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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on: 19.01.2024
Pronounced on: 06.02.2024

1. CWP No.16709 of 2017

Jatinder Pal Singh and others		Petitioners
	Versus	
State of Punjab and others		Respondents

2. CWP No.17293 of 2017

Inderjit Singh and others		Petitioners
	Versus	
State of Punjab and others		Respondents

3. CWP No.18137 of 2017

Narinder Singh and others		Petitioners
	Versus	
State of Punjab and others		Respondents

4. CWP No.14794 of 2017

Sukhminder Singh and others		Petitioners
	Versus	
State of Punjab and Others		Respondents

5. CWP No.16814 of 2017

Kulbir Singh and others		Petitioners
	Versus	
State of Punjab and others		Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

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Present: Mr. Hemen Aggarwal, Advocate
for the petitioner(s).

Mr. T.P.S. Walia, AAG, Punjab.

Mr. Vikas Chatrath, Advocate
with Mr. Sanjeev Sharma, Advocate
Mr. Sahil Bhadu, Advocate
and Mr. Rajbir Singh, Advocate
for respondent No.3.

NAMIT KUMAR J.

1. This judgment shall dispose of CWP Nos.16709, 17293, 18137, 14794 and 16814 of 2017, as common questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from CWP No.16709 of 2017.

2. The present writ petition has been filed by the petitioner(s) invoking the jurisdiction of this Court under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of mandamus, directing respondents No.1 to 3 to take a final decision on letter dated 04.02.2016 (Annexure P-2), whereby the approval has been granted by the Board of Directors in the meeting held on 11.01.2016, whereby it was approved to send the case of pay-scale of officers/officials of different categories, for removal of anomalies in their pay-scales, as per the details given in agenda Item No.2 and it was requested that approval may be given to remove the anomalies in the pay-scales of officers/officials of the Mandi Board.

3. Brief facts, as have been pleaded by the petitioners in the present writ petition, are that the petitioners are employees of Punjab Mandi Board Market Committees and are working as Mandi

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Supervisors-cum-Fee Collectors and Auction Recorders. The case set up by the petitioners in the writ petition is that prior to 01.12.2011, the pay-scales of Mandi Supervisors were at par with Senior Assistants and similar was the position with regard to the post of Auction Recorders, whose pay-scale was also same as that of Junior Assistants and whereas w.e.f. 01.12.2011, after revision of pay-scales, anomaly has been created and the Senior Assistants have been placed in a higher Grade Pay of Rs.4400/- than that of Mandi Supervisors and similarly, Junior Assistants have been placed in a higher Grade Pay than that of Auction Recorders. The comparative chart with regard to above posts reproduced in the writ petition(s), showing their pay-scales and grade pay is reproduced, which reads as under:-

Name of posts	1986	1996	2006	From 1.12.2011
Mandi Supervisor-cum-Fee Collector	Rs.1800-3200	Rs.5800-9200	Rs.10300-34800+Grade Pay Rs.3800	Rs.10300-34800+Grade Pay Rs.3800
Senior Assistant	Rs.1800-3200	Rs.5800-9200	Rs.10300-34800+Grade Pay Rs.3800	Rs.10300-34800+Grade Pay Rs.4400

Name of posts	1986	1996	2006	From 1.12.2011
Auction Recorder	Rs.1200-2100	Rs.5000-8100	Rs.10300-34800+Grade Pay Rs.3200	Rs.10300-34800+Grade Pay Rs.3200
Junior Assistant	Post was not in existence	Rs.4400-7000	Rs.5900-20200+Grade Pay Rs.2800	Rs.10300-34800+Grade Pay Rs.3600

4. It has been further averred that the said anomaly has been crept in for the reason that since there is no post of Mandi Supervisor

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and Auction Recorder in the State of Punjab, therefore, the Notification dated 01.12.2011, is silent about these two posts and since there was an anomaly, therefore, the matter was taken up by the Punjab Mandi Board in the meeting of Board of Directors, held on 11.01.2016, whereby it was approved to send the case of pay-scales of officers/officials of different categories, for removal of anomalies in the pay-scales, as per the details given in agenda Item No.2 and it was requested that approval may be given to remove the anomaly in the pay-scales of officers/officials of the Mandi Board and since no action was taken by the respondent/State, therefore, the State President of Punjab Market Committee Employees Union sent a legal notice dated 11.05.2016, to the respondents for enhancing the Grade Pay of Mandi Supervisors and Auction Recorders. However, no action has been taken by the respondents, therefore, the instant writ petition has been preferred by the petitioners and a writ in the nature of mandamus, has been sought for directing the respondents to take a final decision on letter dated 04.02.2016 (Annexure P-2).

