

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

214	1.	CWP No.30286 of 2018 Date of decision:08.02.2023
Gurinder Pal and others		... Petitioners
	Vs.	
State of Haryana and others		... Respondents
	2.	CWP No.2742 of 2019
Sanni and others		... Petitioners
	Vs.	
State of Haryana and others		... Respondents
	3.	CWP No.30913 of 2018
Balwan Singh and others		... Petitioners
	Vs.	
State of Haryana and others		... Respondents
	4.	CWP No.38064 of 2018
Rajinder Kumar and others		... Petitioners
	Vs.	
State of Haryana and others		... Respondents
	5.	CWP No.6535 of 2019
Ramesh Kumar and others		... Petitioners
	Vs.	
State of Haryana and others		... Respondents

6. CWP No.19354 of 2020

Gurinder Pal and others ... Petitioners
Vs.

State of Haryana and others ... Respondents

7 CWP No.510 of 2019

Joginder Pal and others ... Petitioners
Vs.

State of Haryana and others ... Respondents

8 CWP No.5184 of 2021

Ganga Ram and others ... Petitioners
Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Arav Gupta, Advocate for
Mr. Praveen Gupta, Advocate
for the petitioners in CWP No.30286 of 2018,
CWP No.2742 of 2019, CWP No.38064 of 2018 and
CWP No.30913 of 2018.

Mr. Amit Kaith, Advocate
for the petitioners in CWP No.6535 of 2019.

Mr. Raj Kapoor Malik, Advocate
for the petitioners in CWP No.19354 of 2020.

Mr. Rishi Pal Singh, Advocate for
Mr. Arvind Mohan Mehra, Advocate
for the petitioners in CWP No.510 of 2019.

Mr. Jagjeet Beniwal, Advocate for
Mr. Ravi Malik, Advocate
for the petitioners in CWP No.5184 of 2021.

Mr. Ravi Dutt Sharma, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

This order shall dispose of eight writ petitions bearing Nos.30286 of 2018, 2742 of 2019, 30913 of 2018, 38064 of 2018, 6535 of 2019, 19354 of 2020, 510 of 2019 and 5184 of 2021 as they involve common questions of law and facts. For the sake of convenience, facts are being taken from CWP No.30286 of 2018.

Petitioners, who are working as Drivers, have approached this Court with a grievance that they are not being paid arrears of difference of over-time allowance in the un-revised and revised pay scale for the period from 01.01.2016 to 31.03.2017. It has been submitted that on the basis of recommendation of the 7th Pay Commission, the pay scales of the employees working with the Transport Department, Haryana have been revised w.e.f. 01.01.2016 and the arrears of salary in the revised pay scales have been paid w.e.f. 01.01.2016 to 31.03.2017. It has been stated that over-time allowance in the new pay scale has been upgraded and is being paid to the petitioners w.e.f. 01.04.2017. However, the same is not being paid for the period prior thereto.

Writ petition has been contested by the respondents by filing a reply and an additional affidavit, wherein, it has been submitted that during the pendency of the petition, by an office order dated 27.02.2019, Annexure R-1, the arrears of difference of over-time allowance were paid to the petitioners for the period from 01.01.2016 to 31.03.2017. However, by a subsequent office order dated 11.09.2019 (Annexure R-2), over-time

allowance on the revised pay scale was confined from 28.10.2016, the date when the revised pay was notified. It has been stated that the recovery of the excess amount paid to the petitioners is being effected from 01.01.2016 to 28.10.2016.

I have heard counsel for the parties and have examined the documents appended with the paper book with their able assistance.

Similar dispute regarding the entitlement of the petitioners to over-time allowance in the revised pay scale came up for adjudication before this Court after the revision of pay scales in the year 1996. Interpreting the provisions of the Motor Transport Workers Act, 1961 (for short the '1961 Act'), a Division Bench of this Court in **LPA No.858 of 2009 titled as The General Manager, Haryana Roadways, Chandigarh Vs. Azad Singh and others**, whereby, a bunch of appeals was decided, vide judgment dated 23.03.2011 (Annexure P-1), held as under:-

“Section 26 of the 1961 Act contemplates that an adult motor transport worker such as the respondents herein works for more than eight hours in any day in case referred to in the first proviso to Section 13 but work on any rest day under sub-Section (2) of Section 19 in terms of wages at the rate of ‘twice his ordinary rate of wages.’ Sub Section 4 defines ‘ordinary rate of wages’ in relation to a motor transport worker means basic wages plus dearness allowance. Though, the notification was issued on 1.1.2008 revising the pay scale of the employees

of the State Government including the drivers and conductors but such revision of pay scale was effected from 1.1.1996. Thus, the drivers and conductors are entitled to over time allowance at the rate of twice the ordinary rate of wages i.e. basic wages plus dearness allowance.”

This judgment has been followed by a Coordinate Bench of this Court in CWP No.7703 of 2010 titled as **Puran Chand and others Vs. State of Haryana and others**, decided on 14.08.2012 (Annexure P-2). It has been stated that both the judgments have attained finality and the benefit flowing by virtue of these judicial pronouncements have been granted to the the employees.

In view of the above settled legal position, writ petitions are disposed of with a direction to the respondents to grant and release the arrears of difference of over-time allowance to the petitioners in un-revised and revised pay scales for the period from 01.01.2016 to 31.03.2017 within a period of four months from the date of receipt of certified copy of this order. In case any amount has been recovered from the petitioners pursuant to office order (Annexure R-2), the same be refunded to them within the aforesaid period. Despite the fact that legal position stands settled by a Division Bench of this Court, the respondents have forced the petitioners to knock at the doors of this Court. It is, therefore, directed that respondents shall pay an interest @ 6% per annum on differential amount from the day it

became due till actual payment. Amount recovered, if any, be also refunded with the same rate of interest.

Pending application(s), if any, stands disposed of.

February 08, 2023

savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>