

CWP-26654 of 2022

2024:PHHC:157988



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

CWP-26654 of 2022

Reserved on: 11.11.2024

Pronounced on: 27.11.2024

Darshan Walia

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Sharwan Sehgal, Advocate,
for the petitioner.

Ms. Saguna Arora, AAG, Punjab.

Mr. Ashok Kumar Bazaz, Advocate,
for respondent No.3.

Mr. Alankrit Bhardwaj, Advocate,
for respondent No.4.

NAMIT KUMAR, J.

1. Petitioner has invoked the writ jurisdiction of this Court by filing the instant petition under Article 226 of the Constitution of India, seeking quashing of order dated 01.08.2022 (Annexure P-19), whereby claim of the petitioner for similar basic pay which was granted to respondent No.4, has been rejected and for directing the respondents to release the arrears of retirement benefits and salary and refixation of his pension after revision of his grade pay as given to respondent No.4, along with interest and all consequential benefits.

2. Brief facts of the case, as have been pleaded in the petition, are that the petitioner had joined the Municipal Corporation,

CWP-26654 of 2022

2024:PHHC:157988



Ludhiana, on 07.06.1977 as Clerk and thereafter he was promoted as Junior Assistant on 01.03.1986 and further he was promoted as Officer on Special Duty (OSD) on 01.04.1999 and he retired as such on 31.10.2016 on attaining the age of superannuation and thereafter he was given two years' extension upto 31.10.2018. It has further been stated in the petition that respondent No.4 was promoted as OSD on 01.05.2006 and whereas petitioner was promoted on the said post on 01.04.1999, therefore, respondent No.4 was much junior to the petitioner. While the petitioner was in service, he was not paid his correct salary as well as grade pay throughout his service as OSD. He was granted basic pay of Rs.5800-9200 and w.e.f. 01.01.2006 he was granted revised pay scale of Rs.10300-34800 with grade pay of Rs.3800/- and whereas respondent No.4, who was OSD at Municipal Corporation, Jalandhar, was granted pay scale of Rs.7880-13500 (unrevised). Thereafter, grade pay of the petitioner was revised to Rs.4200/- and was granted the pay scale of Rs.6400-10640 (unrevised) w.e.f. 01.11.2006 and afterwards he was granted the grade pay of Rs.4400/- in the pay scale of Rs.7000-10980 w.e.f. 01.04.2008 and whereas he was entitled for the pay scale of Rs.7880-13500 and grade pay of Rs.5400/- and, therefore, the petitioner submitted representation dated 21.01.2013, followed by representations dated 08.04.2015 and 10.06.2015, wherein the petitioner claimed the same pay scale of Rs.7800-13500 which was granted to respondent No.4, and in this manner, he was also not paid the correct pensionary benefits. He sent legal notice dated 18.06.2021 and in reply to the said legal notice,

CWP-26654 of 2022

2024:PHHC:157988



respondent No.1 has sought comments from respondent No.3, vide letter dated 30.09.2021, and thereafter petitioner filed CWP No.24717 of 2021, which was disposed of by this Court vide order dated 06.12.2021 with a direction to the respondents-authorities to consider the legal notice dated 18.06.2021 and decide the same within a period of one month and in compliance with the said order, the claim of the petitioner has been rejected, vide order dated 01.08.2022 (Annexure P-19), which has been impugned in the present petition.

3. Separate replies have been filed by respondent No.3 by way of affidavit of Parshotam Lal, Executive Engineer, Operation and Maintenance (Establishment), Municipal Corporation, Ludhiana, and respondent No.4. In the reply filed by respondent No.3, it has been stated that the claim of the petitioner is hopelessly time-barred and suffers from vice of delay and laches as the petitioner retired from service on 31.10.2018 after grant of two years' extension, and the petitioner is claiming the basic pay of Rs.7880-13500 w.e.f. 01.01.2006, which was sanctioned to respondent No.4 on his appointment as Officer on Special Duty. It has further been stated that there is no comparison of the petitioner with respondent No.4 as the petitioner was a member of the non-provincialized Corporation service and whereas respondent No.4 was a member of the provincialized service and the State Government was his appointing and controlling authority. Petitioner and respondent No.4 were governed by separate set of service rules and discharged different and distinct duties, therefore, there was no parity between petitioner and respondent No.4



and hence the impugned order dated 01.08.2022 (Annexure P-19) is perfectly legal and valid.

