

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

**CWP No.2364 of 2018 (O&M)**

Reserved on: 11.04.2023

Pronounced on:03.05.2023

Om Parkash

...Petitioner

Vs.

State of Haryana and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present: Mr. Pankaj Sharma, Advocate  
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Padamkant Dwivedi, Advocate  
for respondents No.2 and 3.

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**JAISHREE THAKUR J.**

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for quashing of order dated 13.01.2015 (Annexure P-12) passed by respondent No.3 whereby claim of the petitioner with regard to granting him the pay scale of the Electrician w.e.f. 10.07.1998 has been denied, while alleging that the direction issued by this Court vide order dated 02.05.2014 passed in CWP No.7556 of 2009 titled as Om Parkash Vs. The State of Haryana and others has completely been overlooked.

2. In brief, facts are that the petitioner, being Class IV employee of respondent No.3 and having qualification of 10+2 with 'A' Class Wireman Certificate, applied for promotion to the post of Electrician in pursuance to letter dated 08.06.1995 issued by respondent No.3 for filling up the post of Electrician from amongst Class IV employees. The qualification for the said post was prescribed as Matric with ITI Certificate in Electric

Trade or equivalent. Vide order dated 10.07.1998, petitioner was promoted to the post of Electrician in the scale of Rs.950-1500 purely on *ad hoc* basis, subject to the condition that he will give an undertaking that he will not claim any right to the post of Electrician. On 08.12.2008, promotion of the petitioner stood regularized. The petitioner made representations dated 05.07.1999 and 02.02.2008 to respondent No.3 to grant him pay scale of Rs.1200-2040/- as was admissible to the post of Electrician w.e.f. 10.07.1998. In pursuance to representations made by the petitioner, an agenda item was put before the Board of Directors that actual pay scale for the post of Electrician is Rs.4000-6000/- and therefore, once the said scale is being given to similar employees of other Boards/Corporations, then same ought to be given to the petitioner. The said proposal was further sent to the Government for approval, however, the same was rejected. Respondent No.3 again wrote a letter dated 25.11.2008 to respondent No.2 for grant of aforesaid scale to the petitioner but the same stood rejected. Aggrieved against the said action of respondents, petitioner filed CWP No.7556 of 2009 before this Court for granting him pay scale of Rs.4000-6000/- as admissible to the post of Electrician instead of Rs.3050-4500/-, which was disposed of vide judgment dated 02.05.2014 directing the respondents therein to consider the case of the petitioner, in view of the finding rendered in the judgment passed by this Court. In pursuance of the judgment passed by this Court, respondents considered the case of the petitioner and passed order dated 13.01.2015 denying him the pay scale of Rs.4000-6000/-, which is subject of challenge in the instant writ petition.

3. Learned counsel appearing for the petitioner would argue that while passing the impugned order dated 13.01.2015, respondents have relied upon the Haryana (Abolition of Distinction of Pay Scale between Technical & Non-Technical Posts) Act, 2014, however, the said Act and the instructions referred therein as well as the scale were never implemented in his case and therefore, withdrawal of said instructions has no consequence. In fact, the petitioner is praying for grant of pay scale as admissible to the post of Electrician i.e. Rs.4000-6000/-, as is being given to the persons working on the post of Electrician in other Boards/Corporations. The petitioner is performing similar duties and responsibilities and therefore, he is entitled to the said scale on the basis of Equal Pay for Equal Work. It was further argued that case of the petitioner was rejected on a frivolous ground that the petitioner does not possess ITI diploma, as respondents granted him promotion as Electrician while considering his Wireman Grade A Certificate, however, at the time of granting the pay scale of Rs.4000-6000/- the said certificate was not taken into consideration. The respondents are blowing hot and cold at the same time. It was also argued that Board of Directors is competent to fix salaries or emoluments or remuneration of its employees and there is no requirement for taking approval of the Standing Committee of Bureau of Public Enterprises for the same. In support of his arguments, he relied upon the judgments passed by Coordinate Benches of this Court in *Pawan Kumar and others Vs. Uttar Haryana Bijli Vitran Nigam Limited 2014 (2) PLR 209, Haryana Warehousing Corporation Godown Keepers/Accounts Clerks Union Vs. State of Haryana and others 2015 (4) RSJ 187* and the judgment passed by a Division Bench of this Court in LPA No.383 of

2014 decided on 18.02.2015 titled as *Uttar Haryana Bijli Vitran Nigam Ltd. and another Vs. Pawan Kumar and others.*

4. Per contra, learned counsel appearing for respondents would submit that the issue of equal pay for equal work has already been considered by this Hon'ble Court in CWP No.7556 of 2009 wherein the petitioner was unable to establish his case and this Court observed that it is unable to issue direction to grant equal pay for equal work only on the basis that the employees working on the same post in PWD Department are getting that pay scale. Consequently, a direction was issued to the respondents to consider the case of the petitioner by considering the observations made in the aforesaid writ petition. The respondent authorities duly considered the case of the petitioner and rejected the same on the ground that the petitioner did not possess the technical qualification i.e. ITI in Electric Trade and the Certificate of Wireman Grade-A issued by the Chief Electrical Inspector to Government of Haryana is not equivalent to ITI certificate as per the clarification given by the Director, Industrial Training & Vocational Education, Haryana vide its memo dated 09.06.2005. It was further argued that as per Section 3 of the Haryana (Abolition of Distinction of Pay Scale between Technical & Non-Technical Posts) Act, 2014, all persons serving on various posts in difference services under the State shall be entitled to get the pay scale prescribed for those posts only under the relevant service rules, notifications and instructions issued from time to time and no person, who is serving or has served on any post in any service under the State, shall be entitled to a higher pay scale on account of possessing a technical qualification or on account of serving or having served on a post of which

the prescribed qualification is/was of technical nature i.e. Matric with ITI/Polytechnic or Non-Matric with ITI/Polytechnic. Further as per Section 5 of the same, all employees appointed to a post in connection with the affairs of the Government of Haryana under various Departments, Boards or Corporations shall be entitled only to the pay scales of the posts held by them, which were granted to them under the relevant service rules, notifications and instructions issued from time to time, irrespective of their qualifications. Since the petitioner is employee of Haryana Warehousing Corporation and his service is governed by the Service Rules of the Haryana Warehousing Corporation, he is entitled to pay scale of Rs.3050-4590/- as prescribed in the said Service Rules and therefore, his claim for grant of pay scale of Rs.4000-6000/- has rightly been rejected.

