

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

(215) **CWP-20891-2018**
Date of Decision : January 30, 2024

Surajbir Rathee and others .. **Petitioners**

Versus

State of Haryana and others .. Respondents

(2) CWP-29316-2018

Vineet Kumar and others .. Petitioners

Versus

State of Haryana and others .. Respondents

(3) **CWP-4181-2020**

Naresh Kumar and another .. Petitioners

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate, for the petitioners
in CWP-20891-2018.

Mr. Rajesh K. Kataria, Advocate, for the petitioners
in CWP-29316-2018.

Mr. Vinod K. Kanwal, Advocate, for the petitioners
in CWP-4181-2020.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Mr. Dushyat Singh, Advocate, for
Mr. Nilesh Bhardwaj, Advocate, for respondents No. 3 and 4
in CWP-29316-2018.

HARSIMRAN SINGH SETHI J. (ORAL)

1. By this common order, three writ petitions, the details of which have been given in the heading, are being disposed of as all these petitions

involve the same question of law on similar facts.

2. For the purpose of the present order, the facts are being taken from CWP No.20891 of 2018 titled as Surajbir Rathee and others vs. State of Haryana and others.

3. The petitioners were initially appointed in the Department of Health and Family Welfare on the post of Lab Technician. Out of the Department of Health and Family Welfare, another Department i.e. Employees State Insurance, Health Care (hereinafter referred as 'ESI') was carved out and the options were sought from the officials/employees working in the Department of Health and Family Welfare, who are ready to shift to the New Department on permanent basis by way of absorption.

4. Keeping in view the options exercised, the petitioners were absorbed in the newly created department of ESI, Directorate on 25.09.2007. Keeping in view the fact that a new Department had been carved out and the Rules governing the service for the said new Department were yet to be framed, it was decided that till the new Rules of the ESI Department are framed, the petitioners, despite their absorption in ESI Department, will continue to be governed by the Haryana Health Department-Laboratory Technician (Group C) Services Rules, 1998 (hereinafter referred as "1998 Rules").

5. As per 1998 Rules, the post of Laboratory Technician was in a pay scale of Rs.1350-2200 which the petitioners were getting while working in the Department of Health, Government of Haryana as well as after being absorbed in the ESI Department.

6. In the year 2016, the Haryana Civil Service (Revised Pay) Rules, 2016 were notified on 28.10.2016, which were to come into effect w.e.f. 01.01.2016. As per Rule 4 of the 2016 Pay Rules, the functional

level of the post of Lab Technician General in the Department of Health was given a Level-6 of Pay Matrix and the existing grade pay of Rs.2800 was upgraded to Rs.4200/-.

7. After the notification of the said Rules, the Lab Technicians who are working in the Department of Health were granted the said benefit but the said benefit has not been extended to the petitioners, who had been absorbed in the ESI Department.

8. The petitioners raised a grievance that the petitioners, who were earlier part of the Health Department and had been absorbed in the ESI Department and even up to 01.01.2016, they were being governed by the Rules governing the Department of Health, hence, once the pay scale of Lab Technicians working in the Health Department i.e. the post on which the petitioners were also previously working, has been revised as per the Rule 4 (C) of 2016 Pay Rules, the benefit of the same be extended to the petitioners, who are also working as a Lab Technicians but in the separate Department of ESI.

9. The said grievance of the petitioners was considered by the Government and ultimately, an order was passed by the respondents granting the benefit as given under Rule 4 (C) of 2016 Pay Rules, revising the pay structures of the Lab Technicians working in the ESI Department as well of some Department where the petitioners in these petitions were working. The said order was passed on 17.04.2018, a copy of which has been appended with this petition as Annexure P-6. While granting the said benefit w.e.f. 01.01.2016, it was mentioned that the benefit from 01.01.2016 till 17.04.2018 will be notional and actual benefit will only be granted from the date of issuance of the said instructions.

