

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

CWP No.23175 of 2022 (O&M)

Date of decision : 13.03.2023

Makhan Singh & ors.

..... Petitioners

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. T.P.S.Tung, Advocate for the petitioners.

Ms. Shivani Sharma, DAG, Punjab.

Mr. Amarjeet Singh Thakkar, Advocate
for respondent No.3.

Mr. Ashwani Prashar, Advocate
for respondents No.4 & 5.

PANKAJ JAIN, J. (ORAL)

CM-1822-CWP-2023

For the reasons recorded, the application is allowed.

Amended memo of parties is taken on record.

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Petitioners pray for issuance of a writ in the nature of mandamus directing the respondents to keep the petitioners at par with the junior namely Sandeep Chadha w.e.f. 01.05.2010 to 31.03.2021 with respect to salary claiming that the petitioners having been promoted as Accountants much prior to the aforesaid junior who was promoted on 28.06.2005. It has been further claimed that so far as the entitlement of the petitioners is concerned, the same was

adjudicated by respondents No.4 & 5 vide different resolutions and it was admitted that the petitioners are indeed entitled to claim parity with the aforesaid junior employee. However, the respondents have withdrawn the said benefit claiming that the resolutions were wrongly passed.

Petitioners were appointed with respondents No.4 & 5 and were further promoted to the ranks of Assistant Managers with respondents No.3 & 4. After the petitioners attained rank of Manager on promotion, they came under the umbrella of common cadre rules under the Administrative control of respondent No.3 which is the Apex society.

Learned counsel for the petitioners submits that once the right of the petitioners for claiming parity *vis-a-vis* their junior employee has not been disputed even before this Court, the withdrawal of the benefit and further recovery of the payment cannot be sustained.

Per contra, Mr. Ashwani Prashar, Advocate appearing for respondents No.4 & 5 submits that the resolutions granting pay parity to the petitioners at par with their juniors were withdrawn after a jurisdictional defect was pointed out by the Registrar, Cooperative Society. He submits that the petitioners after 14.01.2014 having been promoted to the rank of Manager came under the administrative control of Apex Society i.e. Respondent No.3 and thus the resolutions passed being without jurisdiction were rightly withdrawn by respondents No.4 & 5.

Likewise respondent No.3 towing the line of Mr. Ashwani Prashar, Advocate submits that since there was no resolution passed by the Apex Body i.e. respondent No.3, the payment ought not to have been paid to the petitioners.

I have heard learned counsel for the parties and have gone through the records of the case.

None of the counsels representing the respondents is in position to dispute the fact that there exists pay anomaly and it is a duty of the employer to maintain the parity among employees. The claim is being denied by passing the buck inter-se between respondent No.3 on one side and respondents No.4 & 5 on the other side. It is also not denied that the anomaly came into being in the year 2010 i.e. much prior to date the petitioners graduated to the common cadre rules and came under the Administrative control of the Apex Body i.e. respondent No.3. Admittedly whole of the financial burden with respect to the claim of the petitioners has to be borne by respondent No.4. The right of an employee to claim parity has its genesis under Article 14 & 16 of the Constitution of India and the petitioners definitely has a vested right to claim protection of law so that they are not discriminated with hostility. The plea raised by respondents with respect to their being delay at the hands of the petitioners for raising their claim, also cannot be looked into in view of the fact that respondents No.4 & 5 have already accepted claim of the petitioner. The cause of action to file the present writ petition came to the petitioners only after the rights of the petitioners which were earlier accepted were withdrawn. Thus the plea raised by Mr. Prashar, Advocate with respect to delay in raising claim and restricting the relief to 38 months also cannot be accepted. In view of the aforesaid factual position, this Court does not find any justification in the action of the respondents in denying the claim of the petitioners and the action of the respondents in withdrawing the claim of the petitioners even though admitted. So far as dispute between the Apex Body and its members is concerned, the

same may be an internal friction between different organs which obviously cannot be raked up to deny the claim of the petitioners stemming out of Article 14 & 16 of the Constitution of India. However, in order to remove the aforesaid confusion, respondent No.3 is directed to fix the pay of the petitioners after removing the anomaly within a period of 60 days. Till the said time, no recovery from the petitioners shall be effected. Obviously the claim of the petitioners shall follow such adjudication at the hands of respondent No.3.

Petition stands disposed off.

Ordered accordingly.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

13.03.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No