

(2013) 07 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11279 of 1990

Harbans Lal Joshi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 07 P&H CK 0122

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Ravi Kapur, for the Appellant; P.S. Bajwa, DAG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—The petitioner's grievance in the writ petition is that although he was appointed as a Mechanic, he was afforded scale of pay which was lower than a Mechanic appointed in other departments. The petitioner would refer to a particular instance of a person called Gurpreet Singh, who was appointed to the post of Mechanic on 21.10.1986 but he was afforded a scale higher than his own scale. At a previous hearing, I had directed the respondent to give an affidavit through Director, Research & Medical Education, who issued the order to Gurpreet Singh to provide for a particular scale which was said to be higher than the petitioner's own scale. There has been no response to the direction. The State would confine itself to bringing out the relevant Rules that prescribed a scale of pay for the post of Mechanic and pointed out also to the fact that the petitioner was being afforded the particular scale which the Rules provided for. While the petitioner seeks for parity with a person like him appointed to the same post but given a higher scale and that he shall also be given the same scale, the respondent would say that the Rules do not provide for such an eventuality. If yet another employee has come by a higher scale, which is not in conformity with the Rules, the proper procedure would be either to take action

for recoveries of the pay which was paid more than what the Rules provide for or take action against the officer who made possible for yet another employee to come by certain scales which were not according to the Rules. I may not be able to bring the play of Article 14 to a situation that is not shown to be in conformity with the Rules. It is axiomatic that Article 14 is only to be applied to enforce what is legal and there can not be equality in any arbitrariness or a wrong application of particular scale afforded to yet another employee.

2. The counsel himself states that several communications sent by the Head of the Department have recognized the petitioner's work as an Electrician and that he should be paid the scales applicable to the Electrician. Unless the appointment order had been made to the particular post, the mere fact that he was doing some other work and shouldering the responsibility of a higher post would not entitle him to claim the higher scales. An officiation to a higher post must be again in terms of the procedure established by law. A voluntary assumption of duty in a higher post whose services are utilized by officials fortuitously cannot again be a ground for providing the scales for the higher post for the responsibility that he has assumed. I am afraid, it is not possible to accommodate the plea of the petitioner for the reliefs which he has sought for. The petition would require to be dismissed and accordingly dismissed.