

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-9410-2016 (O&M)
Date of decision: 13.05.2024

Balbir Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP-11060-2016 (O&M)

Amit Rampal and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP-21142-2021 (O&M)

Jagsir Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CWP-20356-2020 (O&M)

Krishan Lal and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP-9364-2024 (O&M)

Rakesh Phul and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CWP-9482-2024 (O&M)

Arvind Kumar and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. RK Arora, Advocate,
for the petitioners in CWP-9416 & 11060-2016, CWP-20356-2020
and CWP-9364 & 9482-2024

Mr. BS Bajwa, Advocates
for the petitioners in CWP-9410-2016

Mr. Amit Kaith, Advocate
for the petitioners in CWP-21142-2021

Mr. Arun Gupta, DAG, Punjab.

AMAN CHAUDHARY J.

1. These cases involve similar issues and therefore, are being disposed of together by this common judgment.

2. The prayer in the present petitions is for quashing the impugned action of the respondents in creating disparity for the grant of revised pay scale in respect of Vocational Masters appointed prior to 08.07.1995 and further directing them to grant the same to the petitioners w.e.f 01.01.1996 onwards.

3. Learned counsel make a reference to the advertisement dated 28.12.1994, as per which, for the post of Vocational Masters/Mistresses, the education qualification varied for different posts i.e. for Book Keeping and Accountancy, it was M.Com or M.A. with B.Com and diploma in Office Organisation or procedure, while for the post of Masters/Mistress, which the petitioners have applied for, i.e. R & M of Electrical Gadgets, were either degree in Electrical Engineering or 3 years diploma in Electrical from the State Board of Technical Education and for Mechanical Engineering, degree in Mechanical Engineering or 3 years diploma in Mechanical Engineering etc., the pay scale was prescribed as Rs.1800-3200 for all posts irrespective of the prerequisite qualifications for appointment to the same. All petitioners were appointed in the said

scale for the post of Vocations Masters and were granted revised pay scale of

Rs.6400-10,640, w.e.f. 01.01.1996. The Department while considering the case afresh regarding revision of pay scales of Vocational Masters/Mistresses/ Lecturers w.e.f. 01.01.1996, withdrew letters dated 07.11.2002 and 16.05.2003 and decided that designation and scale of Rs.6400-10640/- will be admissible to only those Vocational Masters/Mistress appointed on or before 08.07.1995, who acquired qualifications of Post graduation degree by the said date. This, on challenge by the Association was quashed, with directions to give benefits of Notification dated 31.03.1995 to all Vocational Masters/Mistresses recruited prior to 08.07.1995, irrespective of whether they had qualification of degree or ITI diploma, against which the appeal filed by the State was also dismissed vide judgment dated 28.05.2006, and the SLP, which was converted into Civil Appeal No. 632 of 2008, was dismissed on 18.08.2017, affirming the judgment passed by this Court, categorically observing and holding thus:

“19. In view of the forgoing discussion, we are of the considered opinion that the High Court was fully justified in declaring that the vocational masters are entitled to pay scale of Rs. 6,400-10,640/- on the ground that the nature of duties being discharged by the vocational masters are the same as vocational lecturers and that there was no rationale behind making a classification between the two especially when both the categories were treated as one and the same in all the previous pay revisions since 1978 onwards. Vide notification dated 31.03.1995, only the nomenclature of vocational masters was changed without changing their nature of duties and pay scales. Further, the impugned order dated 16.07.2003 deserves to be quashed on the short ground that it has been passed without complying the rules of natural justice. The same could not have been passed without giving an opportunity of hearing to the concerned employees.

20) It is by now well settled that no orders causing civil consequences can be passed, without observing rules of natural justice as it was held in Bhagwan Shukla vs. Union of India & Ors. AIR 1994 SC 2480 wherein it was held as under:

“3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs, 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 pan. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to

show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991. which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs. 190 to Rs. 181 w.e.f. 18.12,1970.”

