



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on : 20.09.2024
Pronounced on : 04.10.2024

(i) CWP-1281-2020
Shyam Sunder and othersPetitioners

Versus

State of Haryana and anotherRespondents

(ii) CWP-9415-2019
Pushpender SinghPetitioner

Versus

State of Haryana and othersRespondents

(iii) CWP-26-2022
Anil Kumar Garg and othersPetitioners

Versus

State of Haryana and anotherRespondents

(iv) CWP-13040-2020
Ramesh KumarPetitioner

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Jatinder Kumar Kamboj, Advocate
for the petitioner(s).

Mr. Saurabh Mohunta, D.A.G., Haryana.

NAMIT KUMAR, J.

1. This judgment shall dispose of all the above-said writ

petitions, as common question of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CWP No.1281-2020, titled as “Shyam Sunder and others vs State of Haryana and another”.

2. The petitioners have approached this Court by filing the present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, quashing the order dated 28.11.2019 (Annexure P-15), whereby their claim(s) for grant of pay scale/emoluments of the higher post of Section Officer have been rejected.

3. The brief facts, as have been pleaded in the petition, are that the petitioners initially joined as Clerks in various departments of State of Haryana on different dates between 1982 to 2005 and thereafter, they have passed the State Accounts Service Part-1 Examination between 1989 to 2011. The Government of Haryana decided to fill-up the vacant posts of S.A.S.-Section Officers in S.A.S. cadre by appointing officials, who have passed S.A.S. Part-1 Examination, in order to meet shortage of S.A.S. Officers in the State of Haryana by relaxing rules of the post of Section Officer since the S.A.S. Examination are not being conducted regularly and frequently. Therefore, the petitioners were offered appointments in S.A.S. Cadre as Section Officers ‘in their own pay scale’ with Rs.100/- special pay, vide orders dated 17.05.2004, 14.12.2012 and 09.08.2012 (Annexures P-2 to P-4). Accordingly, the petitioners have been continuously working as Section Officers to the entire satisfaction of the

authority–respondents from the date of their appointments as Section Officers and there is no complaint with regard to their work and conduct as their work remained outstanding/very good. It is further the case of the petitioners that they have been assigned charge of two or more posts of Section Officers in different offices and copies of different dual posting orders in respect of some of the petitioners have been annexed as Annexure P-6 (colly) with the petition. Even in certain cases, appreciation certificates have been issued to the petitioners for their excellent services in the field of administration. The grievance of the petitioners is that they have been performing the duties of the higher post of Section Officer and sharing all responsibilities of the said posts from the date of their appointments/joining but they have not been granted pay scale/salary of the said higher post despite the fact that more than 300 posts of Section Officer are lying vacant. They have acquired lien on the posts of Section Officer in view of the relevant service rules. There is no difference between the duties of S.A.S. Part I & II, Section Officer. They are getting salary in the pay scale of the Clerk i.e. Rs.5200-20200+ 1900 Grade Pay + Rs.100/- as special pay. On the other hand, regular pay scale of the post of Section Officer is Rs.9300-34800 + 4600 Grade Pay + Rs.100/- as special pay. The petitioners along with their other colleagues have been throughout requesting the authorities to grant them pay and emoluments and other benefits admissible to the post of Section Officer keeping in view their 7-15 years of regular and satisfactory service on the said posts since joining the regular, vacant and sanctioned post of Section Officer. They

have given representation in this regard which is at Annexures P-11 to P-13 vide reply given by respondent No.2, the claim of the petitioner(s) was rejected arbitrarily and advised them to join their parent departments if they are not interested to work in their own pay scales. Thereafter, petitioner(s) filed CWP No.20317 of 2019, titled as '*Pawan Kumar and others Vs. State of Haryana and another*' before this Court for seeking the same relief and vide order dated 17.08.2019, it was directed to respondent No.2 to decide the representation dated February, 2018, 14.05.2018 and 14.05.2018 (Annexures P-11 to P-13), by passing a well reasoned and speaking order within a period of 03 months from the date of receipt of certified copy of this order but however, the said benefit has not been released to the petitioners and their claim(s) have been rejected by the respondents vide impugned order dated 28.11.2019. Hence, this petition.

4. Pursuant to notice of motion issued on 17.01.2020, written statement on behalf of respondents No.1 and 2 has been filed, wherein the claim of the petitioners has been opposed inter-alia on the ground that they were appointed as Section Officers as a stop gap arrangement and since they have not passed SAS Part-II Examination, which is an essential condition, therefore, they are not entitled for the pay scale of the post of Section Officer. It has further been stated that some of the petitioner along with others have already been repatriated and their writ petitions against order of repatriation have also been dismissed by this Court and LPA's filed against the same have been withdrawn.

5. Learned counsel for the petitioners contended that petitioners have performed duties against the post of Section Officer for the last 7-15 years but they have not been given pay scale and other benefits of said post of Section Officer. Learned counsel for the petitioners further submits that the case of the petitioners is squarely covered by a judgment of this Court passed in ***CWP-7312-2016 titled as 'Baldev Krishan Sharma Vs. State of Haryana and others' decided on 17.11.2018***, wherein similar claim raised by the other similarly situated Section Officers has been allowed and the said judgment has been upheld by the Hon'ble Division Bench of this Court in ***LPA No.1497 of 2019 titled as 'State of Haryana and others Vs. Baldev Krishan Sharma (deceased) through its LRs' decided on 06.09.2019*** and further upheld by the Hon'ble Supreme Court in ***SLP(C) No.008217-2020 titled as 'State of Haryana and others Vs. Baldev Krishan Sharma (deceased) through its Legal Representative, decided on 09.07.2020***.

6. Per contra, learned State counsel has opposed the claim of the petitioners by referring to the averments made in the written statement and submitted that since the petitioners have not passed SAS Part-II Examination, and they were appointed as Section Officers as a stopgap arrangement, in their own pay scales, therefore, they are not entitled for the relief claimed in the present writ petition. In support of his contention, he has placed reliance upon the Full Bench judgment of this Court in ***Subhash Chander Vs. State of Haryana and others : 2012 (1) S.C.T. 603***. He further submits that out of 28 petitioners, 13 of

them have appeared in the S.A.S. Part II examination in year 2019 and cleared the same who have been posted against the regular posts of Section Officer. Petitioners are bound by the law of estoppel as they have been offered posts of Section Officer after receiving their willingness qua performing the duties in their own pay scale. He also submits that since the petitioners do not hold the basic qualification for the post of Section Officer, therefore, they cannot claim pay of the post of Section Officer on the principle of equal pay for equal work.

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

8. Before proceeding further in the matter, the relevant portion of the judgment dated 17.11.2018 passed in ***Baldev Krishan Sharma's case (supra)*** whereby the claim of the other similarly situated Section Officer was allowed, is reproduced as under:-

“XX XX XX XX XX

Learned counsel for the petitioner has referred to the judgment passed by Co-ordinate Bench of this Court in **Ramesh Chander vs. State of Haryana and others**, CWP No.11667 of 2010, decided on 19.08.2013 (Annexure P-15), whereby claim of petitioner (therein) was working on the post of Store Purchase Office (SPO) on current duty charge in his own pay scale w.e.f. 01.12.1998. Finally, he was promoted to the post of Store Purchase Officer on regular vide order dated 21.07.2009. He was seeking the payment of regular pay scale on the post of Store Purchase Officer. The said writ petition was allowed keeping in view

the decision given in Subhash Chander vs. State of Haryana, 2012 (1) RSJ 442, whereby it has been held that if, an official is doing all the duties of higher post and is being paid salary of the lower post, he will be entitled to the salary of his officiating post in the higher grade. A similar view has been taken by a Co-ordinate Bench of this Court in Bijender Singh vs. State of Haryana and another, CWP No. 19452 of 2013, decided on 23.03.2015 (Annexure P-16).

Learned counsel for the respondents, on the other hand, has argued that the petitioner had given his willingness for appointment against the post of Section Officer in his own pay scale. Petitioner does not hold the basic qualification for the post of Section Officer, therefore, he cannot claim payment of salary of the post of Section Officer on the doctrine of 'equal pay for equal work.' He further argued that as per Haryana State Accounts Subordinate (Group C) Service Rules, 2013 (Annexure R-1), a Section Officer can be appointed by promotion/transfer or deputation amongst officials of Haryana Government with three years regular service and who have passed both parts (I & II) of Haryana Subordinate Accounts Service Examination (Ordinary Branch) conducted by the Government. The petitioner has only passed Part-I of Subordinate Accounts Service (SAS) Examination, which was held in the year 2008. He has not passed Part-II of the Examination, though he had appeared in this examination in the years 2009, 2010, 2011 and 2014. Hence, the petitioner is not entitled to the salary of the post of Section Officer.

In the written statement, the respondents have stated that the petitioner and other similarly situated employees of different departments in the State of Haryana, who passed Part-I, Subordinate Accounts Services (SAS) examination, were offered posting on certain terms and conditions against the vacant posts of Section Officers in the Treasuries & Accounts Department, Haryana as a “stop gap arrangement.” The appointment was given with certain conditions, which were accepted by the petitioner vide letter dated 24.04.2008 (Annexure R-2). Even in the pre-appointment offer dated 17.04.2008 (Annexure P-2), it was categorically mentioned that it is purely a stop gap arrangement and the officials, who were offered

appointments, will have no right to the posts of Section Officer (Ordinary Branch). After taking consent of the petitioner vide letter dated 24.04.2008 (Annexure R-2), he was given posting order dated 22.05.2008 (Annexure P-3). In this backdrop, his representation dated 11.08.2015 (Annexure P-4) was declined vide letter dated 18.12.2015 (Annexure P-5).

After hearing learned counsel for the parties and going through the contents of the petition, the only ground for not granting higher pay scale of the post of Section Officer to the petitioner is that he (petitioner) is not duly qualified for promotion to said post. As per Haryana State Accounts Subordinate (Group C) Service Rules, 2013, petitioner is supposed to have qualified two examinations i.e. Part-I and Part-II with minimum 40% marks in each subject and 45% in aggregate. He has only qualified Part-I, Subordinate Accounts Services (SAS) Examination. On this aspect, the petitioner has pleaded that respondent-department did not conduct frequent examinations in terms of the above said rules. A letter was issued on 12.07.2012 stating that next State S.A.S. Part-I & II (OB/LAD) examination would be held in the month of October-November. In 2013, applications were invited vide letter dated 30.07.2013, but the said examination was conducted in February, 2014. Thereafter, no exam was held till date.

In response to the said pleading, the respondent-State has given reply to the effect that examinations for SAS, Part-I & II could not be conducted after 2014 because of pendency of writ petitions, including CWP No.26672 of 2014.

In the present case, petitioner has performing the duties of higher post since 22.05.2008. He has served on this post for almost 10 years. He has not been reverted back despite making representation dated 25.07.2014 (Annexure P-9) when four new Section Officers had joined the department of Food and Supplies, Haryana. Representation dated 25.07.2014 (Annexure P-9) is not being denied by the respondents in their written statement. Respondents have also not denied the letter dated 08.08.2013 (Annexure P-8), whereby it was stated that the petitioner was not relieved keeping in view his exceptional performance and non availability of any other capable/trained officer. The

obvious conclusion is that the petitioner is performing the duties of higher post of Section Officer to the utmost satisfaction of the department. In this backdrop, he cannot be denied the benefit of regular pay scale of the said post keeping in view the judgment passed by Co-ordinate Bench of this Court in **Darshan Singh and another vs. The State of Punjab and others**, CWP No.4552 of 2003, decided on 01.07.2010 (Annexure P-10), which has been upheld by the LPA Bench vide judgment dated 15.11.2010 (Annexure P-11).

In view of the above discussion, this petition is allowed and the respondents are directed to give pay/salary of the post of Section Officer to the petitioner in the scale of Rs.9300-34800 + 4600 Grade Pay + Rs.100/- as special pay along with interest at the rate of 6% per annum with effect from the date of his appointment till the payment is made.”

9. The said judgment has been upheld by a Division Bench of this Court in ***LPA No.1497 of 2019 tilted as ‘State of Haryana and others Vs. Baldev Krishan Sharma (deceased) through its LRs’*** vide decision dated 06.09.2019 by recording the following findings :-

“5. Learned counsel for the appellants laying much stress on the terms and conditions of the letter/order whereunder appointment as Section Officer was made, argued that once he has agreed to work on the said post without making any claim to the salary admissible to the said post, he is not entitled for payment of the same. It is no doubt correct that one of the conditions enumerated in the appointment letter was that he will not have any right or claim either for the regular or permanent appointment on the said post nor to the pay scale or any other benefit attached to the said post because initially it was a purely stop gap arrangement and the incumbent was liable to be reverted back on availability of qualified persons. Undisputed fact is that he has been made to work on the said post for almost 10 years without any break and his request to relieve him from the assignment has been rejected by the appellant on the ground that no suitable officer to function on the said post was available, and

during the interregnum period he was given further promotion to the post of Store Purchase Officer on regular basis vide order dated 21.07.2009, it does not appeal to reason at all that he will not be entitled for payment of regular pay scale admissible to the post of Section Officer though he was found entitled to be promoted on the next higher post. Learned counsel for the appellant relying upon a Full Bench decision of this Court in the case of **Subhash Chander v. State of Haryana and others, 2012(1) PLR 778**, and in particularly paragraph 14 of the said report, contended that since the officiating promotion was given to the respondent-petitioner on account of administrative exigency, he would not be entitled to payment of regular pay scale admissible to the said higher post. No doubt, the Full Bench in paragraph 14 of the said report observed the same, but the facts of the present case being entirely different, the preposition of law laid down in the said judgment in this regard is not at all attractive. On the contrary, the Full Bench while addressing the question posed before it i.e. Whether an employee who is given an independent charge and responsibility of a higher post is entitled to regular pay scale without being substantively appointed to such post, answered the question in affirmative and held if an employee is appointed to officiate on a post involving assumption of duties and responsibility of greater importance than those attaching to the substantive post then he would be entitled to the salary of his officiating post in higher grade. Thus, the Full Bench decision being relied upon by the learned Additional Advocate General for the State of Haryana is in fact in favour of the respondent-petitioner. Though initially the respondent-petitioner was given the higher post as a stop gap arrangement on account of administrative exigency, but he was made to continue to work on the said post regularly for more than 10 years and while working as such he was given promotion to the next higher post of Store Purchase Officer, which went to show that he worked with utmost satisfaction of the department now he cannot be denied the benefit of regular pay scale of the said post merely on the ground that his appointment was a stop gap arrangement. Such an arrangement is for a short period to overcome the exigency and if it is allowed to continue for a long period such as 10 years, it cannot be said to be a stop

gap arrangement. The fact that his request to be relieved from assignment is being declined by the appellant on the ground that his services were exceptional is in itself to demonstrate that he worked with sincerity and utmost satisfaction and cannot be denied the benefit of regular pay scale admissible to the post of Section Officer on which he was made to work for more than 10 years.

6. *In view of the aforesaid facts and discussion, we find no reason to take a different view from the one taken by the learned Single Judge while allowing the petition. The appeal is devoid of merit and accordingly stands dismissed.*

10. Special Leave Petition(C) No.8217 of 2020, preferred against the abovesaid judgment has been dismissed by Hon'ble Supreme Court vide order dated 09.07.2020.

11. The judgment in ***Baldev Krishan Sharma's case (supra)*** has been followed by a Coordinate Bench of this Court in its order dated 27.02.2024 passed in ***CWP-11754-2020 titled as 'Ishwar Chander and another Vs. State of Haryana and others'***. The said order reads as under :-

"1. Learned counsel for the petitioners argues that the petitioners were given promotion to the post of higher post of Section Officer on the stop gap arrangement dated 01.03.2021 and 01.05.2012 (Annexures P-1 and P-2 respectively) with the clear intent that the petitioners will not be granted the benefit of higher post but as the said stop gap arrangement is continued for a period of seven years and the petitioners discharged the duties of the higher post, keeping in view the settled principle of law, the respondents were under an obligation to grant the petitioners the benefit of the pay for the post of Section Officer, duty of which the petitioners had discharged on stop gap arrangement.

2. Learned counsel for the petitioners places reliance upon the decision of this Court in CWP No.7312 of 2016 titled as Baldev Krishan Sharma Vs. State of Haryana and others, decided on 17.11.2018 (Annexure P-6)

wherein, the similarly situated employees of the same Department have been given the benefit as being claimed by the petitioners in the present petition.

3. *Learned counsel for the petitioners submits that the benefits as being claimed by the petitioners, have already been allowed in favour of the petitioner in **Baldev Krishan Sharma's case (supra)** but the same has not been extended to the petitioners on the ground that the petitioners never approached this Court for the grant of relief which was extended to the petitioner in **Baldev Krishan Sharma's case (supra)**.*

4. *Learned counsel for the respondents, on the other hand, submits that the petitioners were asked to discharge the duties of the post of Section Officer as stop gap arrangement. Learned counsel for the respondents further submits that once the petitioners have never been promoted as Section Officer on regular basis, the petitioners cannot be allowed the benefit of same pay scale as being extended to the Section Officer and therefore, the claim of the petitioners is liable to be rejected.*

5. *With regard to the grant of same benefit, as being claimed by the petitioners in **Baldev Krishan Sharma's case (supra)**, learned counsel for the respondents concede the said factum.*

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

7. *Once, a benefit which is being claimed by the petitioners has already been extended to similarly situated employees by this Court, which judgment has already been accepted by the respondents, it was incumbent upon the respondents to grant the same benefit to the similarly situated employees rather than forcing them to approach this Court.*

8. *Keeping in view the conceded fact that the petitioners are similarly situated employees as the petitioner in **Baldev Krishan Sharma's case (supra)**, the present writ petition is also allowed in terms of **Baldev Krishan Sharma's case (supra)**.*

12. Facts of the case are not in dispute. The issue which arises for consideration before this Court is whether the employees who have

discharged their duties on higher post as stop gap arrangement are entitled to higher pay scale particularly when they had performed their duties on such posts for number of years without any break? The same is no longer res integra as the matter has already been settled by this Court in ***Baldev Krishan Sharma's case (supra)*** which has been upheld upto the Hon'ble Supreme Court and it was incumbent upon the respondents to grant the said benefits to the petitioners as well as all the similarly situated persons and they should not be compelled to approach this Court time and again for redressal of their grievance which has already been settled. A Division Bench of this Court way back in the year 1994 in the case of ***Rattan Singh Vs. The State of Haryana : 1995(1) SCT 711*** has held that once the matter has been settled by the Constitutional Courts, the benefit arising out of the said judgment shall be granted to the similarly situated persons and they should not be compelled to knock the doors of the Courts. The relevant paras of the said judgment reads as under :-

“1. Practice adopted by various State Governments, and Government of Haryana is no exception to this practice, to grant relief only to those persons who approach the Court of law leads to avoidable litigation in the Courts. Those running Governments are wholly unmindful of indirect loss to the public exchequer caused due to this unsavoury practice. They do not realise the magnitude of injury which is suffered by the Society on account of filing of Court cases in relation to a subject matter which already stands decided not only by the High Courts but also by the highest judicial institution of the Country. Each petition/plaint presented in the Court consumes substantial amount of papers and the biggest source from which the paper is manufactured is forest wood. Consumption of papers in the Courts indirectly contributes to the consumption of forest

and all must remember that future generation will not pardon us for our failure to protect the environment and ecology. These few words are as a reminder to those actively involved in the running of the Government of the State that once a judgment is rendered by a Court of law and particularly the High Court of the State and such judgment acquires finality, principles laid-down in that judgment should be applied unanimously to all persons similarly situated. Time has come when we must give a decent burial to the theory of litigious perseverance.

xx xx xx xx xx

7. *Delay and laches are twin grounds evolved by Courts for denying relief to a person who approaches it after a lapse of considerable time for issue of a writ under Article 226 of the Constitution of India. The rule that the Court will not give relief to a person who has filed a petition after a lapse of long time is a rule evolved by the Courts. It is not a legislative instrument like the Limitation Act which prevents the Courts from granting relief in a given case. Rather, it is a rule of self imposed limitation innovated by the Courts for not issuing orders which would unsettle the settled things or where a third party would be adversely affected due to the issue of writ after a long delay. This rule which forms part of the Judge-made law cannot, however, be applied to each and every case for non-suiting a petitioner irrespective of the nature of claim and the circumstances which have contributed to the delay in filing of the petition. What we wish to emphasize is that no strait-jacket formula or wooden rule can be applied for declining or not declining the relief to a petitioner, who has approached the High Court for appropriate relief under Article 226 of the Constitution of India. In case and every case the Court shall have to scrutinise the relevant facts for determining as to whether it will be appropriate to exercise jurisdiction in favour of a person who has approached it after a long lapse of time. In a given case Court may decline relief to a person only on the ground that he has approached it after a passage of few months counted from the date of a cruel of cause of action. In another case it may give relief to a person who has filed a petition even after lapse of many years. Primary consideration, which must weigh in the mind of the Court while adjudicating upon a objection of delay or laches, is as to whether the*

petitioner has been grossly negligent in pursuing his remedy and whether the delay has resulted in a situation where rights of others have been settled and it would be inequitable to unsettle those rights.

8. *In so far as these cases are concerned, we find that between the years 1987 to 1994, the Supreme Court as well as this Court has given relief to a large number of similarly situated persons. As a welfare State it was expected of the respondent-State of Haryana to apply those decisions to all similarly situated persons without compelling them to knock the doors of the Courts. Teachers belonging to School Cadre do not fall in the category of affluent persons. Ordinarily they are expected to devote themselves in the process of national building. They are to inculcate a spirit of sacrifice in the younger generations of the Country and, therefore, if the petitioners who belong to the class of teachers have patiently waited for appropriate action by the Government to give relief to them on the basis of the judgment rendered by the Apex Court and by this Court, it is not possible to hold that they have been negligent in pursuing their cause. Moreover, it is not the case of the respondents that right of third parties have accrued and such rights would be unsettled by grant of relief to the petitioners. In this view of the matter, we are not prepared to accept the objection of the learned Assistant Advocate General that the petitioners should be non-suited only on the ground that they have approached the Court after many years.*

9. *Another reason why the preliminary objection raised by the learned Assistant Advocate General merits rejection is that the respondents cannot be allowed to take advantage of their action/omission to give effect to the judgment of the Apex Court in their true spirit. Doctrine of equality enshrined under Articles 14 and 16 of the Constitution of India is binding on the State and its agencies. The State has to take active steps for creating a situation where real equality can be enjoyed by the citizens. The concept of fairness in the State action forms part of the doctrine of equality. It is, therefore, imperative for the State to be fair to all its citizens. Instead of being fair to one of the lowest paid class of its employees, the State has tried to take shelter of hyper-technical objection of delay. We refuse to be swayed by the hallow sought to be created by the*

State that grant of higher pay scale to the petitioners would put the State to a lot of financial burden. This spacious plea cannot be used to frustrate one of the basic rights available to the citizens of this Country.”

13. To the similar effect is the judgment of the Division Bench of this Court in ***Satbir Singh Vs. State of Haryana : 2002(2) SCT 354.***

The relevant paras of the said judgment are as under :-

“10. Articles 141 and 142 of the Constitution of India make the judgment of the Apex Court binding on all courts. All authorities including the State must implement the orders effectively in comety to the law of the land. The constitutional mandate imposes an obligation on the State to ensure enforceability throughout the boundary of India of the orders passed by the Apex Court. Attempts to by-pass and circumvent the orders of the Court could never achieve any object of the State. On the contrary, it would certainly introduce an element of discontentment and frustration in its employees. In a large society like ours, the steps taken on behalf of the State to eliminate unnecessary litigation is essence of proper administration. The maxim boni judics est causas litium dirimere even requires the Court to remove causes of litigation. Such maxim is indented to further the principle of precedents and is essential to maintain consistency in judicial pronouncements. The command in judgments which attain finality must not only appears to be respected, but should be enforced and implemented with respect as ‘lex nil frustra jubet’.

11. State has pervasive obligations to discharge in relation to maintaining its expected standards of employer-employee relationship. As already noticed, one of the important facets of such obligations is to be reasonable and fair in granting service benefit to its employees in accordance with service rules and the principles enunciated on pronouncement of judgments by the Courts. When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees

*to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of **Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994(7) SC 565: 1995(1) SCT 527 (SC)** the Hon'ble Apex Court held as under :-*

"The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means of approach the Court."

12. A Division Bench of this Court in the case of **Satyapal Singh and others v. The State of Haryana and another, 1999(2) RSJ 377** also observed as under:-

"The respondents as a welfare State should rather see to it that the litigation in the Courts is minimised. After this Court or the Apex court lays down the law, it should see to it that similarly situated persons automatically get the same relief without resorting to litigation."

13. In one of its very recent judgments in the case of **Union of India and another etc. etc. v. Lalita S. Rao and others, etc. etc., AIR 2001 Supreme Court 1792 : 2001(2) SCT 1010 (SC)**, while dealing with the cases of determination of seniority in the Indian Railways Medical Department, emphasised the need of adherence to this principle of relief being granted even to the parties who had not approached the court as the judgment pronounced squarely covers their interests as well. The Court held as under :-

"In view of the apprehended confusion in the mind of the Railway Administration on account of the judgments of this Court, referred to earlier, and for doing complete justice in the matter of determination of seniority amongst the medical officers recruited by the Railway Administration through the UPSC, we have approached the problem on consideration

of the different Rules in force as well as the orders issued by this Court in several earlier cases and this should apply irrespective of the fact whether some are parties to this proceeding or not."

14. Yet in another case titled as ***E.S.P. Rajaram and others v. Union of India and others***, AIR 2001 Supreme Court 581 : 2001(1) SCT 759 (SC), the Hon'ble Supreme Court held that per se discrimination even by judicial pronouncements should be avoided. Undesirable situation emerging in the same cadre particularly where large number of employees are working in big establishments like Indian Railways of Government should also be avoided. The benefits in furtherance to the judgments of the Court must be equally and effectively granted to employees of the same cadre. The Apex Court in order to achieve the object of this principle even set aside the judgments of the Central Administrative Tribunal which had attained finality on earlier occasions.

15. The cumulative effect of the above settled principles is that the State must avoid discrimination in grant of service benefits to the members of the same cadre identically situated. If the employees had not approached the Court, but the judgments otherwise pronounced relating to the same matter have attained finality, the State must show its grace and in fact carry out its implicit duty to grant benefit to the other members of the cadre.

xx xx xx xx xx

19. Be that as it may, particularly in the afore referred premises, we still feel that it is the bounden duty of the Court to issue the following directions to the State in the larger public interest and for proper administration of justice :-

- (i) Wherever the rights of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against that judgment even upto the highest court of the land and the judgments has attained finality, then the State must accept the judgment and implement it in its true spirit and command. There is implicit obligation on the part of the State to grant same relief to other members of the cadre whose claim was based upon identical facts and points of law.

- (ii) *The State Government shall as expeditiously as possible in any case not later than four months react and respond to a legal notice/representation served upon it by any of its employees in redressal of his grievance/grant of relief, which has been granted to his co-employees similarly situated, in furtherance to the judgment of the Court. Unless, for reasons to be indicated in the reply, the State feels compelled to deny such relief. Needless to point out that denial must neither be evasive nor intended to circumvent the orders of the Court.*
- (iii) *In the event such an employee is compelled to approach the court of law, whereupon the court awards interest and/or costs while allowing such a petition, then the expenditure incurred by the State including the costs/interest paid in furtherance to the orders of the Court should be recovered from the erring officers).*
- (iv) *The concerned quarters of the Government are expected to work out the details in furtherance to the above directions and issue pervasive but definite instructions to all its departments forthwith to ensure compliance.”*

14. A Division Bench of this Court in ***Nirmaljit Singh and others Vs. Punjab State Electricity Board : 2008(1) SCT 494***, has held as under :-

*“1. The grievance of the petitioners in the instant petition is that once an issue has been settled by the Courts and relief has been granted to persons who have approached the Court then the same benefit ought to have been granted to all similarly situated persons. The similarly situated persons are not to be forced to approach the Court time and again for grant of the same relief. The petitioners have prayed for commanding the respondent Punjab State Electricity Board (for brevity, 'the Board') to grant them the pay scale of Rs.6300-10700 with effect from 1.1.1996 in terms of the Division Bench judgments of this Court in the cases of ***G.K. Nagpal and others v. Punjab State Electricity Board, Patiala, 1998(1) SCT 694 (P&H)*** (L.P.A.No. 488 of 1989, decided on 7.1.1998, Annexure P-*

1) and Pawan Kumar Mittal and others v. Punjab C State Electricity Board, (C.W.P. No. 14112 of 2002, decided on 22.12.2005, Annexure P-5).

xx xx xx xx xx

9. *It is appropriate to refer to a Division Bench judgment of this Court in the case of **Smt. Om Pati v. State of Haryana and others, 2007(1) SCT 294** (C.W.P. No.10209 of 2004, decided on 26.9.2006), of which one of us (M.M. Kumar, J.) was also a member, wherein it has been held that it is the duty of the concerned authorities/State to implement judicial pronouncements not only in the cases of those who approached the courts but such judgments have, to be followed, applied and implemented in every case where similar fact - situation is involved so as to avoid unnecessary rush in the Courts and discourage apathy on the part of bureaucracy. The relevant observations made in the case of **Smt. Om Pati (supra)** are extracted as under :-*

" It has become fashion of the day for the respondent State to force the litigant to approach the Court in every case without caring to examine the controversy which has been settled by the judicial pronouncements. It poses a question for the respondents to answer as to whether the principles of law in similar facts are to be every time reiterated by the Court or such principles should serve the respondent State as guidelines for deciding the issues raised before it.

xx xx xx xx xx

.....It is amazing that brushing aside the view already expressed by the Division Bench, the respondent State has adopted an absolutely undesirable and impertinent stand in the written statement. This approach adopted by the respondent State is causing unnecessary rush in the courts and encourage apathy on the part of bureaucracy. Such an apathy has to be completely discouraged and the law as laid down by this Court has to be followed, applied and implemented. The respondent State cannot expect this Court to express opinion in every case where similar facts situation is involved as is the position in the present case. If no one in the

bureaucracy is prepared to take responsibility of stating honestly and fairly that the facts of the case are covered by the judgment of this Court or the Supreme Court then it is a sad day because it unnecessarily clog the working of the Courts by disposing those cases which are required to be taken care of by the respondent State and its executives.

xx xx xx xx xx

Before parting we hope and trust that the respondent State would take some corrective steps in view of our observation made in this judgment because we are sure that if suggested approach is followed then it would advance the Administration of Justice and would also infuse the sense of responsibility in those who are entrusted with the duty to discharge such like functions in accordance with law. If need be, necessary instructions in that regard may be issued by the worthy Chief Secretary.....”

15. To the similar effect is the judgment of the Hon’ble Supreme Court in ***Maharaj Krishan Bhatt and another Vs. State of Jammu & Kashmir and others : 2008(4) SCT 62***, wherein, it has been observed as under :-

“xx xx xx xx xx

15. But, once a similar case of Abdul Rashid Rather came up for consideration before a Single Judge and his writ petition was allowed, a direction was issued to the authorities to appoint him as PSI by granting consequential benefits, the learned Single Judge could not be said to have committed any error of law in following the said decision, in allowing the writ petition filed by the present appellants-writ petitioners and in issuing similar directions to the State Authorities. This was particularly true because the judgment and order of the learned Single Judge was confirmed by the Division Bench and even by this Court inasmuch as Special Leave Petition was also dismissed.

16. In our considered opinion, in the light of the facts and circumstances, the Government ought to have accepted and respected the decision of the learned Single Judge

without filing intra-Court appeal. No distinguishing feature had been brought to the notice of the Division Bench, nor the Division Bench set aside the judgment and order passed by the learned Single Judge holding or observing that though Abdul Rashid Rather was granted the benefit and the learned Single Judge ordered extension of those benefits to the writ petitioners, they were not entitled because the case of Abdul Rashid Rather was different. Even before us, nothing special or extraordinary fact or circumstance was shown to distinguish the case of Abdul Rashid Rather and of the present appellants. In our opinion, therefore, the learned Single Judge was wholly justified in allowing the writ petition and the Division Bench ought not to have interfered with the said decision.