5. On issuance of notice of motion, separate replies have been filed by respondent No.1/State and respondent No.3, wherein it has been stated that the Market Committee Union Organization filed CWP No.13325 of 2015, before this Court in which vide order dated 07.07.2015, respondent No.1/State of Punjab was directed to take decision on the representation dated 28.04.2015, submitted by the petitioners therein by passing a speaking order and after affording an opportunity of hearing to the petitioners, preferably within a period of

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03 months, from the date of receipt of certified copy of the order and in compliance thereto, the petitioners/Union was called for personal hearing on 02.12.2015 and finally, it was decided by the Government of Punjab, which is reproduced as under:-

“6. That after the detailed hearing of petitioner organization in the meeting, the anomaly committee had decided that the representation dated 28.04.2015 of organization/union regarding pay scale anomaly is not countable under these circumstances and the case related to the pay scale may be sent back to Punjab Mandi Board with the direction that representation given by the employees of the Board should be pursue in the next pay commission in the light of the letter No.1/63/2012-5 FP-1/284 Dated 23.05.2012, of the Finance Department unanimously.

7. That in the light of recommendations given by the anomaly committee of the Agriculture Department, the representation dated 28.04.2015 of petitioner organization is not countable under these circumstances and Punjab Mandi Board is directed to pursue the proposal related to the pay-scales sent vide their letter dated 12.01.2015 and 04.02.2016 in the next pay commission in the context of letter no. 1/63/2012-5 FP-1/284 dated 23.05.2012 of the Finance Department.

*Sd- (N.S. Kalsi)
Chandigarh, Additional Chief Secretary (Development),
Dated, the Government of Punjab,
10.5.2016 Department of Agriculture.”*

6. The present case was heard at length by the Co-ordinate Bench of this Court on 01.05.2023 and the following order was passed:-

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*“Learned counsel for the petitioners very fairly submits that even if the claim of the petitioners to seek parity vis-a-vis Junior Assistants is held to be covered against them in terms of ratio of law laid down in **Punjab State Power Corporation Limited Vs. Rajesh Kumar Jindal & Ors., (2019)3 SCC 547**, still in the light of order placed on record by the respondents Annexure R-1 dated 10.05.2016 respondents need to place on record as to whether the claim of the petitioners was considered in the last pay commission which stands recommended on 20.09.2021 w.e.f. 01.01.2016 as para 7 of the order reads as under:-*

"7. That in the light of recommendations given by the anomaly committee of the Agriculture Department, the representation dated 28.04.2015 of petitioner organization is not countable under these circumstances and Punjab Mandi Board is directed to pursue the proposal related to the pay-scales sent vide their letter dated 12.01.2015 and 04.02.2016 in the next pay commission in the context of letter no. 1/63/2012-5 FP-1/284 dated 23.05.2012 of the Finance Department."

Faced with the situation, learned counsel for respondents No.2 & 3 prays for time to seek instructions.

Adjourned to 15.05.2023. Photocopy of this order be placed in the connected files."

7. Thereafter, on 15.05.2023, last opportunity was granted to learned counsel for respondents No.2 and 3 and in pursuance thereto, an additional affidavit of Dalwinderjit Singh, Additional Secretary, Punjab Mandi Board, S.A.S. Nagar, Mohali, on behalf of respondent No.3 was filed, wherein it has been stated as under:-

“6. That it is highlighted that the Government of Punjab vide notification no. 8/2/2014-3PP3/333, dated 24.02.2016 appointed 6th pay commission with specific terms of reference. Whereas, answering department had not specifically taken up the matter in view of Government

