

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

CWP-9312-2005 (O&M)

Date of decision: 24.02.2023

Mangal Singh Kalsi

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ishaan Bhardwaj, Advocate for the petitioner
Mr. D.K.Singal, Addl. AG, Punjab

ANIL KSHETARPAL, J (Oral)

CM-227-CWP-2019

1. With the consent of the learned counsel representing the parties, the main case is taken on Board for final disposal.
2. CM stands disposed of.

Main case

3. The petitioner prays for issuance of a writ in the nature of Certiorari to set aside the order dated 16.03.2005, whereby his representation for grant of parity of pay, has been rejected by the competent authority. The petitioner is stated to be working as an Instructor-cum-Tractor Mechanic in the Gram Sewak Training Centre, run under the aegis of Rural Development and Panchayat Department, Punjab. He wants the Court to issue a writ of Mandamus directing the respondents to equate his pay with that of the ITI Instructors working in the Department of Industrial Training, Punjab. He submits that when the post of Instructor-cum-Tractor Mechanic was created, it was placed at par with the post of an ITI Instructor. It is submitted that since the

qualification for both the posts is same, therefore, a writ is required to be issued for grant of pay parity.

4. The respondents have contested the petition while submitting that the petitioner is not entitled to parity of pay with that of the ITI Instructors working in the Department of Industrial Training.

5. On 30.01.2020, while replying to a miscellaneous application, an affidavit of the Special Secretary-cum-Director, Rural Development and Panchayat Department, Punjab, has been filed. Para 3 of the said affidavit is extracted hereunder:-

“3. That the contents of para 3 of the Civil Misc. application are admitted to the extent that CWP No.1748 of 1995 filed by Craft Instructors Grade-II working in Industrial Training Institutes in the State of Punjab, was allowed by this Hon’ble Court on 28-11-1995, whereby the State of Punjab and others I.e the respondents were directed to pay the petitioners the pay scales of Rs.1800-3200 with w.e.f 01.01.1986. As stated in reply to the writ petition the petitioner has already been given parity in pay scales w.e.f 01.01.1986. It is however stated the petitioner and Craft Instructors of the Department of Industrial Training are not having similar duties. Neither the post held by the petitioner carries the similar duties nor the educational qualifications are identical. Hence the petitioner is not entitled for any benefits prior to 01.01.1986.”

6. This Court has considered the submissions of the learned counsel representing the parties while examining the documents filed in support of the petition. Undoubtedly, at one stage when the post of Instructor/Tractor Mechanic was created, it was granted the pay scale equivalent to that of an ITI Instructor. However, there is no conscious decision taken by the Government to equate the two posts for the purpose

of pay parity. Mere similarity in the qualification cannot be the only yardstick to issue the writ granting pay parity. Equation of pay between two posts is a highly complex matter, which is best decided by the experts appointed in the specific committees' namely the Pay Commission or the Pay Anomaly Committee which are constituted for deciding the issues related to payment of the Government employees. The scope of judicial review in such matters is very limited. Moreover, the competent authority has considered the petitioner's representation while passing a detailed order. Recently, the Supreme Court in **State of Bihar vs. Bihar Secondary Teachers Struggle Committee, Minger and others (2019) 18 SCC 301** laid down the following parameters before the Court accepts the applicability of the doctrine of "Equal Pay for Equal Work" in the following manner:-

"96. 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.”*

7. Keeping in view the aforesaid facts, this Court does not find it appropriate to exercise its extraordinary writ jurisdiction.

8. Hence, dismissed.

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

24.02.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE