



CWP-32596-2019 (O&M) and
CWP-18457-2020 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

215/2

CWP-32596-2019 (O&M)
Date of Decision:18.07.2024

Dharmender and others

...Petitioners

Versus

State of Haryana and others

...Respondents

2) CWP-18457-2020 (O&M)

Ramesh Chand and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Ankur Ghai, Advocate for
Mr. Ramesh Goyat, Advocate for the petitioners (in both the cases).

Mr. Harish Rathee, Senior DAG, Haryana

AMAN CHAUDHARY J. (Oral)

1. These cases involve similar issues and therefore, are being disposed of together by this common judgment.
2. The prayer made in the present petition is for setting aside letters dated 14.10.2019 in CWP-32596-2019 and 16.10.2020 in CWP-18457-2020, whereby over time allowance has been denied to the petitioners from 01.04.2013 to 31.12.2016, as also to direct the respondents to release the same.



3. Learned counsel submits that the petitioners, employed as Conductors/Drivers in the Haryana Roadways, on contract basis, were granted regular pay scale notionally from date of initial appointments and actual arrears w.e.f. 01.04.2013 in light of the decision of the Division Bench in Mohinder Singh and others vs. State of Haryana and others¹, further upheld by Hon'ble the Supreme Court vide judgment dated 31.01.2017. However, arrears of over time allowance for the period of 01.04.2013 to 31.12.2016 have been denied while relying on Government Instruction dated 03.02.2010, despite their case being covered on all fours by the judgment of this Court in **Baljit Singh and others vs. State of Haryana and others**², relevant paras whereof read thus:

“7. Some of the counterparts of the petitioners have approached this Court by filing a writ petition, which has been allowed by a Co-ordinate Bench of this Court by judgment dated 01.02.2019, Annexure P-4, which deserves to be noticed and is reproduced as under:-

“The petitioners are seeking direction to the respondents to release over time allowance admissible to them after the decision of this Court dated 01.04.2013 rendered in CWP No.22516-2012 and connected writ petitions, which has further been upheld by Hon'ble the Supreme Court, vide judgment dated 31.01.2017.

On notice of this petition, the respondents are denying the claim of the petitioners on the ground that neither this Court nor the Hon'ble Supreme Court held that the petitioners are entitled to any over time allowance. Further there was no prayer of the petitioners for overtime allowance before this Court as well as before Hon'ble the Supreme Court.

Learned senior counsel for the petitioners on the other hand submits that once the petitioners have been given the benefit of regular pay scale they are also entitled for overtime allowance.

The argument of learned State counsel is rejected as the petitioners were appointed as Conductors in the year 2008, keeping in view Rules of 2004. The petitioners were getting Rs.2500/- per month then over time was admissible

¹ CWP-22516-2012, decided on 01.10.2013.

² CWP-1067-2020, decided on 26.04.2023.



to them of Rs.20.16 and when their pay scale was revised to Rs.5600+1900+16% DA total Rs.8700/-, the petitioners were entitled to over time allowance of Rs.70.16. The petitioners were granted scale as per Rules of 2004. Once the pay scales have been revised, the competent authority is bound to revise the overtime allowance as well.

Accordingly, the writ petition is allowed and direction is given to the respondents to recalculate the over time allowance on the revised scale, keeping in view the fact that pay scales have been granted to the petitioners w.e.f. 01.04.2013. The arrears of over time allowance be given to them after adjusting the payment, within a period of four months from the date of receipt of certified copy of this order.”

8. This judgment has attained finality and in compliance thereof, the respondents have granted the benefit to the counterparts of the petitioners. A specific averment has been made in para 7 and 8 of the writ petition to this effect and it has been pleaded that the petitioners are similarly placed. There is no denial to these facts in the response filed by the respondents.

9. Furthermore, no material could be brought to the notice of the Court to distinguish the case of the petitioners from that of their counterparts.

10. In view of the above, writ petitions are allowed in the same terms as in *Brij Bhushan's* case (supra). A direction is issued to the respondents to re-calculate the overtime allowance on the revised scale and to disburse the differential amount to the petitioners within a period of four months from the date of communication of a copy of this order.”