4. Learned counsel for the petitioner has argued that since respondent No.4 was junior to the petitioner as OSD, therefore, petitioner cannot be denied the same scale as was granted to respondent No.4 and since the said benefit has not been extended to the petitioner, therefore, he is entitled for the pay scale of Rs.7880-13500 at par with respondent No.4.

5. *Per contra*, learned counsels for the respondents have opposed the claim of the petitioner by stating that there is no comparison of the petitioner with respondent No.4 and the petition preferred by the petitioner is hopelessly time-barred and, therefore, the petitioner is not entitled for any relief as has been sought in the present petition.

6. I have heard learned counsel for the parties and perused the record.

7. The correct facts of the case are that the petitioner initially joined the Municipal Corporation, Ludhiana, as Clerk on 07.06.1977 and he was made as Junior Assistant on 01.03.1986. On 27.03.1995, the Commissioner, Municipal Corporation, Ludhiana, recommended to create a post of Official on Special Duty (Messenger) in the pay scale of Rs.1800-3200 and the same was approved by the Finance and Contract Committee (F&CC) on 27.03.1995 itself and the said order/resolution was sent to the Government. The petitioner submitted request dated 19.09.1997 to the Commissioner, Municipal Corporation,

CWP-26654 of 2022

2024:PHHC:157988



Ludhiana, to post the petitioner as Official on Special Duty in his own pay scale as he was already performing the duties of Messenger. A resolution dated 30.10.1998 (Annexure P-20) was passed by the Municipal Corporation, Ludhiana, and the petitioner was posted as Official on Special Duty (Messenger) in his own pay scale keeping in view the fact that he was already performing the duties for getting essential documents from Municipal Corporation, Ludhiana, to Chandigarh and vice versa for the last many years. Therefore, it was decided to designate him on the said post in his existing pay scale so that he may not face any trouble in getting approval of his TA/DA bills from audit branch and in this way there will be no financial burden on the Municipal Corporation and consequently, formal order dated 05.11.1998 (Annexure P-21) was issued designating the petitioner as Official on Special Duty in his own pay scale. Petitioner for the first time submitted representation dated 21.01.2013 (Annexure P-7) claiming grade pay of Rs.5000/- instead of Rs.4400/-. Thereafter for the first time in his representation dated 08.04.2015 (Annexure P-10), he claimed pay scale at par with respondent No.4 followed by representation dated 10.06.2015 (Annexure P-11) which remained under consideration with the respondents and thereafter the petitioner sent legal notice dated 18.06.2021 (Annexure P-16) and thereafter filed CWP No.24717 of 2021 (Darshan Walia v. State of Punjab and others), which was disposed of by this Court on 06.12.2021 by passing the following order: -

“The petitioner has come up in this civil writ petition under Article 226 of the Constitution of India

2024:PHHC:157988



seeking a prayer by way of writ of mandamus directing the respondents to release the arrears of the retirement benefits and salary and refixation of his pension after revision of his grade pay as given to his junior - respondent No.4 alongwith interest @ 18% per annum, for which, legal notice dated 18.06.2021 (Annexure P-16) has also been served upon the respondent-authorities.

Heard.

Upon hearing learned counsel for the petitioner, the directions are issued to the respondent-authorities to duly consider the legal notice dated 18.06.2021 (Annexure P-16) as representation of the petitioner and decide the same in accordance with law by passing a speaking order, preferably, within a period of one month from the date of receipt of copy of this order.

If the petitioner is held entitled for so claimed relief and there is no impediment for granting the same, the relief be released to him without any delay.

Disposed off.”