21) The order dated 16.07.2003 came to be made behind the back of vocational masters without following any procedure known to law. Thus, there has been a flagrant violation of the principles of natural justice and the respondents had been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter.

22) In our considered view, the High court while dealing with the matter on merits, has rightly quashed the letter dated 16.07.2003 and directed the State government to give benefits of the Notification dated 31.03.1995 to all the Vocational Masters.”

4. The State however, again issued Notification dated 23.12.2011, denying the grade pay of Rs.5400/- to the Diploma holders with three years' experience and appointed being eligible for the post whereas, allowed to those who obtained Bachelor or Master's Degree. The same was challenged in CWP-19236-2013 by one Tarvinder Kumar, working as Vocational Master (Electrical), stating therein that he had been appointed pursuant to advertisement dated 28.12.19994 issued for filling up 190 posts of Vocational Master/Mistress for different trades as he was found eligible possessing the requisite qualification thereof i.e. Diploma and thus, was appointed along with other candidates possessing Bachelor Degree in Engineering in the same

regard to earlier letter dated 16.07.2003 where the distinction drawn between the pay scales of those appointed prior to 08.07.1995 and possessing higher qualification, was quashed by this Court and upheld by the Hon'ble Supreme Court. The learned State counsel in the said case resisted the prayer by submitting that the Vocational Masters were conferred designation of Vocational Lecturer with pay scale of Rs.6400-10640/-, however, those who did not have the post graduation or degree in Engineering, were given the pay scale of Rs.5800-9200 w.e.f. 01.01.1996. The said writ petition was allowed vide judgment dated 10.10.2018, Annexure P12 quashing the Notification dated 23.12.2011, relevant paras thereof read thus:-

“Hon'ble the Supreme Court has considered somewhat similar issue in Senior Vocational Staff Masters Association's case (supra) as to whether the employees appointed in the common process of selection with qualification of Bachelor Degree in Engineering on the basis of common advertisement in the common pay scale and continued to draw same pay scale, performing same nature of duties, can be discriminated in the grant of revised pay scale. The following conclusion has been drawn in para 19:-

“19. In view of the forging discussion, we are of the considered opinion that the High Court was fully justified in declaring that the vocational masters are entitled to pay scale of L 6,400-10,640/- on the ground that the nature of duties being discharged by the vocational masters are the same as vocational lecturers and that there was no rationale behind making a classification between the two especially when both the categories were treated as one and the same in all the previous pay revisions since 1978 onwards. Vide notification dated 31.03.1995, only the nomenclature of vocational masters was changed without changing their nature of duties and pay scales. Further, the impugned order dated 16.07.2003 deserved to be quashed on the short ground that it has been passed without complying the rules of natural justice. The same could not have been passed without giving an opportunity of hearing to the concerned employees.

The facts of the present case are similar. In the present case, the petitioner with qualification of Diploma with three years experience was appointed along with candidates possessing qualification of Bachelor Degree in Engineering without experience. Both were treated at par and appointed in the common pay scale of `1800-3200. Now, in the revision of pay scale, the artificial distinction has been created between the two despite there was no change in the duties and

responsibilities. The resultant effect is that junior to the petitioner in the same cadre performing similar duties appointed with lesser merit and placed below the petitioner in the seniority list have started getting more pay. Hon'ble the Supreme Court in the aforementioned judgment relating to the Vocational Masters held that there cannot be any discrimination between similarly situated persons either by way of Government notification or by any amendment in the Rules. In the present case also, the lesser pay scale has been given to the Vocational Masters with qualification of Diploma with three years experience without applying the Rules of natural justice. The State has given some economic benefit to one class while denied the same to the other without any justification when both of them were treated as same at the time of their selection/appointment and both were placed in the same seniority list and were treated as same from the date of their initial appointments.

