

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CWP-541-2005

SUNIL KUMAR GARG

...PETITIONERS

VERSUS

STATE OF HARYANA AND ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Virender Kumar, Advocate
for the petitioner.

Mr. Rahul Dev Singh, Addl. AG, Haryana

1.	The date when the judgment is reserved	28.10.2025
2.	The date when the judgment is pronounced	02.12.2025
3.	The date when the judgment is uploaded	03.12.2025
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

SANDEEP MOUDGIL, J

Prayer

1. The present writ petition filed by the petitioner seeks quashing of the orders dated 3.12.2004 (Annexure P-5), issued by Respondent No. 2, whereby the petitioner’s pay was directed to be fixed in the scale of Rs. 8000-13500, being the correct admissible scale for his adhoc promotion as Sub Divisional Engineer (SDE).

The Conspectus Of Facts

2. The petitioner, possessing the qualification of AMIE/Bachelor of Engineering, was initially appointed as Section Officer in the respondent-

department on 22.08.1977. The post was subsequently re-designated as Junior Engineer, and the petitioner continued to draw the revised pay scales applicable from time to time, including the scales of Rs.200-450, Rs.525-105 w.e.f. 01.04.1979, and thereafter Rs.1400-2300 w.e.f. 01.01.1986.

3. The petitioner was promoted as Sub Divisional Engineer (SDE) on adhoc basis w.e.f. 14.05.1990 in the pay scale of Rs.2200-4000. On completion of five years of regular service, he was granted the higher pay scale of Rs.3000-4500 w.e.f. 01.05.1995 in terms of the State of Haryana Notification dated 16.05.1989. Upon revision of pay scales w.e.f. 01.01.1996, the petitioner was further granted the scale of Rs.10000-13900, as admissible after completion of the requisite period of service.

4. Subsequently, respondent No.2 issued instructions stating that the higher scales of Rs.10000-13900 and Rs.12000-16500 were admissible only to directly recruited SDEs, and not to promotees. The said instructions were challenged before this Court and were set aside in CWP No.8506 of 2001 titled as *“Kamlesh Kumar Bindal & others v. State of Haryana”* and connected matters. Although the State preferred SLP No.17608 of 2003, the Supreme Court, *vide* order dated 12.09.2003, stayed only the contempt proceedings and did not stay the operation of the judgment of this Court.

5. Despite the above, respondent No.2 issued the impugned order dated 03.12.2004 directing re-fixation of the petitioner's pay in the lower scale of Rs.8000-13500 w.e.f. 01.01.1996 and ordering recovery of the alleged excess amount paid.

6. Aggrieved thereby, the petitioner has approached this Court.

Contentions**On behalf of Petitioners**

7. Learned counsel for the petitioner contends that the impugned order dated 03.12.2004 is wholly arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India. It is submitted that the petitioner was rightly granted the higher pay scales of Rs.3000-4500 and subsequently Rs.10000-13900 in accordance with the State Government's own policy dated 16.05.1989, after completion of the requisite period of regular service as Sub Divisional Engineer. The benefits were conferred strictly in terms of the applicable rules and without any misrepresentation or concealment of facts on the part of the petitioner.

8. It is further argued that the respondents sought to differentiate between direct recruits and promotees for the purpose of higher pay scales by issuing administrative instructions, which classification was struck down by this Court in CWP No.8506 of 2001 (Kamlesh Kumar Bindal & others) and in connected matters. The judgment attained finality insofar as the operative directions were never stayed by the Supreme Court. Learned counsel emphasises that the Supreme Court's interim order dated 12.09.2003 stayed only the contempt proceedings and did not suspend the effect of the judgment of this Court, therefore, the respondents could not lawfully rely upon it to withdraw benefits already granted.

9. Counsel submits that the impugned order amounts to a unilateral and retrospective withdrawal of vested financial benefits without affording any opportunity of hearing to the petitioner, thereby violating the principles of natural justice. It is contended that once a benefit has been conferred pursuant

to a judicially upheld policy, the same cannot be reversed unless fraud or misrepresentation is established, which is not the case here.

10. Learned counsel thus maintains that the action of the respondents in directing re-fixation of pay and recovery is illegal, discriminatory, and unsustainable in law, and is liable to be quashed.

On behalf of Respondents

11. It is submitted by learned State counsel that under the Haryana Civil Services (Assured Career Progression) Rules, 1998 (herein after referred to as ACP Rules), ACP scales are granted strictly on the basis of the post on which an employee is initially recruited as a direct fresh entrant. As the petitioner entered service as a Junior Engineer, he is entitled only to the JE-based ACP scales of Rs.6500-9900 (ACP-I) and Rs.6500-10500 (ACP-II) as the scales of Rs.10000-13900 and Rs.12000-16500 are reserved exclusively for those officers who enter service as direct recruit SDEs, and therefore the petitioner's grant of these scales was erroneous.

12. It is argued that the ACP scheme is a personal anti-stagnation measure, not a functional pay scale, and cannot override statutory service rules or the rota-quota system. The petitioner had already received advancement by way of adhoc promotion and thus did not suffer the stagnation that ACP seeks to remedy.

13. Learned State counsel maintains that the higher scales were wrongly granted due to administrative oversight, and the department is justified in correcting the error by issuing the impugned order dated 03.12.2004, which directs re-fixation of pay in the correct scale of Rs.8000-13500 and recovery of excess payment, subject to show cause and opportunity of hearing.

14. It is further the stand of the State that the petitioner cannot derive any benefit from judgments such as CWP No.8506 of 2001 as that case

involved regular SDEs, whereas the petitioner remained adhoc till 06.06.2005. Moreover, SLP No.17608 of 2003 concerning these issues is pending before the Supreme Court. Accordingly, learned State counsel submits that no legal right of the petitioner stands violated, the claim is devoid of merit, and the writ petition deserves dismissal.

15. Heard counsel for both parties.

Analysis

16. I have heard learned counsel for the parties and examined the material on record. The central issue is whether the petitioner, who entered service as a section officer in the year 1977 and was subsequently promoted as Sub Divisional Engineer on adhoc basis w.e.f. from 14.05.1990 , could be denied the higher time-bound promotional/higher pay scales of Rs.10000-13900 and Rs.12000-16500 on the ground that such scales were allegedly meant only for direct recruit SDEs.

17. The admitted position is that the petitioner was granted the higher scales strictly in terms of the Government's own policy dated 16.05.1989 and on completion of the requisite period of regular service. There is no allegation of fraud, misrepresentation, or concealment by the petitioner. The only basis cited for withdrawal of these scales is an administrative circular issued by Respondent No. 2 dated 03.12.04.

18. The respondents attempt to differentiate between direct recruit SDEs and promotee SDEs for the purpose of granting the higher scales is wholly arbitrary, unsupported by statute, and directly contrary to the judgment of this Court in ***Kamlesh Kumar Bindal & Others v. State of Haryana***, wherein this court while relying on the ***Suraj Bhan And Other V. State of***

denied the higher pay scale being given to the direct entrant, when they are doing similar nature of the work and the State was directed not to discriminate between promotees and direct recruits.

19. The plea of the state that the petitioner was initially appointed as section officer on 22.08.1977 and therefore entitled only to JE-based ACP scales is untenable, because once he became an SDE on adhoc basis w.e.f. from 14.05.1990, he became part of a single homogeneous class of SDEs irrespective of the fact whether he is a direct recruit or a promotee and his source of entry into service became irrelevant.

20. This principle is firmly grounded in binding Supreme Court precedent such as “Randhir Singh v. Union of India (1982) 1 SCC 618” and “Bhagwan Dass v. State of Haryana (1987) 4 SCC 634” which hold that persons performing identical duties on the same post cannot be given unequal pay merely on the basis of their source of recruitment, as such discrimination violates Articles 14 and 16 of the Constitution. The relevant extract of the above quoted judgement reads as under :

12.Lastly we have to deal with the contention that the Scheme is a temporary Scheme and the posts are sanctioned on an year to year basis having regard to the temporary nature of the Scheme.We are unable to comprehend how this factor can be invoked for violating. 'Equal pay for equal work' doctrine. Whether appointments are for temporary periods and the Schemes are temporary in nature is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of 'Equal pay for equal work' is attracted. As regards the effect of the breaks given at the end of every six months, we will deal with this aspect shortly hereafter. That however is no ground for refusing aspect the 'Equal pay for equal work' doctrine. Be it realised that we are concerned with the 'Equal work Equal pay' doctrine only within the parameters of the four grounds and the fact situation discussed hereinabove. We are not called upon, and we have no need or occasion to consider the applicability or otherwise of the said doctrine outside these parameters. For instance we are not required to express any opinion in the context of employment of similar nature under different employers, or in different cadres

under the same or different employers. Nor, are we concerned with questions required to be dealt with by authorities like the Pay Commissions such as equation of cadres or determination of parity-differential between different cadres or making assessment of work loads or qualitative differential based on relevant considerations and such other matters. We are concerned in the present matter with employees of the same employer doing same work of same nature discharged in the same department but appointed on a temporary basis instead of in a regular cadre on a regular basis. We have, therefore, decided the questions raised before us in the backdrop of facts of the present case. On the other dimensions of the doctrine we remain silent as there is no need or occasion to speak.

13. In the result we are of the opinion that the petitioners are entitled to be paid on the same basis of same pay scale as per which respondents 2 to 6 who are discharging similar duties as Supervisors just like the petitioners, are being paid.

21. Support for this proposition is also found in the decision of the Supreme Court in **“Kamlakar & Others v. Union of India & Others, AIR 1999 SC 2300,”** which unequivocally holds that upon integration of all employees into a single cadre, the distinction between direct recruits and promotees becomes legally irrelevant, thereby mandating equal treatment and uniformity in pay scales. Relevant extract of the judgement reads as under:

6. Now Chandra Prakash Dadwa & Others, the petitioners in SLP (C) No. 16646 of 1995 and Kamlakar & Others in this Special Leave Petition No. 19257 of 1995 before us filed the respective SLPs against the same order dated 7.3.1995 in OA No. 625 of 1990 of the Central Administrative Tribunal, Bombay. In fact, all of them were petitioners in the same OA and claimed relief in regard to the same impugned orders of the Union Government dated 2.7.1990 by which the Government changed (i) the designation of the petitioners from Data Processing Assistants of Data Entry Operators (and gave them a particular scale) which according to them was reversion to an entry grade below that of Data Processing Assistants namely, as Data Entry operators, Grade B. They also claimed that a lower scale of pay Rs. 1350-2200 was given to them than that was to be given. They were in the scale of Rs. 1200-2040 when OA 625 of 1990 was filed and they claimed that the revised scale of Rs. 1600-2660 meant for Data Processing Assistants was to be given and not Rs. 1350-3200. The grievance of all the petitioners in the OA was same. Now unfortunately while those who filed SLP 16646 of 1995 have got relief, the present petitioners who filed SLP 19257 of 1995 did not get relief so far.

12. We have considered the limited issue. We are of the view that all these appellants should get the same relief as the appellants in the Civil Appeal which arose out of Special Leave Petition No. 16646 of 1995. Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given. The birth marks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale - which were matters common to all of them before the impugned order of the Government of India was passed on 2.7.1990, - then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible. We, therefore, reject the respondent's contention. We have examined the record and the common points arising in this case and those in Civil Appeal which arose out of Special Leave Petition 16646 of 1995 and we are unable to find any lawful distinction between the appellants and those in the other appeal which has been allowed.

22. The further action of the respondents in unilaterally withdrawing the higher scale after almost a decade, without notice or hearing, offends the principles of natural justice and the doctrine of legitimate expectation, and the direction for recovery of the alleged excess payment is impermissible in view of the settled law laid down in “**State of Punjab v. Rafiq Masih (2015) 4 SCC 334**”, which categorically prohibit recovery of amounts wrongly paid by the employer in the absence of fraud or misrepresentation by the employee.

23. Fairness is the soul of the rule of law, and even the humblest citizen cannot be denied its fragrance. There is no allegation, much less proof of fraud, concealment, or deception by the petitioner. Absence of such vitiating factors, the withdrawal of accrued financial benefits is plainly unconstitutional, offends Articles 14 and 16, and violates the settled doctrine that equitable rights once perfected cannot be arbitrarily reversed. The State is expected to act as a model employer, not as a cold legal combatant. Governance gains its moral legitimacy only when it deals with its servants in a manner consonant with justice, reason, and constitutional compassion.

Conclusion

24. In these circumstances, this Court has no hesitation in holding that the petitioner, notwithstanding his status as a promotee, is fully entitled to the same higher scales and consequential benefits as have been granted to direct recruit SDEs, and that the impugned order dated 03.12.2004 refixing his pay in the lower scale of Rs. 8000–13500 w.e.f 01.01.1996 and ordering recovery is illegal, arbitrary and liable to be quashed.. The petitioner's rights, once crystallised, must be protected, and the wheels of justice must roll forward, not backwards.

25. The writ petition is accordingly allowed, the impugned order dated 03.12.2004 (Annexure P-5) is set aside, the higher scales already granted to the petitioner shall stand as it is and any recovery made or proposed shall be refunded within eight weeks from the receipt of certified copy of this order.

26. Accordingly, the present writ petition is hereby allowed.

27. Pending application(s), if any shall be disposed off, accordingly.

(SANDEEP MOUDGIL)
JUDGE

02.12.2025
Anuradha

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*