8. Vide impugned order dated 01.08.2022 the claim of the petitioner for grant of pay scale of Rs.7880-13500 with grade pay of Rs.5400/- w.e.f. 01.01.2006 at par with respondent No.4, has been rejected by observing as under: -

“In the office report dated 20-04-2022, which is duly endorsed by the Additional Commissioner (R), it has been reported that the claim of the Petitioner for grant of pay scale of 7880-13500 with grade pay of Rs.5400 w.e.f. 01-01-2006 is devoid of any merit. It has been further reported that as per record while the Petitioner was working as Assistant, the Commissioner, Municipal Corporation Ludhiana vide his order no. 399 dated 30-10-1998 designated the Petitioner as OSD and it was clearly

2024:PHHC:157988



stipulated in the office order that the Petitioner shall continue to draw pay scale attached to his substantive post. The Petitioner had initially Joined as Clerk in MC Ludhiana and was later on designated as Junior Assistant as per the then applicable Govt. policy. Further, the State Govt. has duly notified "Punjab Municipal Corporation Service (Recruitment & Conditions of Service) Rules, 1978 (As amended from time to time)" under the "Punjab Municipal Corporation Act, 1976" to control and regulate the various services constituted by the Govt. in exercise of the powers conferred u/s 71(1) of the PMC Act, 1976. As per these rules, the hierarchy of promotion from post of Clerk (Junior Assistant) is that of "Assistant" or "Inspector" and then as "Superintendent Grade-II". As per record, neither post of OSD was ever sanctioned by the MC Ludhiana nor the Govt. In exercise of powers conferred u/s 71(1) of the PMC Act, 1976 has constituted any service of "Official on Special Duty". The Petitioner has claimed a parity with a employee working in M.C. Jalandhar. However, the Municipal Corporation Ludhiana and Municipal Corporation Jalandhar are two different and distinct bodies and a employee of one corporate body cannot claim parity with the employee of another corporate body. It has been further gathered from the record that while Sh. Ram Nath Tuli was working as Junior Engineer in the M.C. Jalandhar, he was further promoted as Assistant Corporation Engineer. Simultaneously, it was ordered by the Govt. that Sh. Ram Nath Tuli shall work as OSD in the office of Superintending Engineer, MC Jalandhar. Thus Sh. Ram Nath Tuli was sanctioned and granted the pay scale of 7880-13500 on his promotion as Assistant Corporation Engineer. On the other hand, the Petitioner, throughout from 05-11-1998 onwards has been discharging the duties



of a messenger i.e. he had been delivering the dak of MC Ludhiana to the Head Office and vice versa.

I have perused the office report and the relevant record also. It is explicit from the facts stated in the office report dated 20-04-2022 that the Petitioner was never promoted and appointed as "Official on Special Duty", as claimed by the Petitioner. No post of "Official on Special Duty" was ever sanctioned in the MC Ludhiana. Above all, during the period from 05-11-1998 onwards, the Petitioner has never agitated that he is not being paid his salary correctly. The Petitioner is claiming the relief of revised salary from 05-11-1998 and this claim is otherwise hopelessly barred by law. The Hon'ble Supreme Court of India in number of judgements including in a judgement titled as "S.S. Rathore Vs. State of Madhya Pradesh", which was delivered by a Constitution Bench of the Hon'ble Supreme Court had held that the disputes relating to the service conditions of an employee can be agitated within a period of three years and not thereafter. Consequently, I fully agree with the office report and declare that the claim of the Petitioner for payment of revised salary in the pay scale of 7880-13500 with grade pay of Rs.5400 is devoid of any merit, therefore is rejected.

A copy of this order may be sent to the Petitioner for his information.

Commissioner”

9. The question which arises for determination by this Court in the present petition is as to whether the petitioner can claim parity for the grant of pay scale of Rs.7880-13500 w.e.f. 01.01.2006 at par with respondent No.4- Ram Nath Tuli.



