

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

(235)

CWP-11365-2019

DATE OF DECISION:- 07.02.2023

YOGESH KUMAR

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Mamta Panwar, Advocate
for the petitioner.

Mr. Saurabh Mohunta, Haryana.
for State-respondent No.1.

Mr. Kanwal Goyal, Advocate and
Mr. Govind Tanwar, Advocate
for respondents No.2 and 3.

SUVIR SEHGAL, J. (ORAL)

Petitioner has approached this Court for issuance of a writ in the nature of certiorari for quashing impugned order dated 02.02.2019, Annexure P-15, and for issuance of a writ in the nature of mandamus directing the respondents to grant him unrevised pay scale of Rs.5000-8100/- w.e.f. 01.04.2003, followed by subsequent revisions, in parity with non-graduate Clerks of the High Court and/or in parity with non-graduate Clerks working with the subordinate Clerks in the States of Punjab and Union Territory, Chandigarh.

Before examining the claim of the petitioner, a brief statement of facts and background is necessary.

Pursuant to an advertisement, Annexure P-1, issued by District & Sessions Judge, Faridabad, petitioner, who is a matriculate, has been selected and appointed as Additional Ahlmad-cum-Clerk vide appointment letter dated 18.08.1998, Annexure P-2, in the Grade of Rs.3050-4500/- with usual allowances. The essential qualifications for the post of Ahlmad-cum-Clerk was raised to Graduation in the year 1999 and on the recommendation of the Shetty Pay Commission, pay scale of graduate Clerks was revised to Rs.4000-6000/- w.e.f. 01.04.2003. By an office order dated 26.04.2012, Annexure P-5, respondent No.2 granted unrevised pay scale of Rs.5000-8100/- to non-graduate Clerical cadre of the High Court w.e.f. 01.04.2003. Initially, petitioner approached this Court by filing CWP-7073-2010 claiming pay parity with graduate Clerks and this Court by order dated 11.02.2011, Annexure P-4, disposed of the writ petition with a direction to consider and dispose of the claim of the petitioner on the basis of the judgments of this Court in ***CWP-12750-2009, Sarabjit Singh and others Versus State of Punjab and another*** and ***CWP-22878-2010, Jitender Kumar and others Versus State of Haryana and others***, but as the judgments passed in both the writ petitions were set aside by the Division Bench in an LPA, petitioner submitted representations, Annexures P-12 and P-13, claiming parity of pay scale with non-graduate Clerical cadre of the High Court. By order dated 13.09.2018, Annexure P-11, passed in CWP-21587-2018, filed by the petitioner, a direction was issued to the respondents to look into the matter. Thereafter, impugned order dated 02.02.2019, Annexure P-15,

was passed by the District & Sessions Judge, Sonipat rejecting the representation of the petitioner. This order has been challenged by the petitioner before this Court.

I have heard counsel for the parties and examined the material placed on record.

The judgments of the Writ Court in **Sarabjit Singh's** case (supra) and **Jitender Kumar's** case (supra) came up for consideration before a Division Bench of this Court in LPA-287-2011 and LPA-288-2011, wherein, the Latters Patent Bench considered the question as to whether educational qualification could constitute a valid and rationale basis for different pay scale to employees working in one cadre. After an exhaustive discussion of case law, the Division Bench allowed the LPAs filed by the State vide judgment dated 25.02.2011, Annexure R-3/1, observing as under:-

*“19. When the principles laid down in the aforesaid judgments are applied to the facts of the present appeals, no manner of doubt is left that the classification made between the graduate Clerks and non-graduate Clerks does not violate Articles 14 and 16 of the Constitution. In **Gopi Kishan Sen's case (supra)** it has been held by Hon'ble the Supreme Court that a person who has higher qualification is likely to discharge his duties better than a less qualified person. A graduate Clerk would be more efficient than a non-graduate and matriculate Clerk. Moreover, there was no limitation on Shetty Commission to make recommendations of identical pay scale for both graduate and non-graduate Clerks. However, the Shetty Commission preferred to recommend the pay scale of Rs.5000-8100 for graduate*

Clerks leaving the non-graduate Clerks to keep working in the pay scale of Rs.3120-5160.”

Following the Division Bench, this Court in ***CWP-7189-2017, Prem Lata and others Versus The S.S.S.C. and another***, decided on 30.01.2023, held that as the controversy regarding pay differentiation between graduate and non-graduate Clerks stands settled in the State of Punjab, the same reasoning would apply to their counterparts working in the State of Haryana.

Through the present petition, petitioner is indirectly claiming what has already been denied to him. In other words, his original claim was for pay parity with graduate Clerks, who have been granted a pay scale of Rs.5100-8000/-, which has now been granted to the non-graduate clerical cadre of the High Court. Petitioner is now claiming pay parity with the non-graduate clerical cadre.

Merely because the non-graduate Clerks working in the High Court have been granted a higher pay scale, would not entail the grant of similar benefit to the non-graduate Clerks working in the subordinate Courts. In order to seek parity in pay, heavy onus lies on the claimant. It is for the claimant to show that the duties and responsibilities being discharged on both the posts are the same, they are governed by the same set of rules, their mode and method of recruitment is the same etc. However, there is no such material on the record. It is undisputed that the services of the petitioner are governed by the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997. Their mode and method of recruitment, duties and responsibilities are markedly different from those of the Clerks working

in the High Court Establishment, who are governed by the High Court Establishment (Appointment and Conditions of Service) Rules, 1973. Furthermore, a perusal of the Division Bench judgment dated 25.04.2011, Annexure R-3/1, shows that the pay scale of Rs.5000-8100/- has been recommended to graduate Clerks in the Courts by the Shetty Commission. Petitioner being a non-graduate cannot claim the same pay scale.

Given the above, the claim raised in the present petition cannot be entertained.

Petition being bereft of merit, is hereby dismissed.

07.02.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No