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letter dated 10.05.2016, but the Pay Commission has looked into all the aspects raised. While the Pay Commission was seized of the matter, a public notice was issued by the Commission on 04.05.2017 calling upon all Employees Union and concerned employees to make representations up to October, 2018 and thereafter the Commission had conducted public hearings and after consideration all submissions/objections, taking into the Pay Commission, after due deliberations, submitted its report to the Government of Punjab on 30.03.2021. However, the claim's/Pay anomalies of the petitioner's alongwith all categories have been considered by the 6th Pay Commission as Mid-Term revision of scales was unprecedented and out of turn. The Government of Punjab on the basis of above said report/recommendations of the 6th pay commission vide notification dated 05.07.2021 notified The Punjab Civil Service (Revised pay) Rules, 2021. Therefore, in view of above all anomalies arising from the mid-term re-revision of scales-2011 were redressed & which have been implemented w.e.f. 01.01.2016, as per chart given below:-

Sr. No.	Name of the Post	Pay Scale implemented w.e.f. 01.01.2006	Mid-term Re-revision Scale w.e.f. 01.12.2011	Anomaly claimed regarding Grade Pay	Implementation of 6 th Pay Commission w.e.f. 01.01.2016
1	Mandi Supervisor	10300-34800+3800	No Change	10300-34800+4400	Level 11
2	Senior Assistant	10300-34800+3800	10300-34800+4400	NIL	Level 11
3	Auction Recorder	10300-34800+3200	No Change	10300-34800+3600	Level 09
4	Junior Assistant	5910-20200+2800	10300-34800+3600	NIL	Level 07

The copy of The Punjab Civil Services (Revised pay)

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rules, 2021 is annexed herewith as ANNEXURE R-3/4.

*7. That it is pointed out that at the time of mid-term Re-revision of pay scales in the year 2011, Mandi Supervisors were enjoying Grade Pay of 3800 in the pay scale of 10,300- 4,800, and while Senior Assistants were given the Grade Pay of 4400 in the Same pay scale and this was claimed as one of the anomalies. Now, **in view of The Punjab Civil Services (Re-revised pay) rules, 2021, Senior Assistants and Mandi Supervisors have been placed at Level-11.***

8. That so far as claim of Auction Recorder claiming parity with Junior Assistant is concerned, it is submitted that the Department of Finance, vide letter dated 15.12.2011, initially granted Pay Scale of 10,300-34,800 with the Grade Pay of 3,200 w.e.f. 01.10.2011, but the same was revised to 10,300-34,800 with Grade Pay of 3,600 w.e.f. 01.12.2011. Vide this letter itself, the Clerks, who were given pay scales of 5,910-20,200 with Grade Pay of 2,400 w.e.f. 01.10.2011 were allowed revised scale of pay w.e.f. 01.12.2011 to the tune of 10,300-34,800 with Grade Pay of 3,200. This was the anomaly claimed by the employees' union espousing cause of employees, while as a matter of fact, there is no post of Junior Assistant under the Service Rules of Punjab Mandi Board, however, within the same cadre of Clerk, an employee with 5 year's service was given higher Grade Pay of 3,600 in the same scale of pay as was being enjoyed by Auction Recorders.

*9. That in this regard, it is submitted **that in view of recommendations of the 6th Pay Commission, Auction Recorders have been placed at Level-9 and Junior Assistants have been placed two steps below at Level-7 and as such, Auction Recorders are now enjoying much better pay scales vis-a-vis Junior Assistants.***

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10. That it is pertinent to mention here that the issue involved in the present writ petition is no more res-integra as the same has already been decided by this Hon'ble Court in a similar writ petition titled as "**Khushwant Singh & Others Vs. State of Punjab & Others**" vide judgment dated 20.04.2023 passed in CWP No. 14047 of 2017. Vide order dated 20.04.2023 passed in the above writ petition this Hon'ble court has dismissed the above writ petition while relying upon CWP No. 22069 of 2014, titled as "**Om Parkash & others Vs. Chief Secretary to Government of Punjab & others**" decided on 11.09.2017 and same has been upheld by the Division bench in LPA no. 2206 of 2017 decided on 20.11.2017. Copies of judgments passed in CWP No. 14047 of 2017 and LPA No. 2206 of 2017 are annexed herewith as **ANNEXURE R-3/5 (Colly)**.