In view of the above, the present writ petition is allowed and the notification dated 23.12.2011 (Annexure P-4) is hereby set aside. The respondents are directed to release the same pay scale to the petitioner as allowed to the other Vocational Masters with qualification of Bachelor Degree in Engineering in the notification dated 23.12.2011 (Annexure P-4) with all consequential benefits. The needful be done within a period of two months from the date of receipt of copy of the order."

5. After the aforesaid judgment, vide Instructions dated 14.08.2023, issued in view of the Finance Department letter dated 17.05.2023, it was decided to grant the benefit of the said judgment to the other similarly situated and accordingly COCP-4046-2019, was disposed of on 23.02.2022.

6. Notably, from the aforesaid date i.e. 01.12.2011, pay scale being released to the petitioners is the same as that to Vocational Lecturers who had the qualifications of Graduation or Masters. On instructions from the petitioners, it is submitted that only notional benefit may be granted w.e.f. 01.01.1996 with arrears of only 38 months, before the petitions were filed.

7. Learned State counsel despite his best efforts was unable to offer any resistance to the petitions or justify non-grant of the benefit between the years 1996 and 2011, but for stating that the same was granted w.e.f. 01.12.2011 in view of the fact that the said letter came to be quashed by this Court. The aspect of generalising

the benefit was also accepted, it being an admitted fact.

8. It may be accentuated that Hon'ble the Supreme Court vide its judgment dated 18.08.2017, had while affirming the view taken by this Court directing the State Government to give benefits of the Notification 31.03.1995 to all Vocational Masters after quashing the letter dated 16.07.2003, observed that there was no rationale behind making the classification between them and Vocational Lecturers, the nature of duties discharged by them being the same and especially when these categories were treated as one and the same in all previous pay revision since 1978 onwards, thus, they were entitled to pay scales of Rs.6400-10,640/-. Only the nomenclature of Vocational Masters was changed vide Notification dated 31.03.1995, without altering their nature of duties and pay scales.

9. Likewise, this Court had set aside the Notification dated 23.12.2011, whereby the petitioner therein was denied the grade pay of Rs.5400/-, directed release of same pay scale to him, a Vocational Master, as allowed to others with qualifications of Bachelors Degree in Engineering.

10. The direction passed in the aforesaid judgment, has now even been generalized *albeit* granting the revised scales that, concededly, the petitioners have received w.e.f. 1.12.2011.

11. There is no denying the fact that being the two arms of the vocational cadre, the posts against which the petitioners and Vocational Lecturers, were sought to be filled by a common advertisement and they were selected and appointed having the qualifications required for the posts and thus in the wake of the judgment of Hon'ble the Supreme Court and this Court, there is no cogent reason for not granting to the petitioners the benefit of the said scale during the intervening period from 01.01.1996 to 30.11.2011, particularly in view of the fact that when the Court has declared the law, the said decision is retrospective, until made prospective and thus, would necessarily relate to the date when cause of action arose, from which the

grievance was agitated, as held in **P.V. George vs. State of Kerala**, (2007) 3 SCC 557, reiterated in **Manoj Parihar vs. State of J&K**, (2022) 14 SCC 72.

12. Eclipsing the petitioners of what is rightfully theirs from the date it actually became due, would therefore be iniquitous and in teeth of the principle which embodies equality before the law and equal protection of the laws.

13. The government is otherwise bound to implement recommendations of the Commission in respect to all its employees, else it commits a breach of Articles 14 and 16 of the Constitution, as was held in **Purshottam Lal vs. Union of India**, (1973) 1 SCC 651.

14. In view of the above discussion, the present petitions are disposed of with a direction to grant revised pay scale w.e.f. 01.01.1996 notionally, restricting the arrears to a period of 38 months preceding the filing of the writ petitions, as was even the statement made, which be released within a period of three months from the date of receipt of certified copy of this order is received by the respondent-Department.

15. A photocopy of this order be placed on the connected files.

(AMAN CHAUDHARY)
JUDGE

13.05.2024
mkamra/ashok

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