

**(2001) 08 P&H CK 0112**

**In the Punjab And Haryana At Chandigarh**

**Case No : Regular Second Appeal No. 800 of 1992**

Haryana State Electricity Board and Others

APPELLANT

Vs

Anil Kapoor and Others

RESPONDENT

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**Date of Decision : 09-08-2001**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation : (2001) 08 P&H CK 0112**

**Hon'ble Judges : R.L. Anand, J**

**Bench : Single Bench**

**Advocate : H.S. Hooda and P.S. Hooda, for the Appellant; W.R. Dua, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

R.L. Anand, J.—By this judgment I dispose of R.S.A. No. 800 of 1992 filed by Haryana State Electricity Board and others and Civil Writ Petition No. 1632 of 1999 titled Anil Kapoor and others v. Haryana Power Generation Corporation as in my opinion the appeal as well as the writ petition can be disposed of by the common judgment.

2. The fate of the relief claimed by the petitioners in the writ petition will depend upon the decision of the regular second appeal. The facts of the case have been taken from the appeal itself.

3. The brief facts of the suit are that Anil Kapoor and 15 others fully described in the head note of the plaint filed a suit for declaration with consequential relief praying that the plaintiffs are entitled to higher scale on the basis of equal work for equal pay. It was pleaded by the plaintiff that plaintiff Nos. 1 to 11 are employed as Senior technician with defendant No. 1 i.e. Haryana State Electricity Board now known as Haryana Vidyut Parsaran Nigam at Faridabad and their date of joining of service has been specifically given in para No. 1 of the plaint. Similarly plaintiff Nos. 12 to 16 are employed as technicians and they joined their

post on different dates as mentioned in para No. 2 of the plaint. It is pleaded by the plaintiffs 1 to 11 that they are drawing the pay in the scale of Rs.450-760 while plaintiffs 12 to 16 are drawing their salary in the pay scale of Rs.400-700 and these scales have been made effective w.e.f. 1st April, 1979. It was further submitted by the plaintiffs that their counter-parts who are also working as Senior Technicians/Technicians at Thermal Power House, H.S.E.B.Panipat have been given initial pay scale w.e.f.1st April, 1979 as follows:-

Senior Technicians Rs.700-1250/-Technicians Rs.600-1100/-

4. It was further pleaded by the plaintiffs that the pay scales of the employees of Haryana State Electricity Board for all these categories all over Haryana were circulated vide letter dated 19.8.1987 and was made effective from 1.1.1986 at the following rates:-

Senior Technicians from 700-1250 to 1600-2600 Technicians from 600-1100 to 1400-2600

5. It is also pleaded by the plaintiffs that in spite of the increase in the pay scale the employees of Thermal Power House, H.S.E.B. Faridabad were not given these scales as were given to the employees of Thermal Power House, H.S.E.B.Panipat. This act of the defendants have been challenged as illegal, arbitrary and unconstitutional. It is pleaded that plaintiffs are holding the same posts, status as they are doing the same nature of work as their counter-parts in Panipat who are getting revised pay scales w.e.f. 1st April, 1979 and 1st January, 1986 and by not releasing the revised pay scales to the plaintiffs, they have been discriminated. The Thermal Power House, H.S.E.B. is a part and parcel of Haryana State Electricity Board and is governed by all the rules and regulations prepared by the Board for its employees for all cadre and categories. Defendant No.2 i.e. Chief Engineer is not competent to convert the designation of any employee without order of the Secretary, H.S.E.B. It was also pleaded by the plaintiffs that plaintiff Nos. 1 to 11 were appointed as Senior Technicians but in their appointment letter the word Assistant Operator was mentioned and this has been done to deprive them of their legitimate benefits. The plaintiffs made several representations to the defendants but to no effect. Hence the suit.

6. The suit was contested by the defendants. They pleaded that the suit was not maintainable; that the plaintiffs have no cause of action; that Haryana State Electricity Board is a commercial entity and, therefore, the jurisdiction of the Civil Court is barred. It was also pleaded that scales of pay had been allowed as per their appointment letter. The plaintiffs originally joined on different posts but they were promoted to the post of Senior Technicians and technicians work charge. On merits, it was pleaded by the defendants that Panipat Thermal Unit is an independent unit for the purpose of recruitment and promotion policy up to 1986. The authority of Panipat had recruited the persons as Senior Technicians and technicians at the scale mentioned in para No.4 of the written statement but plaintiff Nos. 12 to 16 were promoted as Senior technicians work charge and

Technicians work charge in the scales of Rs. 450-760 and 400-700 against the posts notified in the press advertisement. It was also pleaded that the scale of senior technicians and technicians were revised to 1200-2040 and 950-1500 and the pay scale of the plaintiffs has also been revised. The defendants also pleaded that scale of pay of same trade cadre posts in Haryana State Electricity Board is under consideration for removal of the pay anomaly and the anomaly has been rectified. With this broad defence the defendants pray for the dismissal of the suit.