4. The aforesaid judgment, having been carried up in appeal by the State in a batch of petitions with lead **State of Haryana and others vs. Sanjeev Kumar and others**³, the Division Bench held and observed thus:

“3. Counsel for the State very fairly pointed out that a similar order passed in **CWP No.30286 of 2018 ‘Gurinder Pal and others Vs. State of Haryana and others’** decided on 08.02.2023 has also been upheld in bunch of appeals, lead case of which was **LPA-857-2023 ‘State of Haryana and others Vs. Joginder Pal and others’**, decided on 05.02.2024 by us. A perusal of the said order would go on to show that we had also relied upon earlier decision dated 23.03.2011 passed in **LPA-858-2009 ‘The General Manager, Haryana Roadways, Chandigarh Vs. Azad Singh and others’**. The reasoning given in the order dated 08.02.2023 passed in **Joginder Pal (supra)** reads as under:-



“9. The petitioners had filed writ petition seeking the writ in the nature of mandamus directing respondents to grant/release the arrears of overtime allowance from 01.01.2016 to 31.10.2016 in unrevised and revised pay scale alongwith interest. Apparently, the claim as such was based on the earlier policy dated 01.02.2002 itself whereby a Committee of the officers had been constituted for the purposes of granting overtime allowance whereby, a decision was taken that overtime from the month of October, 2001 was to be paid in the month of November, 2001 and the instructions were to come w.e.f. 01.10.2001.

10. The stand of the State in the written statement was that instructions dated 03.02.2010 (Annexure R-5) had been issued that there would be no arrears to be paid on the basis of revised pay. Similarly, reliance was placed upon an order dated 11.09.2019 (Annexure R-1) passed by the State during the pendency of the writ petition wherein, a decision was taken that no arrears of overtime allowance will be paid on the basis of revision of pay for which only arrears had been given. The overtime allowance on the revised pay will be admissible from the date of notification i.e. 28.10.2016 on the revised pay while falling back on the earlier instructions dated 03.02.2010 (Annexure R-5).

11. The said issue apparently was considered by the co-ordinate Bench in Azad Singh's case (supra) wherein overtime allowance had been given for the period from 01.01.1996 to 31.12.1997 by the Labour Court wherein an application under Section 33-C(2) of the Industrial Disputes Act, 1947 had been filed. The same was in pursuance of an overtime policy dated 23.07.1985 which was apparently superseded by the policy dated 01.02.2002 (Annexure P-1 herein). Resultantly, the Division Bench came to the conclusion while upholding the order of the Single Judge that Section 26 of the Motor Transport Workers Act, 1961 provided the right to overtime allowance and which was a statutory right. In such circumstances, the order of the learned Single Judge was upheld while noticing in the said case that the notification had been issued on 01.01.2008 revising the pay scale of the employees and the revision had been effected from 01.01.1996 and, therefore, the overtime allowance was to be permissible.

12. In the present case also, we have noticed that a revision of pay had been done from 01.01.2016 vide notification dated 28.10.2016 (Annexure P-2) but arrears had not been granted and, therefore, the same principle as such would be applicable.

13. In such circumstances, we do not find any plausible ground to interfere in the well reasoned order dated



**CWP-32596-2019 (O&M) and
CWP-18457-2020 (O&M)**

-5-

08.02.2023 passed by the Single Judge wherein, he decided eight writ petitions, lead case of which was CWP-30286 2018, wherein he had placed reliance upon the binding precedent of the co ordinate Bench in Azad Singh's case (supra). It is also not disputed that the judgment in the said case was not interfered with by the Apex Court as it is itself pleaded by the State in its appeal in ground 5(iii).

14. Accordingly, the present appeals stand dismissed.”

4. Keeping in view the above, the present appeals also have to meet the same fate of dismissal.

5. Ordered accordingly.”

5. Learned State counsel despite his best efforts, has been unable to controvert the submissions made on behalf of the petitioner and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

6. In wake of the above, both the petitions are disposed of in terms of the judgment passed in **Baljit Singh and others** (supra).

7. Photocopy of this order be placed on the connected file.

**(AMAN CHAUDHARY)
JUDGE**

July 18, 2024
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Whether speaking : Yes/No

Whether reportable : Yes/No