10. The substantive post held by the petitioner prior to his designation as Official on Special Duty (Messenger) was Clerk (Junior Assistant). He belongs to non-provincialized cadre and is governed by the Rules known as “Punjab Municipal Corporation Service (Recruitment and Conditions of Service) Rules, 1978 (as amended from time to time), which have been framed under the “Punjab Municipal Corporation Act, 1976” to control and regulate the various services constituted by the Government in exercise of powers conferred under Section 71(1) of the Punjab Municipal Corporation Act, 1976. As per these Service Rules, the next channel of promotion from the post of Clerk/Junior Assistant is to the post of “Assistant” or “Inspector” and then as “Superintendent Grade-II”. It is the case of the respondents that the post of Official on Special Duty was neither ever sanctioned by the Municipal Corporation, Ludhiana, nor approved by the Government in exercise of powers conferred under Section 71(1) of the Punjab Municipal Corporation Act, 1976.

Respondent No.4 was working as Junior Engineer (Civil), Municipal Corporation, Jalandhar, and was appointed as Officer on Special Duty in the pay scale attached to the post of Assistant Corporation Engineer i.e. Rs.7880-18300 vide order dated 01.05.2006 (Annexure P-4), which was next promotional post, by the State Government and belongs to the provincialized cadre and his appointing and controlling authority is the Government. The Government is empowered under Section 71(1) of the Punjab Municipal Corporation Act, 1976 to constitute any service in Municipal Corporation and on



constitution of such service, the power to make recruitment and decide the service conditions of the member of such constituted service, commonly known as “Provincialized Services” vests with the Government. On the other hand, power to make appointment and determine the service conditions of other employees commonly known as “non-provincialized” as provided in Sub-section 7 of Section 71 read with Section 75 of the Act of 1976 vests in the Municipal Corporation. The members of the provincialized service can be transferred and posted in any other Municipal Corporation of the State, whereas members of the non-provincialized services cannot be transferred and are considered the employees of the Municipal Corporation in which they are appointed. Respondent No.4 was working as Junior Engineer, a post duly sanctioned by the Government under Section 71(1) of the Act of 1976, and he was appointed as Officer on Special Duty in the office of Superintending Engineer in the pay scale of the post of Assistant Engineer (Civil), which is the next promotional post of Junior Engineer.

11. The petitioner availed the ACP scheme step up in the sanctioned pay scale of “Official on Special Duty” of Rs.5800-9200 (revised to Rs.10300-34800+Rs.4400) from 01.01.2006 on 06.07.2007 and 23.04.2008 without any protest. Thereafter, the Government vide order dated 15.12.2011 revised the grade pay of the employees such as Senior Assistant and Stenographers from Rs.4400/- to Rs.5000/-. The petitioner on 21.01.2013, followed by another similar request dated 26.02.2013, requested the Government for grant of benefit of revised

CWP-26654 of 2022

2024:PHHC:157988



grade pay of Rs.5000/- and did not claim the same pay scale/grade pay at par with respondent No.4.

12. The petitioner cannot claim any parity with respondent No.4 for the grant of pay scale of Rs.7880-13500 as both the posts are different and distinct and there is no similarity.

13. This Court while relying upon various judgments of the Hon'ble Supreme Court and this Court, vide judgment ***dated 06.02.2024*** has dismissed ***CWP No.16709 of 2017 – Jatinder Pal Singh and others v. State of Punjab and others and other connected cases, 2024 NCPHHC 8183***, wherein the Mandi Supervisors had claimed parity with Senior Assistants with regard to their pay scales. The said writ petitions were dismissed by this Court by observing as under: -

“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, 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 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 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 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 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 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 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 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 & 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 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 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 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.”

CWP-26654 of 2022

2024:PHHC:157988



14. Since there is no parity between the posts held by the petitioner and respondent No.4, therefore, the petitioner cannot claim same pay scale as was granted to respondent No.4. Moreover, from 1998 to 2015, the petitioner did not raise any grievance for claiming the pay scale at par with respondent No.4.

15. In view of the above, finding no merit, the present petition is dismissed with no order as to costs.

27.11.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No