5. I have heard learned counsel for the parties and have perused the paper books as well as the case laws cited.

6. In the earlier round of litigation i.e. CWP No.7556 of 2009, this Court after considering various factors for applying the principle of Equal Pay for Equal Work, order dated 02.05.2014, disposed of the writ petition while observing as under:-

*“...The Court is unable to issue direction to grant “Equal Pay for Equal Work” only on the basis of averment that the employees working on the same post in PWD Department are getting that pay scale. It is an executive function and the competent authorities of the department will be in a better position to assess all these factors as discussed above by considering the nature of duties, mode of appointment and other factors.*

7. Principle of “*equal pay for equal work*” has no mechanical application in every case of similar work and would not be automatically applicable. It requires various considerations including financial capacity, responsibility, educational qualification and mode of appointment etc. In ***Mewa Ram Kanojia v. All India Institute of Medical Sciences (1989) 2 SCC 235***, the Hon’ble Supreme Court has *inter alia* held as follows:

*“5. While considering the question of application of principle of ‘equal pay for equal work’ it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scales but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality.*

*7. Even assuming that the petitioner performs similar duties and functions as those performed by an Audiologist, it is not sufficient to uphold his claim for equal pay. As already observed, in judging the equality of work for the purposes of equal pay, regard must be had not only to the duties and functions but also to the educational qualifications, qualitative difference and the measures of responsibility prescribed for the respective posts. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of ‘equal pay for equal work’ would not apply.”*

8. It ***Shyam Babu Verma v. Union of India (1994) 2 SCC 521***, the

Hon’ble Supreme Court has held as under:-

*“9. ... The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of ‘equal pay for equal work’ should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of ‘equal pay for equal work’ to them. The principle of*

*'equal pay for equal work' has been examined in State of M.P. v. Pramod Bhartiya [(1993) 1 SCC 539: 1993 SCC (L&S) 221: (1993) 23 ATC 657] by this Court. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution."*

9. In ***Deb Narayan Shyam v. State of West Bengal, 2005(1) SCT 166 : (2005) 2 SCC 286***, the Hon'ble Supreme Court has held as under:-

*"A large number of decisions have been cited before us with regard to the principle of "equal pay for equal work" by both sides. We need not deal with the said decisions to overburden this judgment. Suffice it to say that the principle is settled that if the two categories of posts perform the same duties and functions and carry the same qualification, then there should not be any distinction in pay scale between the two categories of posts similarly situated. But when they are different and perform different duties and qualifications for recruitment being different, then they cannot be said to be equated so as to qualify for equal pay for equal work."*

10. In ***U.P. State Sugar Corporation Ltd. and another Vs. Sant Raj Singh and others (2006) 9 SCC 82***, the Hon'ble Supreme Court has held that distinction in scale of pay made on the basis of educational qualification does not violate Article 14 of the Constitution of India. Possession of higher qualification can be treated to be a valid basis for classification of two categories of employees, even if no such qualification prescribed at the time of recruitment.

11. A perusal of the letter dated 08.06.1995 (Annexure P-3) would reveal that qualification for the post of Electrician, on which the petitioner was promoted, was prescribed as Matric with ITI certificate in Electric Trade or equivalent. Admittedly, petitioner does not possess the qualification of ITI in Electric Trade and the Certificate obtained by him has been declared to be not equivalent to ITI in Electric Trade and

therefore, in view of the settled law that a reasonable classification based on qualification between two categories of employees is not violative of Article 14 of the Constitution of India, the petitioner cannot be equated to qualify for grant of scale of Rs.4000-6000/- as is being granted to the Electricians in other Boards/Corporations, being ITI Diploma Holders, on the basis of equal pay for equal work. Moreover, petitioner gave an undertaking while accepting the promotion as Electrician that he will not claim any right to the post of Electrician. Be that as it may, as per Section 5 of the Haryana (Abolition of Distinction of Pay Scale between Technical & Non-Technical Posts) Act, 2014, all employees appointed to a post in connection with the affairs of the Government of Haryana under various departments, boards or corporations shall be entitled only to the pay scales of the posts held by them, which were granted to them under the relevant service rules, notifications and instructions issued from time to time, irrespective of their qualifications. Petitioner is seeking grant of scale of Rs.4000-6000/- as is being given to the persons working as Electrician in other Boards/Corporations. It is not the case of the petitioner that he is not being given the scale as is admissible to him under the Service Rules, which govern the services of employees of Haryana Warehousing Corporation. It is also settled position of law that the classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Court/Tribunal cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service. The petitioner herein failed miserably to establish that he has been treated unreasonably in granting scale on his

promotion as Electrician and classification made on the basis of academic qualification is unreasonable and arbitrary.

12. In view of the aforesaid facts and circumstances, this Court does not find any reason to interfere with the order dated 13.01.2015 (Annexure P-12). Consequently, the instant writ petition stands dismissed.

**(JAISHREE THAKUR)**  
**JUDGE**

**May 03, 2023**  
Pankaj\*

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