



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

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CWP-5422-2024 (O&M)
Date of decision: 14.05.2024

Ashok Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Harnek Singh , Advocate,
for the petitioner.

Mr. Satnampreet Singh, DAG, Punjab.

AMAN CHAUDHARY J.

CM-7785-CWP-2024

For the reasons mentioned in the application, the same is allowed and the main case is taken up on Board today itself.

Main case

1. The prayer in the present Civil Writ Petitions filed under Article 226/227 of the Constitution of India, is to issue a writ in the nature of mandamus directing the respondents to grant pay scale of Rs.1350-2400/- to the petitioner.

2. Learned counsel for the petitioner would submit that the petitioner who is working as Patwari in the Revenue Department, granted lower pay-scale than Rs.1350-2400/- w.e.f. 01.01.1986 based on notification dated 25.02.1991 vide which the post of Patwaris were split into two parts i.e. junior and senior Patwaris which has since been quashed by this Court vide judgment dated 04.08.2023 passed in

batch of petitions i.e. **Baljinder Singh and others vs. State of Punjab and others**, CWP-5382-2003 and connected cases. He thus prayed that the instant petition is squarely covered and may be disposed of in view of it. Relevant paras thereof read thus:

“9. The Punjab Revenue Patwaris Class III Service Rules, 1966 Revenue Department lays down the Rules of Selection and Appointment of Patwaris. There is no bifurcation in the Rules of Patwaris into Senior and Junior Patwaris. The method of appointment is same for all Patwaris. The seniority inter se members of the service as per Rule 15 is maintained districtwise and is to be determined by the length of continuous service. Rule 15 of seniority and Rule 16 regarding pay are quoted here as under:-

“15. Seniority. - The seniority inter se of members of the Service in each cadre shall be maintained district-wise and shall be determined by the length of continuous service on a post in that cadre: Provided that in the case of two or more members appointed on the same date, their seniority shall be determined as follows :-

- (a) a member recruited by direct appointment shall be senior to a member recruited otherwise;
- (b) a member appointed by promotion shall be senior to a member appointed by transfer;
- (c) in the case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and
- (d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay preference being given to a member who was drawing a higher rate of pay in his previous appointment, if the rates of pay drawn are also the same then by their length of service in those appointments and if the length of such service is also the same, an older member shall be senior to a younger member.

Note 1. - This rule shall not apply to persons appointed on purely provisional basis pending their passing the qualifying tests.

Note 2. - In the case of members whose period of probation is extended under rule 14, the date of appointment for the purpose of this rule shall be deemed to have been deferred to the extent the period of probation is extended.

16. Pay. - The members of service shall be entitled to such scales of pay including special pay, if any, as may be authorised by Government from time to time. The scales of

pay at present in force in respect of specified post given in Appendix A', to these rules.”

10. Facts as have been noticed above while recording the contentions of the petitioners reflect that the pay scale of Patwaris has been bifurcated only for the limited period when the 3rd pay commission recommendations were enforced. The contention of the respondents that the same was made in order to avoid stagnation is found to be without any basis. If the stagnation is the criteria, the same would apply to all the Patwaris. However, while making recommendations, the 4th pay commission and onwards, the Cadre has remained the same. The pay scale has also remained the same for all the Patwaris. But on account of change of pay scale of 50% Patwaris in the grade of Rs.1800-3200 and the remaining in 1640-2925, a cascading effect has occurred as is seen from the table noticed above and although the pay scales under the 4th pay commission and thereafter done, drew differences between the pay scales of the Patwaris. Artificially two different pay scales as denied to be provided to 50% Patwaris who are senior in comparison to the 50% Patwaris who are junior.

11. However, it is an admitted position that there is no channel of promotion from the Junior Patwaris to the Senior Patwaris. Classification made is therefore, artificial and cannot be allowed on the anvil of Article 14 of the Constitution of India.

12. In Union of India v. Dineshan K.K.'s case (supra), it has been held as under:-

19. In the present case, therefore, in the light of the admitted factual position, the question of examination of external comparisons, internal relativities and other factors, to be kept in view for job evaluation, considered to be a complex issue to be studied only by expert bodies, does not arise. As a necessary corollary, the issue as to whether there is a complete or wholesale identity between the said paramilitary forces, does not survive for consideration. 20. Thus, the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the apparent disparity and anomaly in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in pre-revised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution.”

13. In State of Punjab and others v. Senior Vocational Staff Masters Association and others's case (supra), the Apex Court has held as under:-

17) The principle of equality, is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39A, 43 and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice- social, economic and political, by inter alia, minimizing monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of 4 th pay commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eyes of law if no reasonable justification is offered for the same.

18) We are conscious of the fact that a differential scale on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of employees are treated as equal initially, they should continue to be so treated unless a different treatment is justified by some cogent reasons. In a case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continued to be identical as they were initially laid down, then the Court shall be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed. Thus, the decisions relied upon by learned senior counsel are clearly distinguishable and are not applicable to the facts of the present case.

Conclusion:

19) In view of the forgoing discussion, we are of the considered opinion that the High Court was fully justified in declaring that the vocational masters are entitled to pay scale of Rs. 6,400- 10,640/- on the ground that the nature of duties being discharged by the vocational masters are the same as vocational lecturers and that there was no rationale behind making a classification between the two especially when both the categories were treated as one and the same in all the previous pay revisions since 1978 onwards. Vide notification dated 31.03.1995, only the

nomenclature of vocational masters was changed without changing their nature of duties and pay scales. Further, the impugned order dated 16.07.2003 deserves to be quashed on the short ground that it has been passed without complying the rules of natural justice. The same could not have been passed without giving an opportunity of hearing to the concerned employees.”

14. In Gurdev Singh and another v. State of Punjab vide CWP No.1748 of 1995, decided by the Division Bench on 28.11.1995, this Court was examining the similar notification issued in respect of Craft Instructors Grade II whereby 50% of the Instructors were given pay scale of Rs.1800-3200 while the remaining 50% were granted grade of 1640-2925 w.e.f 01.01.1986 on the basis of seniority after considering the various aspects, this Court has held as under:-

“20. It has been argued by Mr. P.S. Patwalia, learned counsel for the petitioners that both the cadres were amalgamated and there Was no reason to separate them. He has also argued that the duties, responsibilities and the qualifications required Grade-I and Grade-II posts are the same. He has cited before us a case of Attar Singh Vs. State of Haryana, reported in 1995(1) SCT 107. It is the case where the department was directed to pay to Classical, Vernacular and Sanskrit equal pay teachers. The learned Single Judge of this Court had considered the fact that doctrine of equal pay for equal work is enshrined in Article 39(d) of the Constitution of India and has been treated as an intergral part of the "equity before Law" contained in Articles 14 and 16 of the Constitution and that it is the function and mandatory duty of executive authorities to give effect to the provisions of the Constitution. It was further held that it was for the Department to prove that classification between the group of employees was reasonable and justified beyond arbitrariness and hostile discrimination.”

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17. In contradistinction of above, in the present case, where the Cadre of Patwari is same, method of selection is same and the post is same, merely because a person in the seniority list of Patwaris above, it would be a fortuitous circumstance as to who may fall within the first 50% of the seniority list of Patwaris. As and when a person may retire, the next would claim higher grade. Seniority being a volatile incident of service as a person may go up in the seniority on account of senior persons being promoted or retired or having expired. The pay of such individual Patwari cannot be allowed to be changed on such circumstances and a stability is required to be maintained for grant of the pay scale to all persons in the Cadre on such circumstances and a stability is required to be maintained for grant of the pay scale to all persons in the Cadre.

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19. Applying the aforesaid, this Court finds that in the present case the petitioners suffer continuous wrong. This Court is satisfied by the reasons putforth by the learned counsel and hold that the notification dated 25.02.1991 seeks to create artificial classification and discrimination between the similarly placed persons and violates Article 14 of the Constitution of India as similarly placed persons have been classified differently without their being any basis. The notification is thus, arbitrary and is accordingly quashed and set aside to the extent of dividing the Patwaris in two categories and granting two different pay scales.
20. Accordingly, all the writ petitions are allowed.
21. All the petitioners will have to be placed in the higher pay scale of 1350-2400 as has been given to their Senior Patwaris and pay fixation shall be done accordingly within a period of four months. The arrears shall also be released in their favour.”

3. Learned State counsel despite his best efforts has not been able to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.
4. In view of the aforesaid, the present case is disposed of in terms of the judgment passed in **Baljinder Singh** (supra).

(AMAN CHAUDHARY)
JUDGE

14.05.2024
dinesh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No