11. That in the light of above, the anomaly complained of has already been addressed because Mandi Supervisors has since been equated with the Senior Assistant at Level-11 w.e.f. 01.01.2016, while Auction Recorders have been placed two notches higher at Level-9 compared with Junior Assistant, who have been placed at Level-7, therefore, Auction Recorders are enjoying much better scale vis-à-vis Junior Assistant. As such nothing survives in the writ petition and same deserves to be dismissed."

8. Learned counsel for the petitioners submits that since there was a parity in the pay-scales for the posts of Mandi Supervisors with Senior Assistants and Auction Recorders with Junior Assistants and they were in the same grade pay, prior to amendment made w.e.f. 01.12.2011, therefore, the petitioners are entitled for the same Grade Pay as has been

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granted to the Senior Assistants and Junior Assistants and therefore, there is a clear anomaly in the Grade Pay granted to the petitioners and consequently, the same is liable to be enhanced to be placed at par with that of Senior Assistants and Junior Assistants. He further submits that since now w.e.f. 01.01.2016, Mandi Supervisors and Senior Assistants have been placed in the same Grade Pay in Level 11 and similarly, the Auction Recorders and Junior Assistants have also been granted the same Grade Pay, though Auction Recorders have been placed in Level 09 and Junior Assistant in Level 07, therefore, the petitioners are entitled for the same Grade Pay for the intervening period from 01.12.2011 to 31.12.2015, as have been granted to Senior Assistants and Junior Assistants.

9. Per contra, learned counsel for the State as well learned counsel(s) for respondents No.2 and 3, submits that the prayer made by the petitioners in all the writ petitions, have already been satisfied as only a direction was sought by the petitioners to issue directions to respondents No.1 to 3 to take a final decision on letter dated 04.02.2016 (Annexure P-2) whereby the approval has been granted by the Board of Directors in the meeting held on 11.01.2016, vide which it was approved to send the case of pay-scales of officers/officials of different categories, for removal of anomalies in the pay-scales, as per the detail given in agenda Item No.2 and it was requested that approval may be given to remove the anomaly in the pay-scales of officers/officials of the Mandi Board and since, the final decision has already been taken vide letter dated 10.05.2016, whereby the government decided to pursue the

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said proposal relating to the pay-scales in the next Pay Commission in the context of letter dated 23.05.2012 of the Finance Department and the next Pay Commission has already submitted its recommendation, which had already been implemented w.e.f. 01.01.2006 and the petitioners have already been placed in the Grade Pay equivalent to the posts of Senior Assistants and Junior Assistants, therefore, the prayer made in the present writ petitions, has become infructuous and the claim of the petitioners, which is now being raised by them, to the effect that for the intervening period from 01.12.2011 to 31.12.2015, the petitioners should be placed in the same Grade Pay at par with Senior Assistants and Junior Assistants, without there being any pleadings to that effect and without any material for comparing and equating the posts of Mandi Supervisors with that of Senior Assistants and Auction Recorders with Junior Assistants, the petitioners cannot claim any benefit and therefore, the present writ petitions is liable to be dismissed.

10. I have heard learned counsel for the parties and perused the record with their able assistance.

11. In nutshell, the present writ petitions have been filed by the petitioners with the precise grievance that directions be issued to respondents No.1 to 3 to take a final decision on letter dated 04.02.2016 (Annexure P-2), whereby the approval has been granted by the Board of Directors in the meeting held on 11.01.2016, vide which it was approved to send the case of pay-scales of officers/officials of different categories, for removal of anomalies in the pay-scales, as per the details given in agenda Item No.2 and it was requested that approval may be

given to remove the anomaly in the pay-scales of officers/officials of the Mandi Board, therefore, it is clear that the relief claim in the present writ petition has already been granted to the petitioners.

