

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(212)

CWP-7189-2017
Date of decision:- 30.01.2023

Prem Late and others

...Petitioners

Versus

The S.S.S.C. And another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Saurabh Dalal, Advocate
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana
for respondent No.1.

Mr. H.S.Dhaliwal, Advocate for respondent No.2.

SUVIR SEHGAL, J. (Oral)

Petitioners, who are matriculates and are working on the post of Clerks in the District Courts in Haryana, have filed the instant petition for issuance of a writ in the nature of mandamus directing the respondents to grant them the same pay and benefits as are being paid to graduate clerks along with all consequential benefits.

Counsel for the parties have been heard.

Counterparts of the petitioners working in the neighbouring State of Punjab had approached this Court with an identical grievance. The matter was settled by a Division Bench of this Court in ***State of Punjab Versus Rakesh Kumar and others, 2011 (13) SCT 460***. The judgment of the Division Bench is reproduced hereunder:-

“1. This order shall dispose of a bunch of appeals filed by the State of Punjab under Clause X of the Letters Patent against similar orders passed by the learned Single Judge allowing the writ petitions filed by the petitioner-respondent(s) in terms of the Single Bench judgment dated 13.8.2010 passed in **CWP No. 12750 of 2009 (Sarabjit Singh and others v. State of Punjab and another)**. In that case the appellant State of Punjab and the High Court of Punjab and Haryana were directed to place the petitioner-respondents, who are non-graduate Clerks, to place them in the pay scale of ₹5000-8100 with effect from the date the said pay scale has been allowed to the Graduate Clerks. These non-graduate clerks have been working in the Subordinate Courts of Punjab. They have been further directed to calculate and pay the differential amount of the pay scale to the non-graduate clerks within a period of four months, failing which they would be entitled to interest @ 6% from the due date till realisation.

2. It has remained undisputed that the judgment rendered by the learned Single Judge in the case of **Sarabjit Singh (supra)** was challenged by the appellant State of Punjab in LPA Nos. 287 and 288 of 2011. After noticing the factual position in detail, the Letters Patent Bench formulated the following question of law:

“Whether education qualification could constitute a valid and a rationale basis for different pay scale to employees working in one cadre?”

3. The Letters Patent Bench allowed the said appeals vide judgment dated 25.4.2011 by setting aside the judgment of the learned Single Judge rendered in **Sarabjit Singh’s case (supra)** by holding that different pay scales could be granted to the graduate and non-graduate Clerks because it did not contravene Articles 14 and 16(1) of the Constitution. In that regard the Letters Patent Bench has placed reliance on various judgments of Hon’ble the Supreme Court rendered in the cases of **State of Mysore v. P. Narasinga Rao, AIR 1968 SC 349, General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36; V. Markendeya v. State of Andhra Pradesh, (1989) 3 SCC 191; State of Rajasthan v. Gopi Kishan Sen, 1993 Supp (1) SCC 522; Shyam Babu Verma v. Union of India, (1994) 2 SCC 521; Rajasthan State Electricity Board Accountants Association, Jaipur v. Rajasthan State Electricity Board, (1997) 3 SCC 103; Government of West Bengal v. Tarun K. Roy, (2004) 1 SCC 347; M.P. Rural Agriculture Extension Officers Association v. State of M.P., (2004) 4 SCC 646; and U.P. State Sugar Corporation Ltd. v. Sant Raj Singh, (2006) 9 SCC 82. In paras 19 and 20, the Letters Patent Bench has made the following observations:-**

“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 ₹5000-8100 for graduate Clerks leaving the non-graduate Clerks to keep working in the pay scale of ₹3120-5160.

20. The view of the learned Single Judge is primarily based on the judgment of Hon'ble the Supreme Court rendered in the case of **Roshan Lal Tandon (supra)**. The judgment in **Roshan Lal Tandon's case (supra)** has been distinguished by a 5-Judges Bench of Hon'ble the Supreme Court in the case of **State of Jammu and Kashmir v. Triloki Nath Khosa v. Triloki Nath Khosa, (1974) 1 SCC 19**. In para 35 of the judgment it has been pointed out that educational qualifications have been recognised by the Supreme Court as a safe criterion for determining the validity of classification. The judgment in **P. Narasing Rao (supra)** has been relied upon in support of the aforesaid view. In para 46 of the judgment in **Triloki Nath Khosa's case (supra)**, their Lordships' have held that the judgment in **Roshan Lal Tandon's case (supra)** is no authority for the proposition that if direct recruits and promotees were integrated into one class they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. Upholding the classification, 5-Judges Bench held that it rests fairly and squarely on the consideration of educational qualifications and Graduates alone were to be considered for promotion to the higher post irrespective of the fact that they were appointed as Assistant Engineers by way of direct recruitment or by way of promotion. The position has further been clarified in the case of **Kuldeep Kumar Gupta v. H.P. State H.P. State Electricity Board, (2001) 1 SCC 475**. Therefore, no reliance could have been placed on the

- judgment of Hon'ble the Supreme Court rendered in **Roshan Lal Tandon's case (supra)**. Accordingly, the view taken by the learned Single Judge would not be sustainable in the eyes of law."*
4. *Mr. Suvir Sehgal, learned Additional Advocate General, Punjab, has also apprised us that the judgment dated 25.4.2011 rendered in **Sarabjit Singh's case (supra)** has been upheld by Hon'ble the Supreme Court in Special Leave to Appeal (Civil) No(s). 15800-15801 of 2011 (Sarabjit Singh and others v. State of Punjab and another) vide order dated 7.7.2011. Learned counsel for the petitioner-respondent(s) have not been able to controvert the above position.*
5. *In view of the above, these appeals are allowed in terms of the Letters Patent Bench judgment dated 25.4.2011 rendered in **Sarabjit Singh's case (supra)**. Accordingly, orders dated 20.12.2010, 21.12.2010, 23.12.2010, 17.12.2010 and 8.2.2011, passed by the learned Single Judge in CWP Nos. 22620 of 2010, 22812 of 2010, 23122 of 2010, 22575 of 2010, 6929 of 2010 respectively are set aside.*
6. *A photocopy of this order be placed on the files of connected appeals."*

It deserves to be noticed that the employees unsuccessfully challenged the above reproduced judgment before the Hon'ble Supreme Court and SLP (C) No.5593 of 2012, preferred by them, was dismissed on 06.02.2012. The issue has attained finality.

In view of the above, there is no merit in the petition, which is hereby dismissed.

30.01.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No