

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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LPA-949-2022 (O&M)
Decided on 18.01.2024

State of Haryana and others ... Appellants

Versus

Rajesh Kumar and others ... Respondents

CORAM: HON’BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON’BLE MR.JUSTICE AMAN CHAUDHARY

Present: Mr. Deepak Balyan, Additional Advocate General, Haryana.

Mr. Ram Kumar Malik, Sr. Advocate with
Mr.Varun Veer Chauhan, Advocate for the respondents.

AMAN CHAUDHARY, J.

1. Challenge in the present intra-Court appeal, under Clause X of the Letters Patent is to the judgment dated 18.04.2022, vide which the civil writ petition preferred by the respondents came to be allowed.

2. Learned Single Judge has held entitled the petitioner-respondents to the pay scale for the post of Laboratory Technicians (Malaria) to that of those promoted to the said post, by rightly relying on the judgment of the Division Bench of this Court in the case of **Kishan Chand Bhardwaj vs. State of Haryana** 2002 (1) SCT 399, wherein the judgment of Hon’ble the Supreme Court in **Kamlakar vs. Union of India**, 1999 (3) RSJ 419 holding that there could be no distinction between direct recruits and promotees, so far as it appertains to pay scale, since after becoming a part of one cadre, the birth marks have no relevance, was followed.

3. The learned Single judge has also taken into consideration the fact that it remained undisputed that even the qualifications prescribed for those

coming through direct recruitment were higher vis-à-vis those coming through promotion, for the former being matriculation with science and one year diploma in medical laboratory technology, however for the latter, matric with six months training with Sanitary Inspector. There was no such distinction pointed out between the duties and responsibilities of those who joined service by way of direct recruitment and the ones who came to occupy the post through promotion. Even the post of Multipurpose Health Supervisor, which was a feeder cadre post for Laboratory Technicians (Malaria) prior to 01.01.1986, had the scale of Rs.5000-7850 w.e.f. 01.01.1996, thus also, prescribing lower pay scale of Rs.4000-6000 effective from the aforesaid date to the petitioner-respondents, who came in service through direct recruitment, was untenable.

4. In **Smt. Shayani U. Naik vs. State of Goa**, 2022 (5) AIR Bom.R 70 the High Court had held, in a case wherein there was a disparity in the salaries of those, who were directly recruited as Legal Assistants and the ones transferred, the same could not be justified even if the reasons thereof were of austerity measures, as the same would not be in consonance with the principles of equality under Article 14 of the Constitution.

5. The aforesaid was the view even when the essential qualifications required were the same, whereas in the case at hand, higher are required for direct recruits, who are being sought to be placed in the lower scale of pay.

6. The artificial outline created for distinguishing the ones who joined through direct recruitment and the promotees, whose seniority list also is incontrovertibly common; performing the same function and duties, thus even the argument of the learned State counsel, which pivots on the assertion that the petitioner-respondents are estopped after accepting the appointment, would still be in the teeth of and sacrificial to Articles 14 and 16 of the Constitution of India, in

light of the broader principles of fairness and equal treatment and not being based on intelligible differentia.

7. *Ex-consequenti*, there is found to be no error on both law and facts in the impugned judgement, requiring any intervention at our hands. As such, the present appeal being meritless, is hereby dismissed.

8. Pending applications, if any, shall be rendered as disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

18.01.2024
ashok/gsv

Whether speaking / reasoned: YES / NO
Whether Reportable: YES / NO