12. However, during the course of arguments, it has been argued by learned counsel for the petitioners that since prior to 01.12.2011 and w.e.f. 01.01.2016, the petitioners have been granted same Grade Pay as that of Senior Assistants and Junior Assistants, therefore, for the intervening period also, the petitioners are entitled for the same Grade Pay as have been granted to the Senior Assistants and Junior Assistants and on the principle of parity, the petitioners are entitled for the same. The said claim of the petitioners cannot be accepted, for the following reasons:-

(i) In the absence of any pleadings with regard to the duties and responsibilities of the post of Mandi Supervisors, Senior Assistants, Auction Recorders and Junior Assistants, there is also no averment in the petition(s) which would shed light on the comparative educational qualifications required for the posts, the method of recruitment, the duties to be performed and the responsibilities to be discharged. In the absence of such pleadings and material on record, the prayer of the petitioners i.e. Mandi Supervisors to be granted Grade Pay parity with the post of Senior Assistants and similarly, Auction Recorders with Junior Assistants cannot be adjudicated upon and countenanced with.

The burden of proof in establishing parity in the pay-scales and nature of duties and responsibilities, is on the petitioners,

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however, the said burden has not been discharged by the petitioners as no such pleading to this effect has been given in the writ petition.

(ii) There is also no conscious decision of the government at any point of time equating the post of Mandi Supervisors with that of Senior Assistants and Auction Recorders with Junior Assistants and merely the posts of Mandi Supervisors, Senior Assistants, Auction Recorders and Junior Assistants, were in the same pay-scales and granting different Grade Pay to Mandi Supervisors and Auction Recorders w.e.f. 01.12.2011 is not a case of anomaly.

The parity cannot be claimed merely on the premises that at an earlier point of time, the posts of Mandi Supervisors and that of Senior Assistants and Auction Recorders and Junior Assistants, were in the same pay-scales. Similar issue has been considered by the Co-ordinate Bench of this Court in a bunch of cases and the lead case being **CWP No.22069 of 2014**, titled as ***“Om Parkash and others vs Chief Secretary to Government of Punjab and others”***, decided on **11.09.2017**, wherein it has been held as under:-

“The precise grievance raised in the petition is that such historical parity has not been maintained and has been broken w.e.f. 01.12.2011. It is submitted that the Senior Lab Attendants who were enjoying identical pay scale earlier in point of time have now been placed in a pay scale/grade pay as also initial pay inferior to a

position as compared to the reference posts. In support of such contention another tabulation stands furnished in Para 11 of CWP No.23209 of 2015 and which is extracted herein below:-

Post	Un-revised pay scale	Revised pay scale w.e.f. 01.12.2011			Revised pay scale w.e.f. 01.06.2011/10.10.2011			Repeated Revised/Re-revised pay scale w.e.f. 01.12.2011		
		Scale	Grade Pay	Initial Pay	Scale	Grade Pay	Initial Pay	Scale	Grade Pay	Initial Pay
Senior Lab Attendant	3120-5160/6200	5910-20200	1900	7810				5910-20200	3200	9880
Photostat machine	-do-	5910-20200	1900	7810				10300-34800	3200	13500
Patwari	-do-	5910-20200	1900	7810						
ARC (Irrigation Department)	-do-	5910-20200	1900	7810				10300-34800	3200	13500
Work Munshi	-do-	5910-20200	1900	7810				5910-20200	2400	9880
Gram Sewak	-do-	5910-20200	1900	7810				10300-34800	3200	13500
Constable	-do-	5910-20200	1900	7810	5910-20200	200	8240	10300-34800	3200	13500
Clerk	-do-	5910-20200	2400	9880				10300-34800	3200	13500
Restorer	-do-	5910-20200	1900	7810				5910-2022	2400	9880

The solitary contention advanced by counsel is that since Senior Lab Attendants had enjoyed identical pay scale for a period in excess of four decades, it was not open for the State Government to have broken such parity. The action of the State Government in having denied to the petitioners identical pay scale/grade pay and initial pay to the Senior Lab Attendants and while granting revised pay scales w.e.f. 01.12.2011 to the reference posts at a higher level is stated to be arbitrary and violative to Articles 14 and 16 of the Constitution of India.

Counsel for the parties have been heard at length.