10. The challenge in the present petitions is to the remarks given with regard to the applicability of revised pay scale to the Lab Technicians working in the ESI Department notionally from 01.01.2016 onwards.

11. Learned counsel for the petitioners argues that keeping in view the facts and circumstances of the present case, where the petitioners were appointed in the Department of Health and were working as Lab Technician and it was only when the new Department of ESI was created, the petitioners were absorbed in the new Department and even after the absorption, they were being governed by the Rules which were applicable to the Department of Health hence, the benefit granted to the Lab Technicians in the Department of Health should have been extended to the petitioners in the year 2016 itself and now though, the same benefit has been given to them but it has been given prospectively, which is arbitrary and illegal.

12. Learned counsel for the petitioners further argues that once, the respondent-Department accepted the claim of the petitioners that they were also entitled for the benefit of revised pay scale as revised under Rule 4 (C) of 2016 Pay Rules, the said benefit should have been extended to the petitioners at the relevant time and now, grant of said benefit notionally for a period of more than two and half years, is totally arbitrary and illegal and without any valid justification.

13. Learned counsel for the respondents concedes the factum that the petitioners were the employees of the Department of Health working on the post of Lab Technician and they were absorbed on the creation of new Department of ESI and even after absorption, the 1998 Rules governing the Department of Health qua the post of Lab Technician were applicable upon the petitioners.

14. Learned counsel for the respondents submits that keeping in view the said analogy, vide instructions dated 17.04.2018 (Annexure P-6), the petitioners have also been granted the benefit of revised pay scale but as the said benefit has been granted on a particular date, the same has been made prospective though notionally, the pay of the petitioners will be fixed in accordance with Rule 4 (C) of 2016 Pay Rules w.e.f. 01.01.2016 hence, no grievance can be raised by the petitioners.

15. I have heard learned counsel for the parties and have gone through the record with their able assistance.

16. It is a conceded fact that the petitioners were initially appointed as Laboratory Technician in the Department of Health and thereafter, on creation of the new Department of ESI, they were absorbed in the said Department. It is also a conceded fact that nature of duties being performed by the petitioners i.e. Laboratory Technician in the ESI Department as well as in other Department are akin to the duties being performed by the Laboratory Technician in the Department of Health. It is also a conceded fact that even as of now, there are no Rules governing the post of Laboratory Technician in the Department of ESI and the Laboratory Technicians working in the Department of ESI are still governed by the 1998 Rules which govern the Laboratory Technician working in the Department of Health. Keeping in view these conceded facts, this Court is to adjudicate whether, non-grant of revised pay scale, as revised by the respondent-State vide 2016 Pay Rules, should have been made applicable upon the Laboratory Technician working in ESI Department or not.

17. From the 2016 Pay Rules, it is clear that the Laboratory Technicians working in the Department of Health were given the benefit of revised pay/revised grade pay. The said notification was implemented qua

the Laboratory Technicians working in the Department of Health immediately and that too w.e.f. 01.01.2016 by giving them all the benefits from the said date. Had the petitioners continued working in the Department of Health, the petitioners would have also got the same benefit but as the petitioners were absorbed in the New Department which was carved out by the respondents, the said benefit was not extended to them.

18. The non-grant of the benefit admissible under Rule 4 (C) of 2016 Pay Rules upon the Laboratory Technician working in the ESI Department was without any valid justification especially when the respondents conceded the fact that the Rules which were governing the Laboratory Technician in the Department of Health, were made applicable upon the petitioners also who were working as a Laboratory Technician in the Department of ESI. Once the benefit of revised pay scale was granted to the Laboratory Technician working in the Department of Health, the respondents should have granted the said benefit to the petitioners as well.

