

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28362 of 2018 (O&M)

Reserved On: 08.05.2023

Date of Order:05.07.2023

Gurwinder Singh and others

.Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Krishan Singh Dadwal, Advocate
Ms. Neha Jain, Advocate,
for the petitioner(s).

Ms. Ishma Randhawa, Additional Advocate General, Punjab.

ANIL KSHETARPAL, J

1. The petitioners are working as Lascars in NCC under the control of Department of Education (Colleges), Punjab. They pray for the issuance of direction to the respondents to remove the anomaly created in the pay scales of the petitioners while ordering the revision of pay scale, grant of grade pay of Rs.3200 and pay scale of Rs.10000-34800 along with all consequential benefits including convenience allowance of Rs.400 per month which has been given to the categories drawing lower pay scale at one stage. In fact, the petitioners claim that they were granted same pay scale as was granted to the categories and Clerks and other ministerial staff till 5th Pay Commission and anomaly for the first time was created w.e.f 01.12.2011 which needs to be removed as the qualification and even job responsibilities of the Clerks and others were the same at the time of initial appointment.

2. The cadre of Lascars is a dying cadre as no further recruitment

of Lascars is being made by the Government of Punjab. While highlighting that the duties of Lascars include training, looking after stores (including weapons of NCC), conducting parades and Clerical work in the office of the Units of NCC, the petitioners claim that the post of Lascar is included the ministerial staff of the Government of Punjab. Initially, they were put in the pay scale of Rs.125-150 whereas the category of Clerks and other ministerial staff was getting Rs.110-150. After the implementation of 2nd Pay Commission, the pay scale of both the posts was made equal as both the cottagers were given the pay scale of Rs.400-600. After the implementation of 3rd Pay Commission, though the pay scale of both the categories was made Rs.950-1800 but start of Rs.1000 was given to the category of Clerk. On implementation of the report of 4th Pay Commission, the pay scale of both the categories was made Rs.3120-5160, however, start of Rs.3220 was given to the category of Clerks and other ministerial staff whereas the categories of Lascars have been left out. After implementation of report of 5th Pay Commission, the Lascars as well as Clerks and other ministerial staff were put in the pay scale of Rs.5910-20200+1900 Grade pay. With effect from 01.12.2011, the pay scale of Clerks and other ministerial staff working in the various departments of Government of Punjab has been enhanced to Rs.10300-34800+3200 Grade pay along with Rs.400 convenience allowance, however, the category of Lascars have been left out and no revision of pay scale has been given effect to from 01.12.2011 with respect of Lascars. Though a representation was made to the Hon'ble Chief Minister Punjab with a copy of Education Minister and other officials, however, no action has been taken.

3. The State of Punjab while contesting the petition has submitted

that the nature of duties, method of recruitment, channel of promotion, qualification/experience, criteria laid down for promotion with respect to the Lascars is altogether different with the category of Clerks and other ministerial staff. Moreover, Expert Body like Pay Commission after examining all aspects of the matter has made recommendation which has been implemented. Furthermore, the State of Punjab has already constituted 6th Punjab Pay Commission vide notification dated 24.02.2016 and now all the cases pertaining to the pay scale or anomalies to the pay scales are to be considered by the Pay Commission.

4. Heard the learned counsels representing the parties at length and with their able assistance perused the paper books.

5. The learned counsel representing the petitioners has submitted the synopsis while reiterating the oral arguments. The learned counsel has made the following submission:-

“Till 5th pay commission, the petitioners were granted the pay scale equivalent to the category of Clerk and other ministerial staff, however, at the subsequent stage, the category of the petitioners have been put to loss. The qualification for appointment to the post of Gram Sewak/Gram Sewikas was matric and now their grade pay has been enhanced, however, the qualification for appointment to the post of petitioner is also matric, however, the pay scale of the petitioner is only 5910-20200 with grade pay of Rs.1900 and no revision has been given w.e.f. 1.12.2011. Petitioners are entitled to grant of grade pay of Rs.3200 and pay scale of Rs.10300-34800 along with all consequential benefits including convenience allowance of Rs.400 as the same has already been given to the similarly placed person. Pay scale is legitimate right of an employee and the same

cannot be varied. Anomaly has to be removed from the date it has arisen, rather than from any subsequent date prospectively. The educational qualification for the promotion of both the posts i.e. Lascars and clerks is equal. Duties and even the job responsibility of both the posts are almost identical, therefore, the discrimination cannot be made for the purpose of providing the identical pay scale.”

He also relies upon the following judgments:-

“(1) Union of India and others vs. Jagdish Pandey and others, 2010(3) SCT 495, (2) Rajbir Singh and others vs. Haryana State Electricity Board and others, 2009 (4) RSJ 125, (3) Pawan Kumar and another vs. MC Amritsar, 1991(2) SCT, 249, (4) Jaspal Singh and others vs. State of Punjab and another, (CWP No.18612 of 2013).”

6. At this stage, it is appropriate to take note of the fact that in a recent judgment passed in the *State of Bihar vs. Bihar Secondary Teachers Struggle Committee, Munger and others (2019) 18 SCC 301* the Supreme Court has laid down the following parameters before a Court orders parity of pay scale in para 96 which reads as under:-

“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.”