It is by now well settled that grant of pay scale is a

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complex function which involves evaluation of duties and responsibilities of different posts. Such evaluation is best left to be carried out by the expert bodies. Granting parity in pay scales depends upon a comparative job evaluation and equation of posts. It is equally well settled that the principle of Equal Pay for Equal Work is not a fundamental right but a constitutional goal. The question as regards pay parity would depend on a number of relevant factors/parameters such as educational qualifications, nature of the job, duties to be performed, responsibilities to be discharged, method of recruitment etc.

It may be noticed that even though, Senior Lab Attendants i.e. the petitioners herein are seeking pay parity with the holders of reference posts i.e. Photostat Machine Operators, Patwaries, Assistant Revenue Clerks (Irrigation Department), Work Munshies, Gram Sewak, Constables, Clerks, Restorers and Multi Purpose Health Workers yet the pleadings are completely bereft as regards the duties and responsibilities of the post of Senior Lab Attendants as opposed to the reference post mentioned hereinabove. There is no averment in the instant petition that would shed light on the comparative educational qualifications required for the posts, the method of recruitment, the duties to be performed and the responsibilities to be discharged. In the absence of such pleadings and material on record, the prayer of the petitioners i.e. Senior Lab Attendants to be granted pay parity with the posts under reference cannot be adjudicated upon and accepted.

Parity also cannot be claimed merely on the basis that earlier in point of time the subject post i.e. the post of Senior Lab Attendants and the reference category posts i.e. noticed hereinabove, were carrying identical pay scale. A

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*reference in this regard may be made to the decision of the Hon'ble Supreme Court of India in **State of West Bengal and another vs. West Bengal Minimum Wages Inspectors Association and others 2010(2) SCT 250**. The issue before the Apex Court in case of State of West Bengal (supra) was pay parity sought by employees holding the post of Inspector Agricultural Minimum Wages (for short Inspector-AMW) with those holding the posts of Inspector (Co-operative Societies), Extension Officers (Panchayat) and Revenue Officers. The case set up on behalf of Inspectors-AMWs while seeking pay parity with the reference posts was that they had enjoyed pay parity with the reference posts all through and such parity had subsequently been broken. Apparently, the State of West Bengal had appointed a Pay Review Committee to consider the representations submitted by Inspector AMW and the Pay Review Committee made a recommendation in their favour and for establishing and restoring pay parity with the reference posts. The State of West Bengal however decided not to accept the recommendations of the Pay Review Committee. The matter having been agitated, a Division Bench of the Calcutta High Court allowed the claim of the Inspectors-AMWs and directed as follows:-*

“The petitioners be given the same scale from the respective date as were given to their counter parts namely the four posts under RPA 1981 as well as corresponding scale under RPA 1986 and the same scale that would be given to those four posts under the 4th Pay Commission and accordingly their pay be fixed and the difference/arrears be paid to the petitioners within six months from the date of receiving of certified copy of the order.”

The matter having been carried up in appeal before

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the Hon'ble Supreme Court, appeal was allowed and the impugned judgment of the Division Bench of the Calcutta High Court was set aside.

It was held that the Apex Court as follows:-

“17. It is now well-settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust. The respondents have neither pleaded nor proved that the

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holders of post of Inspectors (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) were discharging duties and functions similar to the duties and functions of Inspector-AMW. Hence, the prayers in the original writ petition could not have been granted. In fact, that is why the learned single Judge rightly held that whether the posts were equivalent and whether there could be parity in pay are all matters that have to be considered by expert bodies and the remedy of the respondent was to give a representation to the concerned authority and the court cannot grant any specific scale of pay to them.”

In the considered view of this Court, the dictum laid down in the case of State of West Bengal (supra) applies squarely to the facts of the present case as well.

The petitioners could have claimed the benefit of higher pay scale as admissible to the reference posts of Photostat Machine Operator, Lift/Telephone/Tubewell Operator, Senior Technician, Constables, Restorers, Patwari, Clerks(Basic Entry point), Bill Clerk, Assistant Revenue Clerks (Irrigation Department), Work Munshi, Booking Clerk, Ledger Keeper, Store Munshi, Complaint Clerk, Gram Sewak, as also Multi Purpose Health workers, only upon establishing that the Senior Lab Attendants also discharge duties and functions identical with or similar to the ones discharged and carried out by holders of the posts in reference. It is only in the eventuality of the petitioners having discharged such onus that this Court could possibly hold that the dis-parity in pay scales is irrational and unjust. There are no such pleadings on record. The only ground set up for claiming pay parity is that there had been pay parity in the past. That by itself cannot be a ground to accept the prayer

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made in the instant writ petition.

It is not even the case of the petitioners that the State Government at any point of time had taken a conscious decision of equating the post of Senior Lab Attendant with any of the reference posts noticed hereinabove.

In view of the discussion above, no merit is found in these petitions and the same are dismissed.”

The said judgment has been upheld by the Division bench of this Court in **LPA No.2206 of 2017**, titled as **“*Malkiat Singh and others vs The Chief Secretary to the Government of Punjab and others*”, decided on 20.11.2017**. The operative part of the said judgment, reads as under:-

“The learned Single Judge noticed that at one point of time there was a parity of pay between certain set of employees mentioned in the petition but that would not mean that the appellants would continue to be equated in terms of pay with those employees in the event of the other categories getting higher pay scale unless it is shown to the court that there is a co-relation between their work and similarity of functions or the existence of rules equating these posts.

Before us while arguing learned counsel for the appellants has candidly conceded that there are no rules or instructions equating these posts to render a co-relation between them. If that is so then merely because at one point of time the pay structure admissible to these set of employees was co-incidentally similar would be no cause to seek parity. Therefore, finding no error in the approach of the learned Single Judge, we decline interference in the Letters Patent Appeal but make it clear that the grievance of the appellants for higher pay structure can

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independently be looked into by the State considering the nature of duties performed by the appellants. We hasten to add here that this is not to comment on the legitimacy of the appellants' grievance. Since the appellants have made a representation to the State, they may look into it.

Appeal stands disposed of.”

The aforesaid judgment in case of ***Om Parkash and other's case (supra)***, has been followed by this Court in CWP No.14047 of 2017, titled as ***“Khushwant Singh & Others Vs. State of Punjab & Others”*** decided on 20.04.2023.

The Hon'ble Supreme Court in ***“Punjab State Power Corporation Limited vs Rajesh Kumar and others”***, 2019(1) SCT 536, while considering the similar question with regard to the parity in pay-scales of the posts of Head Clerks with that of Internal Auditors in Punjab State Electricity Board has held as under:-

“13. In the light of the submissions, several issues arise for determination inter alia are as under:-

Whether the Internal Auditors are entitled to claim parity of pay scale with Head Clerks and Head Clerk-cum-Divisional Accountants irrespective of the nature of recruitment, qualifications and nature of duties and responsibilities?

Can the Internal Auditors claim equity of pay scale, merely because they are in the same group (Class-XII) irrespective of the nature of work and the internal qualification for recruitment. In view of the promotional avenues available to the Internal Auditors and the high pay scales which are available in the promotional position, opting for Internal Auditors, is it not a “preferred option”?

When there are about fourteen posts categorised in

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Group XII, can Internal Auditors claim parity of pay scale with the Head Clerks merely because they were categorised in Group XII?

14. Ordinarily, the courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission etc. The aggrieved employees claiming parity must establish that they are unjustly treated by arbitrary action or discriminated. In **Kshetriya Kisan Gramin Bank v. D.B. Sharma and Others (2001) 1 SCC 353**, this Court held as under:-

“7. The next question that arises for consideration is, as to what extent the High Court would be justified in exercise of its extraordinary jurisdiction under Article 226 to interfere with the findings of an expert body like the Equation Committee. In **State of U.P. and Others v. J.P. Chaurasia and Others (1989) 1 SCC 121**, this Court unequivocally held that in the matter of equation of posts or equation of pay, the same should be left to the Executive Government, who can get it determined by expert bodies like the Pay Commission, and such expert body would be the best judge to evaluate the nature of duties and responsibilities of the posts and when such determination by a commission or committee is made, the court should normally accept it and should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration....”

15. In **S.C. Chandra and Others v. State of Jharkhand and Others (2007) 8 SCC 279**, this Court held as under:-

“33. It may be mentioned that 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. Hence, the court should exercise judicial restraint and not interfere in such executive function vide **Indian Drugs &**

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Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408.

.....