19. The said controversy has already been solved by the respondents when they themselves gave the petitioners the benefit from the due date i.e. revised pay scale as admissible under Rule 4 (C) of 2016 Pay Rules vide notification dated 17.04.2018 (Annexure P-6). Once, the respondents conceded the fact that the petitioners who are working as Lab Technician in different Department, were also entitled for the said benefit from 01.01.2016, there is no valid justification to deny the petitioners the actual benefit of the revised pay especially when it is a conceded position that the petitioners continued to work on the same post from 01.01.2016 onwards till 17.04.2018. Once the petitioners discharged the same duties of the post of Lab Technician granting the revised pay scale notionally is totally arbitrary and illegal and is discriminatory.

20. It is not a case where, the employee was not working on a post prior to the passing of the order but was granted retrospective promotion so as to deny the benefit of salary of a post. It is a case where, anomaly in the pay scale of two similar posts was created by the respondents which fact was conceded by the respondents while passing the notification dated 17.04.2018 (Annexure P-6). That being so, granting of notional benefit only to the petitioners w.e.f. 01.01.2016 to 17.04.2018 is totally arbitrary and illegal and without any valid justification and hence, cannot be sustained.

21. Further, as per the judgment of the Full Bench of this Court in ***Rajbir Singh and others vs. Haryana State Electricity Board and others, 2009 (3) SCT 543***, the Full Bench of this Court has held that where an anomaly has been found by the Department and also cured, the same is to be cured from the date when the anomaly occurred. The relevant paragraph 9 of the said judgment is as under:-

“9. Irrespective of our aforesaid determination (on a perusal of the judgments relied upon by the learned counsel for the petitioners), we have no hesitation to uphold the submission advanced by the learned counsel for the petitioners, so as to conclude, that in case of an anomaly, which had arisen during the revision of pay scales, the correction thereof, to be with effect from the date when the anomaly had arisen. In other words, if a pay scale wherein the anomaly had arisen was released from 1.1.1986, it is bound to be corrected from 1.1.1986, and not with effect from the date when the anomaly was discovered, or prospectively with effect from a date of the choice of the employer. Even the learned counsel for the respondents acknowledges the correctness of the aforesaid proposition. The basis of our conclusion recorded hereinabove arises out of a simple premise. Once it is acknowledged that a mistake has been committed, whereby

an anomaly has arisen, the mistake has to be remedied in such a manner, that the aggrieved party does not have any adverse effect of the mistake/anomaly. This would be possible if an anomaly in pay scales is corrected retrospectively with effect from the date when the anomalous pay scale was introduced. On the other hand, if the mistake/anomaly is corrected from a future date, the concerned individual will have to suffer the effect of the anomaly, from the date it had arisen, till the date it was remedied. The latter determination would be iniquitous and unacceptable in law as it would not be able to stand the test of [Article 14](#) of the Constitution of India, which postulates equality before the law and equal protection of the laws.”

22. Learned counsel for the respondents has not been able to rebut the findings recorded by the Full Bench in ***Rajbir Singh’s case (supra)*** to be applicable upon the petitioners especially when it is a conceded fact that an Anomaly Committee was constituted by the respondent-State to find out the anomaly between the Laboratory Technician working in the Department of Health and the Laboratory Technician working in the Department of ESI and whether, the petitioners were also entitled for the benefit of Rule 4 (C) of 2016 Pay Rules, which was answered by the Anomaly Committee in the favour of the petitioners.

23. That being the question of fact, keeping in view the settled principle of law settled by the Full Bench of this Court in ***Rajbir Singh’s case (supra)*** granting the notional benefit from 01.01.2016 till 17.04.2018 is not only factually incorrect but also contrary to the settled principle of law settled by the Full Bench of this Court in ***Rajbir Singh’s case (supra)***, hence, the respondents are directed that the petitioners should also be granted the actual benefit of arrears of salary in revised pay scale, as granted vide notification dated 17.04.2018 (Annexure P-6) w.e.f. 01.01.2016 onwards with consequential benefits. Let the said order be complied with

within a period of three months from the receipt of copy of this order.

- 24. No other argument was raised.
- 25. The present writ petitions are allowed in above terms.
- 26. A photocopy of this order be placed on the file of other

connected cases.

January 30, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No