocate
for the petitioner (in CWP-7622-2010
CWP-8947-2010 & CWP-12697-2010)

Mr. Vikas Mohan Gupta, Addl. AG, Punjab

ANIL KSHETARPAL, J

1. A bunch of 8 connected Civil Writ Petitions (details whereof
are at the foot of the judgment) has come up for final disposal pursuant
to the following order passed by the Supreme Court on 17.01.2022:-

*“Heard learned counsel for the parties.
These petitions emanate from the order passed by the
High Court rejecting the contempt petition filed by
the petitioner (s) in relation to non-compliance of the*

direction given in order dated 27.08.2014 passed by the High Court for the States of Punjab and Haryana at Chandigarh in CWP No. 1842 of 2005 (O&M) and connected cases.

The High Court in the impugned judgment has taken a view that it is not a case for initiating the contempt action, in as much as there is no intentional non-compliance by the Department of the observations made in the order dated 27.08.2014.

The grievance of the petitioner (s), however, is that the direction given by the High Court vide order dated 27.08.2014, has not been complied in its letter and spirit. In that, the petitioners were entitled for the same relief as granted in case of Dr. Naresh Kumar Kataria in CWP No. 23138 of 2010 decided on 05.01.2012, and it was imperative for the Department to extend benefit on notional basis to the petitioner (s) and similarly situated persons. The stand taken by the department, on other hand, is that the relief given to Dr. Naresh Kumar Kataria is on the basis of applicable policy of the concerned Department, namely, Animal Husbandry Department. Whereas, the claim of petitioner (s) has been processed as per the policy of the respondent-Department which is a different Department, namely, Health Department.

It is not in dispute that the second part of the direction given by the learned Single Judge vide order dated 27.08.2014 has already acted upon by the parties. In terms of second part of the stated order dated 27.08.2014, the petitioner (s) had made representation to the Department which, in turn has been considered and rejected by the Department. If the petitioners are aggrieved by that decision, are free to pursue substantive proceedings to assail that rejection, which can be considered on its own merits in the concerned proceedings.

The fact remains that the first part of the direction contained in order dated 27.08.2014, is creating some confusion.

As a matter of fact, it would have been appropriate. for the High Court, while disposing of the writ petition vide order dated 27.08.2014, to analyse both pleas, including as to whether identical relief can be

given to the petitioner (s) herein as given to Dr. Naresh Kumar Kataria, who happened to be employee of another Department, namely, Animal Husbandry Department. That analysis has not been done in the order dated 27.08.2014.

To do substantial justice to the parties, we deem it appropriate to relegate the parties for reconsideration of the writ petition (s), which came to be disposed of vide order dated 27.08.2014, and to explain the correct position in respect of the first part of the direction contained therein. In that, whether it is a case for granting identical relief as given to Dr. Naresh Kumar Kataria or relief which may be similar in nature which can be given to the petitioner (s) herein under the policy of the Health Department.

It is well-settled that the High Court cannot issue direction to the State to form a new policy. The matter ought to be analysed on its own merits in accordance with law.

Accordingly, we dispose of these petitions by relegating the parties before the High Court for reconsideration of the first part of the order dated 27.08.2014, which was subject matter of the contempt petition, to give quietus to the entire controversy between the parties.

Needless to observe that if any relief has already been given to the petitioner (s) on the basis of second part of the order dated 27.08.2014 or otherwise, that shall continue to operate and shall not been withdrawn by the Health Department.

Besides this, nothing more is required to be observed in this order.

The parties may appear before the High Court for reconsideration of the first part of the order dated 27.08.2014, on 14.02.2022. The High Court may decide the matter remitted in terms of this order, expeditiously.

All contentions available to both sides are left open, to be decided uninfluenced by the observations made in the order dated 27.08.2014 with regard to the first part of the direction.

Pending applications, if any, stand disposed of.”

2. In fact, a batch of 8 writ petitions was disposed of vide judgment dated 27.08.2014 with the following order:-

“This order will dispose of eight writ petitions bearing CWP nos. 1842, 6889 of 2005, 16918 of 2007, 12697 of 2010, 7622 of 2010, 8947 of 2010, 14627 of 2011 and 18924 of 2012.

*On due consideration of the matter, I find that the case of the petitioners is squarely covered by the ratio of judgment rendered in case titled as **Dr. Naresh Kumar Kataria and others vs. State of Punjab and others** in CWP no. 23138 of 2010 decided on 5.1.2012. The Court also notices that the grievance of the petitioners regarding rectification of the anomaly has been largely redressed though from 21.12.2011. Yet the issue of grade pay, notional fixation and the grant of arrears still survives. In Dr. Naresh Kumar Kataria's case (supra) this Court has granted the benefit of notional fixation to the petitioner with a liberty to the petitioners to represent regarding grant of actual benefits.*

Having regard to the aforesaid, I deem it appropriate to dispose of the instant petitions in the similar terms but with a further liberty to the petitioners to make a representation regarding their remaining arrears of pay as also parity in grade pay. In case the respondents conclude that the petitioners are entitled to grant of arrears of pay etc., the same shall be restricted to 38 months prior to the filing of the writ petition.

In case the petitioners make a representation within six weeks from today, the same shall be considered as expeditiously as possible by the respondents, preferably within a period of six weeks thereafter.

All the writ petitions are disposed of in above terms.”

3. In CWP-1842-2005, the petitioners are praying for issuance of a writ in the nature of Certiorari to quash the order passed on 22.10.2004 (Annexure P-8). In substance, the petitioners who were

working as Pharmacists in the Department of Health and Family Welfare, Punjab, pray for the grant of pay scale of Rs.5800-9200 with the initial pay of Rs.6600 w.e.f 01.01.1996 instead of Rs.4550-7220 with the initial pay of Rs.4700/-. From a perusal of order Annexure P-8, it is evident that the Government in compliance with the directions issued in the previous writ petition filed by the petitioners considered the representation in the context of the reports of 4th Pay Commission. The representation submitted by the petitioners with regard to the alleged anomalies in the pay scales of the Pharmacists was placed before the Punjab Pay Anomaly Committee but was not approved. It was also noticed that before the recommendation of the 4th Punjab Pay Commission, basic pay scales for Nursing Sisters/ Tutors were already higher than the Pharmacist prior to 01.01.1996.

4. While contesting the writ petitions, the State has submitted that vide notification dated 23.12.2011, the pay scale of the Pharmacist has been re-revised w.e.f. 01.12.2011 to 10,300-48000 with Grade Pay of Rs.4200/-. It is also the case of the State that the petitioners are not entitled to parity of the pay scale with that of Nursing Sisters/Tutors and Clerks.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook as well as written note of their arguments. At this stage, it will be appropriate to extract a short judgment passed by the learned Single Judge of this Court in **Dr.Naresh Kumar Kataria and others vs. State of Punjab and others**

in CWP-23138-2010 decided on 05.01.2012, referred to in the judgment dated 27.08.2014, which reads as under:-

“This order shall dispose of C.W.P. No. 23138 of 2010 and C.W.P. Nos. 9708 and 3234 of 2011 involving common questions. For brevity, the facts are being extracted from C.W.P. No.23138 of 2010.

2. The petitioners seek quashing of orders dated 28.11.2000(Annexure P/9), 13.9.2001 (Annexure P/10), 19.5.1998 (Annexure P/11) and 27.5.2009 (Annexure P/12) . They also seek a mandamus to equate and grant them the same revised pay scales(s) as have been granted to their counterparts in the Animal Husbandry Department.

3. When the matter came up for preliminary hearing on December 23,2010, the following order was passed by this Court:-

“Inter-alia relies upon the Circulars dated 18.8.1992 and 18.9.1992 (Annexures P-3 and P-4) to contend that there is a conscious decision taken by the State Government to equate the petitioners with the members of Veterinary Service, hence the equivalence in pay scale has to be maintained at the subsequent stage of revision of pay scales also. Notice of motion for 22.2.2011.”

4. On a reconsideration of the matter, the respondents have now passed the order dated 21.12.2011 (annexure P/20) whereby the claim of pay parity raised by the petitioners has been accepted,however, with a rider that they shall not be entitled to any arrears or of fixation of pay on notional basis from the due date(s).

5. Having heard learned counsel for the parties at some length, I am of the considered view that though there might be some justification in not paying the arrears of revised pay, but, there can be no rhyme or reason to deny the petitioners the benefit of fixation of pay on notional basis from the due date(s).

6. The writ petition though has been in a way rendered infructuous as the impugned orders

Annexures P/9 to P/11 stand substituted vide the subsequent order dated 21.12.2011 (Annexure P/20). The aforesaid order dated 21.12.2011, however, is modified to the extent that the petitioners are held entitled to notional fixation pay fixation from the due dates.

7. Similarly, the petitioners shall be at liberty to represent for the grant of arrears of pay for a period of 38 months immediate prior to the filing of this writ petition along with copies of the decisions of this Court supporting their claim and the said representation shall be considered by the State Government in the light of those binding decisions within four months from the date of receipt of a certified copy of this order.

8. Where the employees have since retired from service meanwhile, it is directed that after fixing their pay on notional basis, the consequential re-fixation of pension shall also take place. The needful be done within four months from the date of receipt of a certified copy of this order.

9. Ordered accordingly.

Dasti.”

6. Pre-dominantly, the learned counsel representing the parties contend that their basic educational qualification are higher or at par with that of Staff Nurse and Nursing Sister, which is a promotional post from the Staff Nurse. It is also the case of the petitioners that before 01.01.1996 the pay scales of Pharmacists were equivalent to Ophthalmic Officers, Nursing Sisters and Assistants. Hence, the petitioners are entitled to the same pay scale.

7. On the other hand, the State of Punjab while relying upon a recent judgment passed by the Supreme Court in **State of Bihar vs. Bihar Secondary Teachers Struggle Committee, Munger and others**

(2019) 18 SCC 301 submits that a Constitutional Court should desist from issuing directions unless there is absolute parity on all aspects.

8. It may be noted here that the learned senior counsel representing the petitioners has also relied upon the following judgments:-

“1. 2009 (4) RSJ 125 FB Rajbir Singh etc. Vs. HSEB etc.

Anomaly is required to be removed from the date it occurred.

2. 1994 (4) RSJ 444 DB Hy State Biologists Assn Vs. State of Haryana

3. 2012 (3) RSJ 53 DB The Agr. Sub Inspectors vs. State of Punjab

4. 1998 (1) RSJ 762 GK Nagpal vs. PSEB etc.

5. 2008 (4) RSJ 178 Haryana State Minor Irrigation Tubewells Corpn. Vs. G.S.Uppal
Parity of pay scales cannot be disturbed.

6. 1998 (3) RSJ 350 FB Saroj Kumari vs. State of Punjab

Pay fixation from retrospective effect cannot be declined, however, arrears shall be restricted to 38 months from the filing of petition.

7. 2008 (3) RSJ 431 DB Krishan Lal etc. vs. CAT, Chd.”

9. This Court has considered the submissions of the learned counsel and analyzed their arguments. In the judgment passed by the Supreme Court in **Bihar Secondary Teachers’ case (supra)** laid down the following tests which must be taken into consideration by a Constitutional Court before it orders equation of the post for the purpose of pay parity:-

“96.1 Analysis of the decisions referred to above shows that this Court has accepted following

limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work':-

96.1) *The doctrine of 'equal pay for equal work' is not an abstract doctrine.*

96.2) *The principle of 'equal pay for equal work' has no mechanical application in every case.*

96.3) *The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.*

96.4) *The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job.*

96.5) *Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.*

96.6) *Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.*

96.7) *Equation of posts and salary is a complex matter which should be left to an expert body.*

96.8) *Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.*

96.9) *Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.*

96.10) *In a given case, mode of selection may be considered as one of the factors which may make a difference."*

10. As already noticed, during pendency of the writ petitions, the petitioners have been granted the pay scale 10300-34800 plus 4200 Grade Pay w.e.f 01.12.2011.

11. The judgment passed in **Naresh Kumar Kataria's case (supra)** is in fact a short order whereby the writ petition, which was rendered infructuous, was disposed of. In this case, the petitioners were working as Agriculture Development Officer, Horticulture Development Officer and Soil Conservation Officers in different departments whereas the petitioners are working in the Health and Family Welfare Department. In fact, this order is in the peculiar facts of the case.

12. The learned counsel representing the petitioners has relied upon the judgments, which were passed before the judgment of the Supreme Court in **Bihar Secondary Teachers' case (supra)**, which is comparatively recent as compared to the judgments relied upon by the learned counsel representing the petitioners. By now, it is well settled that in the absence of the conscious decision of the employer to equate two different posts in two separate departments, it would not be appropriate to grant pay parity merely on account of the fact that at one point of time, their pay scales were identical. In the absence of complete and wholesale identity, the Court is not expected to issue direction. Even similarity in designation and quantum of work, are not determinative for grant of equation of pay scales. Before an order for grant of same pay scales is passed, various other factors are required to be considered such as source, mode of appointment/recruitment, qualification, nature of work, the value of judgment, responsibilities and liabilities, experience, confidentiality, functional needs etc. etc. In fact, in the **Bihar Secondary Teachers' case (supra)**, the Supreme Court has relied upon two previous larger Bench judgments in **Zabar Singh (1972) 2 SCC 275** and

Joginder Singh 1963 Supp (2) SCR 169. The Court has even permitted the State to examine its fiscal position before granting parity of pay scale.

13. Keeping in view the aforesaid facts, this Court does not find it appropriate to discuss in detail the judgments relied upon by the learned counsel representing the petitioners. Hence. the writ petitions are dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

08.05.2023
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE

Sr.No.	Case No.	Parties Name
1.	CWP-1842-2005	Ranjit Singh and others vs. State of Punjab and others
2.	CWP-8947-2010	Neelam Rani and others vs. State of Punjab and another
3.	CWP-12697-2010	Lovejit Singh and others vs. State of Punjab and others
4.	CWP-14627-2011	Balwant Singh and others vs. State of Punjab and another
5.	CWP-18924-2012	Kiran Kumar and others vs. State of Punjab and others
6.	CWP-7622-2010	Balraj Singh and others vs. State of Punjab and others
7.	CWP-16918-2007	Baljeet Singh and others vs. State of Punjab and another
8.	CWP-6889-2005	Narinder Kumar and others vs. State of Punjab and another

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(ANIL KSHETARPAL)
JUDGE