7. By a detailed judgment of even date in **Gurinderpal Singh and others vs. State of Punjab and others (Civil Writ Petition No.27104 of 2018)** an identical case argued by the same counsels representing the parties, the matter has been decided with the following observations:-

“11. The first judgment relies upon the learned counsel representing the petitioners in **Jagdish Pandey's case (supra)** is relating to grant of running allowance at the rate of 120 Kms per day. In the first round, the writ petition filed by the Tower Wagon Drivers employed in Indian Railways was allowed but subsequently the said scale was withdrawn and recovery notices were issued. In that context, the Calcutta High Court allowed the writ

petition which was in appeal upheld by the Supreme Court. This judgment is decided in the peculiar facts of the case.

12. The next judgment relied upon by the learned counsel representing the petitioners is in **Rajbir's case (supra)**. The Full Bench has considering the question that though the anomaly has been removed but from different date held to be unjustified. The Full Bench granted declaration that once the anomaly has been rectified, the same is required from the date when such anomaly occurred and it cannot be from a future date. With highest respect, this judgment does not help the petitioners.

13. In **Pawan Kumar's case (supra)**, the court found that the Building Inspectors have been designated as Section Officers (Building) who are claiming equation with the Section Officers working in the same Municipal Corporation. In that context the writ petition was allowed while relying upon the judgment passed in **Kirpaljeet Vs. State of Punjab , 1987 (4) SLR 594.** The aforesaid judgment cannot be applied particularly in view the judgment passed in **State of Bihar (supra).**!

14. In **Jaspal Singh and others (supra)**, the Court was considering the question of entitlement of pay scale of the post of Multipurpose Health Supervisors which was

throughout less than the pay scales of Multipurpose Health Supervisors (Male), Assistant Malaria Officers and Assistant Unit Officers. While relying upon the judgment in **Rajbir Singh's case (supra)**, the Court held that the removal of anomaly has to relate back to the creation of the anomaly. Hence, it is evident that the judgments relies upon by the learned counsels representing the petitioners do not support the case of the petitioners.

15. As regard the first argument of the learned counsel representing the petitioners, it may be noticed that the State of Punjab while filing the detailed written statement has highlighted that there is a difference in nature of duties, method of recruitment, channel of promotions, etc. Hence, the Court in exercise of writ jurisdiction is not expected to enter into the arena of complex determination of pay scales which is for the expert bodies, namely Pay Commission or Anomaly Committee to decide. The Supreme Court in **The State of West Bengal and another vs. West Bengal Minimum Wages Inspectors Association and others (2010) 5 SCC 255** held that merely on the basis that an earlier point of time two posts were carrying the same pay scale would not mean that after implementation of the revision of pay scales they should be granted the identical revised pay

scales. In **S.C.Chandra vs. State fo Jharkhand, 2007 SCC 279**, the Court held that unless there is complete and wholesale identity, the proper forum is an expert body and not writ Court.

16. The correctness of next argument of the learned counsel is not in dispute, however, such matter is required to be decided by the Expert Body. Moreover, as regard the parity of pay scale at one stage has already been examined and hence need no further deliberation.”

8. With regard to the first argument of the learned counsel representing the petitioners, it may be noted that in **The State of West Bengal and anothr vs. West Bengal Minimum Wages Inspectors Association and others (2010) 5 SCC 255**, held that merely on the basis that at an earlier point of time two posts were carrying the same pay scale would not mean that after implementation of the revision of pay scales they should be granted the identical revised pay scales. Moreover, whether the pay scale of the various posts should be equivalent and there should be parity are the matters to be considered by the Expert Bodies. The grant of pay scales and determination of parity in pay scale is a complex matter which is for the expert bodies to discharge. Unless there is complete and wholesale identity with respect to all matters, the proper forum is an Expert Body and not the writ Court. Reliance in this regard can be placed on the judgment passed in **S.C.Chandra vs. State fo Jharkhand, (2007) & SCC 279**, which has been followed in **Union of India and others vs. Hiramony Sein and others (2008) 1 SCC 630**.

9. In view of the aforesaid settled law, the first argument of the learned counsel representing the petitioner does not have substance. Even with regard to the second argument, it may be noted that the petitioners are working as Lascars. Moreover, the qualification for appointment to the post is not the only criteria for grant of pay scale. The determination of pay scale is a specialized job for which Pay Anomaly Committees and Pay Commissions are constituted. Hence, the petitioners cannot claim parity with Gram Sewak and Gram Sewikas. Even argument no.3 does not require further elaboration in view of the foregoing discussions.

10. As regards the next argument, undoubtably the pay scale is a legitimate right of an employee, however, the same is required to be examined by the experts.

11. The next argument of the learned counsel is with regard to the date from which the anomaly has to be removed. The learned counsel representing the petitioners relies upon the judgment of the Full Bench in **Jaspal Singh's case (supra)**. In this case, it is not the case of the petitioner that the anomaly in the pay has been removed but the petitioners have been granted from a future date rather than from the date it had arisen. Hence, the aforesaid judgment is also not applicable.

12. The next argument of the learned counsel is the same as argument no.2.

13. With respect to the last argument, it may be noted that the Supreme Court has held that unless there is complete and wholesale identity of the responsibilities and duties and all other factors, the proper forum for determination of pay scale should be left to the Expert Body.

13. Keeping in view the aforesaid facts and discussions, finding no

merit, the writ petition is dismissed.

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

05th July, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO