

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118+238

CWP-305-2023 (O&M)
Date of Decision: 21.09.2023

Manoj Ram and Others

...Petitioners

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. R.D. Bawa, Advocate and
Mr. Dipanshu Kapur, Advocate for the petitioners

Mr. Samrit Gill, Advocate for
Mr. Shivoy Dhir, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners, through instant writ petition under Articles 226/227 of the Constitution of India, are seeking direction to respondents to grant pay scale at par with equally placed employees working with Central Government in its different departments including Central Ordinance Depots, Punjab Regiment, Artillery Centre, Nashik and Defence Research & Development Organization.

2. Learned counsel for the petitioners *inter alia* contends that the petitioners are working as Cook with respondent No.2 i.e. Border Roads Organization. The petitioners are getting Grade Pay ₹1800 whereas similarly situated employees working in other organizations are getting Grade Pay

₹1900. After the implementation of report of 7th Central Pay Commission, the petitioners are getting pay scale of ₹18,000-39900 whereas similarly situated employees are getting pay scale of ₹19900-63200. The dissimilarity is writ large. The petitioners are performing same duties rather they are working in hard areas. The qualification of the petitioners is at par with qualification of employees of aforesaid organizations.

3. In support of his contention, learned counsel for the petitioner relies upon judgment of Hon'ble Supreme Court in *State of Punjab and Others Versus Senior Vocational Staff Masters Association and Others; 2017 (9) SCC 379* and Delhi High Court in *D.G.O.F. Employees Association Versus Union of India; 2014 SCC OnLine Del 1989*.

4. Learned counsel for the respondents submits that petitioners are governed by terms and conditions of appointment letter as well as rules and regulations governing their services. The petitioners cannot claim pay or grade pay equal to employees working in other organizations.

5. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

6. The petitioner is relying upon judgment of Hon'ble Supreme Court in *Senior Vocational Staff Masters Association (supra)* whereby Hon'ble Court, noticing the fact that Vocational Masters had been drawing same salary as Vocational Lecturers before the application of 4th Pay Commission, has held that if two categories of employees are treated equal initially, they should continue to be so treated unless a different treatment is

justified by some cogent reasons. The relevant extracts of the judgment read as:

“26. The principle of equality is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39-A, 43 and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice-social, economic and political, by inter alia, minimising monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of the 4th Pay Commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eye of the law if no reasonable justification is offered for the same.

27. We are conscious of the fact that a differential scale on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of employees are treated as equal initially, they should continue to be so treated unless a different treatment is justified by some cogent reasons. In a

case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continued to be identical as they were initially laid down, then the Court shall be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed. Thus, the decisions relied upon by the learned Senior Counsel are clearly distinguishable and are not applicable to the facts of the present case.”

7. A Division Bench of Delhi High Court in *D.G.O.F. Employees Association (supra)* while dealing with claim of the employees working with Ordnance Factories held that petitioners were historically equal to Central Secretariat Service/Central Secretariat Stenographer’s Service and enjoyed equal pay and all benefits flowing from equal pay, thus, they, at later stage, cannot be treated unequally. The relevant extracts of the said judgment read as:

“1. The petitioner (hereafter called “the Association”) is aggrieved by the impugned order of the Central Administrative Tribunal (CAT) dated 18.10.2012 in O.A. No. 39/2011 and the further order dated 01.04.2013 in R.P. No. 43/2011 (hereafter called “the review order). The Association had sought a direction to quash the order of the Ordnance Factories Board, Ministry of Defence (hereafter called “the OFB”) dated 01.09.2009 and the further order of the Central Government, Ministry of Finance dated 20.04.2010, declining the request for grant

of parity of pay scales to employees in Ordnance Factories (“OF”) with that of identically ranked employees in the Central Secretariat Service (CSS) and Central Secretariat Stenographer's Service (CSSS).

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26. *The petitioners were treated historically as equals to CSS/CSSS employees and enjoyed equal pay and all benefits flowing from equal pay. This was based on the previous four instances of determinations by successive Pay Commissions that they performed equal work. No other evidence of “complete identity” of work was necessary in the circumstances of the case. The materials on the record do show that the Sixth CPC stated in more than one place specifically that historical parity in pay scales ought not to be disturbed. Such being the case, this Court is of the opinion that the CAT fell into error in holding that differentiation was facially justified, and could not be gone into given the nature of restricted judicial review. Consequently, a direction is issued to the respondents to fix the members of the Petitioner Association and other similarly placed Assistants working in Ordnance Factories and in OFB in the same pay scale as was given to Assistants similarly placed in CSS/CSSS, Army Headquarters, UPSC, CAT, MEA, Ministry of Parliamentary Affairs, etc. with effect from the same date as was first given to them. Consequential pay fixation and fitment orders shall be issued within eight weeks from today. The writ petition is allowed in the above terms without any order as to costs.”*

8. On being asked, learned counsel for the petitioners expressed his inability to show whether petitioners prior to introduction of reports of 4th, 5th,

6th or 7th Pay Commission were treated equally with the employees of other organizations. Thus, this Court relying upon afore-cited judgments cannot ask the respondents to pay salary to the petitioners equal to the employees working with other organizations.

9. A two Judge bench of Hon'ble Supreme Court in ***Union of India Versus Indian Navy Civilian Design Officers Association and Another; 2023 SCC OnLine SC 173*** has held that equation of post and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore, should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. The relevant extracts of the judgment read as:

“14. In view of the afore-stated legal position, it clearly emerges that though the doctrine “equal pay for equal work” is not an abstract doctrine and is capable of being enforced in a Court of Law, the equal pay must be for equal work of equal value. The equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job

evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service.”

10. In the wake of afore-cited judgments, this Court cannot direct the respondents to fix pay of the petitioners equal to pay of other employees working with different organizations. Nevertheless, considering the factual position, the respondents are requested to look into representation of the

petitioners and redress their grievance in accordance with law. The representation may be disposed of within 6 months from today.

Disposed of in aforesaid terms.

Pending application(s) also stand(s) disposed of.

(JAGMOHAN BANSAL)
JUDGE

21.09.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>