

(2010) 01 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 18754 of 1991

Gurdev Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

Haryana Civil Services (Revised Pay) Rules, 1986 — Rule 40, 40A

Citation : (2011) 1 ILR (P&H) 185

Hon'ble Judges : Pekmod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pekmod Kohli, J.—Having common questions of law and facts, these petitions have been taken up and are being disposed of by this common order.

2. The petitioners in this bunch of petitions are working on various technical post like W.P. I. W.P-II. litter etc. for the last 20 to 30 years. They were placed in different pay scales. On the basis of the recommendations of the pay commission the State of Haryana revised pay scales of its employees with effect from 1st January, 1986. The employees in pay scale of Rs. 400 600 and Rs. 400 660 were placed in pay scale of Rs. 950--1500 with effect from 1st January. 1986 under the Haryana Civil Services (Revised Pay) Rules. 1986. Various discrepancies were pointed out by the employees and even some Government departments. The issue was further examined and--- vide Finance Department Notification No. 6/23/3.P.R. (FD)-88. dated 23rd August, 1990 pay scales were further revised. Various pay scales were clubbed and new pay scale of Rs. 1200 2040 was sanctioned with effect from 1st May, 1990. The revised pay scale is as under :-

Sr.

No.

Name of the Department

Name of Existing pay scale the post as on 1-1-1986

Modified scale of pay w.e.f 1-5-1990

1

xxxx

xxxxx

xxxxxx

xxxxx

40.

General recommendation regarding technical posts in various departments for which minimum educational qualification prescribed is Matric with I.T.I. Certificate/Polytechnic.

XXXX

750-940

775-1025

800-1150

950-1400

950-1500

1200 2040 (It has been decided that further recruitment of non-matric be stopped.

3. From the above revision, it appears that various pay scales including Rs. 950 1500 were converted into Rs. 1200-2040 in respect to technical posts in various departments for which minimum educational qualification prescribed is Matric with ITI Certificate/Polytechnic. It is also relevant to note that in last column below the revised pay scales a note has been appended to stop further recruitment of non-matric. Petitioners, are working against the technical posts and were in pay scales of Rs. 750-940. 775-1025. 800-1150. 950-1400 and 950 - 1500 as on 1st January. 1986. Petitioners working in different trades and technical posts in various departments were either denied the revised pay scale of Rs. 1200-2040 or initially granted but later withdrawn. It is also a fact that some of the petitioners do not possess the I.T.I Certificate/Polytechnic and some of them are under matric, whereas some possess the qualification of matric with I.T.I. All of them are claiming the revised pay scale of Rs. 1200-2040. The contention on behalf of the petitioners is that the revised pay scale has been granted to employees working on technical posts irrespective of their status and pay scale and also notwithstanding whether they possess qualification of matric with ITI or not. It is contended that the only requirement under the revised rules

is that they must be working on the posts for which minimum educational qualification prescribed is matric with I.T.I. In sum and substance the argument on behalf of the petitioner is that all the petitioners are working on the post where the prescribed qualification is matric with ITI and thus they are entitled to the benefit of the revised pay scale irrespective of the qualification. In order to further support their contention the reference is made to the remarks under the revised pay scale wherein it has been mentioned that in future recruitment of non-matric be stopped. Thus, it is stated on behalf of the petitioners that the qualification under the rules has been made necessary for grant of the revised pay scale for future recruitment against the post and those employees, who are already working against the post for which minimum qualification prescribed is matric with ITI, the pay scale of Rs. 1200--2040 has to be granted notwithstanding that the employee is possessed of the prescribed qualification or not.

4. Reply has been filed in some of the petitions. Referring to the reply filed in CWP No. 14493 of 1991 Mr. Kundu, learned Additional A.G., Haryana has argued that in some cases the petitioners were granted revised pay scale of Rs. 1200 2040, however, subsequently in the meeting held, it was decided to withdraw the benefit as they were not entitled to the revised pay scale. It is particularly mentioned that though the writ petitioners in the said writ petition were matric with ITI, they were having ITI in different trades than the posts they are working against. For example, it is stated that the petitioner, who is working on the post of Diesel Mechanic is in fact having ITI Certificate of Motor Mechanic or even a person, who is working as Fitter is having certificate in a different trade. Similar pleas have been raised in other writ petitions. Mr. Kundu has also referred to amendment made to Rule 40 referred to above. This amendment was made on 26th July, 1991 and Rule 40-A has been introduced after Rule 40 in Annexure A to the Government Instructions dated 23rd August, 1990. The rule reads as under :-

Sr. No.

Name of the Department

Name of Existing pay scale the post as on 1-1-1986

Modified scale of pay w.e.f. 1-5-1990

1

40. (A).

General recommendation regarding technical posts in various departments for which minimum educational qualification prescribed is only I.T.I. Certificate/ Diploma from Polytechnic without insistence on matric

xxxx 750-940

775-1025

800-1150

950-1400-

950--1400

The above shall take effect from 1st May, 1990.

5. It is stated that under the amended rule the employees who are working against the technical posts but are non-matric, they are to be placed in the pay scale of Rs. 950-1400. He has also referred to a judgement of this Court passed in CWP No. 15171 of 1991 decided on 4th December, 1991 (Annexure R-1). The said judgement reads as under :-

Notice of motion was issued. Return has been filed. Counsel heard.

The petitioners made the grievance that distinction in the pay scale could not be made on the grounds of higher or technical qualifications. According to the learned counsel, this tantamounts of discrimination between the employees in the same cadre. We however find that in view of paragraph 6 of the return, this stand is not justified. The stand is taken in the return is that the scale of Rs. 1200--2040 is granted only to these employees who are working against such technical posts for which minimum educational qualifications prescribed is matric with I.T.I. Certificates. In our opinion, the payment of higher scale for technical qualifications including the technical training, is perfectly justified and is permissible and cannot be questioned on the vice of discrimination. The petition is therefore, dismissed.

6. Based upon the aforesaid judgement, it is stated that the grant of higher pay scale for higher qualification is valid and only those persons, who are matric with ITI in the concerned trade are entitled to the revised pay scale, whereas those of the writ petitioners, who are lacking any of the qualifications and/or having ITI certificate in different trade cannot claim the benefit of the revised pay scale.

7. from the reading of Pay Rules, 1986 Item No. 40 it appears that the revised pay scale has been prescribed for various technical posts in which the minimum educational qualification prescribed is matric with If I, meaning thereby that any person, who is working on any technical post for which the minimum qualification prescribed is matric with III certificate whether he is in lower pay scale of 750---940 or various higher pay scales referred to above including Rs. 950 -- 1500 is to be placed in the revised pay scale of Rs. 1200-2040. The rule does not prescribe that only an employee working on the technical post possessing the qualification of matric with ITI is to be granted the revised pay scale. Pay scales of the posts and grades have been revised and not of the employees with higher qualifications. It is not in dispute that all the petitioners are working on one or the other technical posts and are in the different pay scale amongst five unrevised pay scales and are working since last 20 to 30 years. The endorsement under the revised pay scale further strengthens the argument that the future recruitment of the non-matric has been stopped, its natural corollary is that in

past non-matrices have been recruited against the posts for which the qualification prescribed is matric with I.T.I.

8. Respondents have not produced any rule of recruitment at the time of the appointment of the petitioners on various posts. It is common case of the petitioners that at the time of their appointment to various posts, they were fully qualified. It is not the case of the respondents that at the time of recruitment of the petitioners, they were ineligible or not possessed of the requisite qualifications prescribed for the posts held by them. These very rules and a similar issue came up for consideration before a Single Bench of this Court in CWP No. 10414 of 1993 decided on 2nd September, 1994 titled as Labh Singh and Others versus State of Haryana and Others 1995 (1) RCJ 345. In the aforesaid case some of the petitioners were possessed of the qualification of matric with ITI, whereas some were having qualification of only I.T.I. They were working as mates in the State of Haryana. They claimed the revised pay scale of Rs. 1200--2040 on the ground that they are working against technical posts for which qualification prescribed is matric with ITI and thus entitled to the revised pay scales. However, the State Government placed them in pay scale of Rs. 750--940 pleading that they are Class-IV employees and not entitled to the revised pay scale. It was noticed that there were no statutory rules at the time of recruitment of those writ petitioners and they were recruited on the basis of the sponsorship from the Employment Exchange and were having qualifications as notified by the department to the Employment Exchange. Those qualifications were laid down in technical memo issued by the department. In some cases the revised pay scales were granted and withdrawn. On consideration of the issue the Hon'ble Court made following observations:-

7. Learned Deputy Advocate General has not been able to show as to how the Executive Engineer has made recruitment on the posts of T. Mates without there being any qualification. In fact the stand taken by the respondents stands belied by the fact that in the standing order issued by the department qualification for the post of T. Mates has been prescribed as I.T.I, pass in respective trade or three years experience in the trade concerned. These qualifications have been enumerated in Annexure D contained in Technical Memo No. 6/88 containing rules and instructions for running and upkeep of vehicles and other machinery working in Public Works Department (Building and Roads), Haryana. This document has been published under the authority of the Government of Haryana and, therefore, there is no reason to believe that these are not the prescribed qualifications. To me it is clear that by virtue of Annexure D, appended to the Technical Memo No. 6/88, the department has prescribed the qualifications for appointment on the post of T. Mates and precisely for this reason the Executive Engineer had incorporated these qualifications in the various notifications sent by it to the Employment Exchange. It is thus clear that each of the petitioner had been recruited with the qualification of I.T.I, and some of qualification of Matric with I.T.I.

8. In the result, the writ petitions are allowed. The notices issued by the respondents seeking revision of the pay of the petitioners are declared illegal and are hereby quashed. The respondents are restrained from revising the pay scale of the petitioners. Costs made easy.

9. The aforesaid judgement was followed by another Division Bench of this Court in case of *Raj Karan versus State of Haryana* 2003 (1) RSJ 119, wherein following observations have been made :-

9. After hearing the learned counsel for the parties and having given our thoughtful consideration to the entire controversy, we find that the present petition deserved to succeed. It is the admitted position between the parties that there were no minimum educational qualifications prescribed for the post, when the petitioner was appointed to the same. Still further, there is no dispute that the petitioner did possess the qualifications of Matriculation with I.T.I, certificate and it was only on the basis of the aforesaid qualifications that the petitioner was actually appointed as a Technical Mate on work charge basis originally on 1st April, 1978. Subsequently, the services of the petitioner were regularized on the aforesaid post with effect from 1st January, 1987. Under these circumstances, when the petitioner was granted the scale of Rs. 1200--2040 with effect from 1st May, 1990, in accordance with the policy decision, then the said benefit now cannot be withdrawn merely because there were no statutory rules, laying down any educational qualification for Technical Mate.

10. The aforesaid Division Bench judgement of this Court was challenged before the Hon'ble Supreme Court in various SLP/Appeals. All the SLP/Appeals were dismissed vide order dated 31st July, 2007. Hon'ble Supreme Court in case of *B.N. Saxena Vs. New Delhi Municipal Committee and others*, has held as under :-

7. The second limb of the rule was evidently to benefit all those persons who have gained sufficient experience as Senior and Junior Draftmen without possession any qualification. Experience gained for a considerable length of time is itself a qualification (see the observation in *State of U.P. versus J.P. Chaurasia*). It would be unreasonable to hold that in addition to this considerable experience, one must also have the diploma qualification prescribed under the first part. It could not have been the intention of the rule making authority that persons who were designated as Senior Draftsmen without any diploma qualification should acquire such qualification for further promotion. Such a view would not be consistent and coherent with the revised rule and its object. We have no doubt that the second limb of the revised rule is independent of the rest. The High Court seems to have erred in this aspect of the matter.

11. There is another aspect the qualification is to be seen at the time of recruitment. A person possessing the requisite qualification at the time of recruitment cannot be denied the benefit of the pay scale, if, at any subsequent stage the qualifications are modified. Hon'ble Supreme Court in case of *Chandraparkash Madhavrao Dadwa versus Union of India* reported as 1998 (4)

RSJ considered the similar question and held as under :-

47. To put it in a nutshell, the change in the essential qualification made in 1990 or 1998 or the additional functions now required to be performed by the appellants could not retrospectively affect the initial recruitment of appellant as Data Processing Assistants nor their confirmation in 1989. Recruitment qualifications could not be altered for applied with retrospective effects so as to deprive the recruits of their right to the posts to which they were recruited nor could it affect their confirmations.

12. Thus, if the petitioners had the requisite qualification to hold the post at the time of their recruitment, any qualification prescribed subsequently will not effect their right to hold the post or their entitlement for the revised pay scales on the ground that they do not possess the qualification prescribed later on.

13. In the light of the aforesaid judgements and in view of the interpretation which can be placed with Item No. 40 of pay revision rules of 1986 the petitioners, if working on technical posts cannot be deprived of the revised pay scales of Rs. 1200 -2040 either on the ground that they are non-matric or that they are ITT or not or even they are having trade certificate of a different trade. According to the memo No. 6/1988 noticed in Labh Singh's judgement three years experience in trade was also to be considered as equivalent to I.T.I.

14. These petitions are, accordingly, allowed. Respondents are directed to release the revised pay scale of Rs. 1200-2040 to the petitioners who are working on technical posts from the date of revision i.e. 1st May, 1990.

15. Copy of this judgement be placed on each connected file.