17. *It was no doubt contended by the learned counsel for the respondent-State that Article 14 or 16 of the Constitution cannot be invoked and pressed in service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 and demand similar relief illegally or against a statute. There can be no two opinions about the legal proposition as submitted by the learned counsel for the State. But in the case on hand, in our opinion, there was no illegality on the part of the learned Single Judge in allowing Writ petition No.519 of 1997 instituted by Abdul Rashid Rather and in issuing necessary directions. Since the action was legal and in consonance with law, the Division Bench confirmed it and this Court did not think it proper to interfere with the said order and dismissed Special Leave Petition. To us, in the circumstances, the learned Single Judge was wholly right and fully justified in following the judgment and order in Writ Petition No.519 of 1987 in the case of present writ petitioners also. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State Authorities ought to have gracefully accepted the decision by granting similar benefits to present writ-petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed Letters Patent Appeal by affirming the order of the Single Judge. The Letters Patent Appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view,*

the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored”

16. The judgment cited by learned State counsel in ***Subhash Chander’s case (supra)*** has already been considered by learned Single Judge in ***Baldev Krishan Sharma’s case (supra)*** and also by a Division Bench of this Court in ***LPA No.1497 of 2019***.

17. More so, the Government of Haryana has framed Haryana State Litigation Policy, 2010 with an aim to transform Government into an efficient and responsible litigant and the relevant portion thereof is reproduced as under:-

“1. Introduction

1.1. *This Policy reflects the resolve of the State Government to bring about a visible and enduring qualitative and quantitative improvement in the manner in which litigation is perceived, managed and conducted in the State. It embodies the national concern that pendency and delays in our learned Courts should be reduced proactively by the Government.*

1.2 *It has been formulated by drawing upon the National Litigation Policy published by Ministry of Law, Govt. of India. A major part of its provisions applicable to the State have been incorporated mutatis mutandis.*

2. Objective

2.1. *To transform Government into an Efficient and Responsible Litigant so that it (a) manages and conducts litigation in a collusive, coordinated and time bound manner (b) Ensures that good cases are won and bad cases not pursued needlessly (c) Reduces overall Govt. Litigation load in Courts thereby providing relief to the judiciary.*

- 2.2. *To encourage and enable redressal of genuine grievances through alternate dispute redressal forum/institutions within the Government.*
- 2.3 *To provide for a substantive mechanism which would inter alia serve to monitor and control the implementation of the Policy, enforce accountability on and provide clarifications, to the implementers and stakeholders of the Policy and to consider changes in the Policy, depending on its performance and effectiveness.*

5. xx xx xx xx xx

5.5. **Covered Matters**

A good number of cases are from the category of similar cases. Each Government Department will aim to consider and settle the claim a representational/ applicant employee/ citizen, if the claim is found covered by any decision of the Court. Many service matters of this nature, can be disposed of at the level of the department itself without compelling the litigant to come to the Court. In this manner, the government departments would be acting as efficient litigants.

- 5.5.1. *In similar cases, departments shall endeavour to settle the issue as per post-judicial proceedings formed in identical cases by different courts when attained finality to avoid multiplicity of same matters increasing rush of work in different courts.*

xx xx xx xx”

18. A perusal of the above policy shows that State itself is not following their own litigation policy and are compelling the similarly situated employees to knock the doors of the Courts.

19. **As per Black's Law Dictionary, the term 'Stop Gap arrangement' connotes to Temporary or unplanned measures used to fix a problem that is unexpected.** In today's fast-paced and dynamic world, organizations often face unexpected challenges and gaps that

require immediate attention. A stop-gap arrangement is a temporary

solution designed to bridge these gaps until a more permanent fix can be implemented. Undoubtedly, the petitioners have performed duties of the post of Section Officer for a long period of 7-15 years in their own pay scale without any break. It is settled principle of law that the employer is always in a position of dominance and, therefore, merely because the Government has incorporated certain conditions favourable to it in their orders as such would not estop the writ petitioners from seeking their legal rights as such. Having taken the work and the responsibility of a higher post, the model employer should have gracefully acceded to the request and the demand of the higher pay/emoluments for the post which they have held. A model employer sets the standard for excellence in human resource management, fostering a positive work environment and promoting employee well-being, driving institutional success through engaged, motivated employees and can create a positive work environment and achieve long-term success. Respondents have taken a conscious decision to utilize the services of the petitioners since they have cleared S.A.S. Part-I and issued appointment orders to the petitioners for performing duties as Section Officer and given charge of the post keeping in view their eligibility and suitability, who have worked for 7-15 years and no complaint is pending against any of the petitioners. It is an admitted fact that the petitioners have worked for full fledged Section Officers since they have been offered posts from year 2004 onwards, therefore, there is no legal or other justification for denying them the pay and allowances of the post of Section Officer and as a result State cannot be allowed to approbate and reprobate in the

same breath.

20. In view of the above factual position and the law laid down in the abovesaid judgments, the present petitions are allowed and the respondents are directed to release the pay and allowances of the post of Section Officer for the period the petitioners have performed the duties of the said posts, with all consequential benefits, within a period of three months from the date of receipt of certified copy of this order.

04.10.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No