35. *In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).*

36. *It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide Govt. of W.B. v. Tarun K. Roy and Others (2004) 1 SCC 347.”*

The same view was reiterated in Union Territory Administration, Chandigarh and Others v. Manju Mathur and Another (2011) 2 SCC 452; State of Haryana and Others v. Charanjit Singh and Others (2006) 9 SCC 321 and in Hukum Chand Gupta v. Director General, Indian Council of Agricultural Research and Others (2012) 12 SCC 666.

16. *Observing that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts, in Steel Authority of India Limited and Others v. Dibyendu Bhattacharya (2011) 11 SCC 122, this Court held as under:-*

“30. the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work

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and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.”

17 to 38. XXXX XXXX XXXX

39. The only ground urged by respondents-Internal Auditors is that parity of pay scale between the Head Clerks and the Internal Auditors was maintained by the appellant-Board for more than two decades and while so, disturbing the parity is arbitrary and illegal. The Court has to keep in mind that a mere difference in service conditions, does not amount to discrimination. Unless there is complete identity between the two posts, they should not be treated as equivalent to claim parity of pay scale. No doubt, Internal Auditors were earlier placed in the same group namely Group XII; but educational qualifications for the post of Head Clerk and mode of recruitment are different. As submitted by the learned Senior Counsel for the appellant-Board, that in the year 1980, there were only four posts in Group XII but subsequently some posts were added to Group XII and the total fourteen posts which were added to Group XII are:- Punjabi Teacher, Drawing Teacher, Hindi Teacher, D.P.Ed. Teacher, Master/Mistress, Science Teacher, Security Inspector, Modeller Divisional Head Draftsman, Prosecuting Inspector (now Law Officer), Law Officer

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*Grade II, Medical Assistant, Librarian and Fire Officer, etc. For all these posts, source and mode of recruitment, qualifications and nature of work are entirely different. If the contention of the Internal Auditors for claiming parity of pay scale with that of Head Clerks merely on the ground that the post of Internal Auditor was placed in Group XII, then if such parity of pay scale may have to be extended to all other posts, it would have huge financial implication on the finance of the Board which is a service-oriented institution owing to the consumers. As held in **Union of India and Another v. Manik Lal Banerjee (2006) 9 SCC 643**, “it is now a well settled principle of law that financial implication is a relevant factor for accepting the revision of pay.”*

40. *The learned Single Judge proceeded under the erroneous footing as if the case of Internal Auditors is covered by the case put forth by Sub Fire Officers. The learned Single Judge did not keep in view the counter statement filed by the appellant-Board before the High Court pointing out various distinguishing features of Internal Auditors and Head Clerks on account of which no parity could be granted to the Internal Auditors with the Head Clerks. The High Court also did not keep in view that the Pay Anomaly Committee did consider the demand of Internal Auditors and had not accepted the demand in view of different nature of duties and various other relevant factors. The learned Single Judge erred in recording that the respondents were in the same category of “Sub Fire Officers” within the same group which have been decided by the earlier judgment dated 21.01.2010.*

41. *As discussed earlier, merely because various different posts have been categorized under Group XII, they cannot claim parity of pay scale as that of the Head*

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Clerk. All the more so, when the Internal Auditors are appointed 55% by direct recruitment and 45% by promotion from Circle Assistant/Assistant Revenue Accountant. The High Court did not keep in view that the duties, nature of work and promotion channel of Head Clerks and Internal Auditors are entirely different and that option to seek promotion apparently as Internal Auditors was the “conscious exercise of option”, the impugned judgment cannot be sustained and is liable to be set aside.

42. In the result, the impugned judgment dated 23.02.2012 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No.264 of 2012 and Order dated 04.05.2012 in the review petition are set aside and these appeals are allowed. No costs.”

13. In view of the foregoing reasons as well as settled proposition of law laid down by the Hon’ble Supreme Court and this Court, the claim of the petitioners seeking pay parity for the posts of Mandi Supervisors with that of Senior Assistants and Auction Recorders with Junior Assistants, cannot be countenanced with and, therefore, the present petition is accordingly dismissed.

(NAMIT KUMAR)
JUDGE

06.02.2024

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No