7. The plaintiffs filed a replication to the written statement of the defendants in which they reiterated their allegations made in the plaint and denied those of the written statement and from the pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether the plaintiff Nos. I to II are entitled to receive revised pay scale of senior technicians Rs. 700-1250 w.e.f. 1.4.1979 in respect of Rs. 450-760 and from 1.1.1986 Rs. 1600-2600 instead of proposed revised scale of Rs. 1200-2040? OPD.
2. Whether the plaintiff Nos. 12 to 16 are entitled to receive revised pay scale of technicians Rs.600-1100 w.e.f. 1.4.1979 instead of Rs.400-700 and from 1.1.1986 are entitled to scale of revised Rs.1400-2600 instead of proposed scale of Rs.950-1500? OPD.
3. Whether the plaintiff Nos.7, 8, 10 and 11 are entitled to be declared as Senior Technicians and received revised pay scale as alleged? OPP.
4. Whether suit is not maintainable to the present form? OPP
5. Whether civil court has got no jurisdiction ? OPP
6. Whether plaintiffs have suppressed any material facts, if so effect thereon? OPD
7. Relief."

The parties led evidence in support of their case and finally the suit of the plaintiffs was decreed by the trial Court and the plaintiffs were granted the decree for declaration to the effect that plaintiff Nos. 1 to 11 are entitled the pay scale of senior technicians in the grade of Rs. 700-1250 w.e.f 1.4.1979 and from 1.1.1986 the grade of 1600-2600 and plaintiff Nos. 12 to 16 are entitled to receive revised pay scale of Rs. 600-1100 w.e.f. 1.4.1979 and in the scale of Rs. 1400-2600 w.e.f 1.1.1986. Directions were given to the defendants to fix the pay scale of the plaintiffs within two months from the date of the finalisation of the decree and thereafter release their arrears. This decree was passed by the trial Court i.e. Senior Sub Judge, Faridabad on 23rd February, 1991.

8. Defendants filed an appeal before the Court of Additional Distt. Judge, Faridabad who dismissed the appeal by affirming the judgment and decree of the trial Court and in this manner the present regular second appeal by the Board.

9. Now I revert to the prayer of Shri. Anil Kapoor and others who filed the writ petition under Articles 226 and 227 of the Constitution of India seeking a direction of this Court in the nature of mandamus directing the respondents to grant all the petitioners the designation and scales of Foreman Grade 1 w.e.f. 15.1.1986 and to grant them the revised pay scales of Rs. 1640-2900 w.e.f. 15.1.1986 and Rs. 1800-3105 w.e.f. 1.5.1990 and the subsequent revisions of pay scales. The relief claimed in the writ petition in fact is a consequential prayer made by the plaintiffs in the suit. If the suit of the plaintiffs succeeds, certainly they are entitled to the enhanced prayer made in the writ petition and if the prayer of the plaintiffs is disallowed, the writ petition will automatically fail.

10. The stand of the respondent in the writ petition is more or less on the same footing as given in the written statement. The defendants have tried to show that the nature of job of the employees of Faridabad plant are different from the Panipat plant. The service conditions of employees of both the services are different. Both the projects were entirely working independently regarding recruitment of staff and promotions which are streamlined in the year 1985. Therefore, the petitioners are not entitled to any enhanced prayer as made in the writ petition.

11. I have heard Shri. H.S. Hooda, learned Senior Advocate on behalf of the appellant i.e Board and Shri. Ravi Kant Sharma on behalf of the plaintiff-respondents and Smt. Abha Rathore, learned counsel who has filed the writ petition on behalf of the plaintiffs.

12. Learned counsel appearing on behalf of the appellants in the appeal and the respondents in the writ petition vehemently submitted that the employees of Faridabad and Panipat Plants are two separate cadres. They are governed by two sets of mode of appointment, their conditions of service are different. In these circumstances, the principle of equal pay for equal work is not applicable.

13. On the contrary the learned counsel for the respondents Shri. Ravi Kant and Mrs. Abha Rathore submitted that the employees of Faridabad and Panipat are being controlled and appointed by the same employer. Their nature of duties are same and also have similar qualifications. In these circumstances, the employees i.e. senior technicians/technicians of Faridabad Unit are entitled to the same pay scale as have been granted to their counterparts who are working at Panipat.

14. The submissions advanced by the learned counsel for the appellant are totally devoid of any merit. It is the admitted case of the appellant that plaintiff Nos. 1 to 11 are either promoted or appointed as senior technicians work charge. Similarly plaintiff Nos. 12 to 16 have been promoted/appointed as senior technicians work charge. At the first instance, plaintiff Nos. 1 to 12 were placed in the pay scale of Rs.450-760 while plaintiff Nos. 12 to 16 were placed in the pay scale of Rs.400-700 being senior technician and technician respectively and these scales were made applicable w.e.f. 1.4.1979. Also it is admitted case of the parties that the counterparts of the plaintiffs who are working as Senior

technicians and technicians in Thermal Plant Panipat are getting the scale of Rs.700-1200 as senior technician and the scale of Rs. 600-1100 as technician. If this was the situation, how the plaintiffs could be deprived of the higher pay scale which was made applicable on 1st January, 1986. It has come in evidence that prior to 1st January, 1986, Panipat Thermal Plant was independent from other thermal plants in the pay scale and recruitment policy but thereafter all the thermal power plants in Haryana were brought under one command and under the same employer. This aspect of the case is clear from the statement of D.W. 1 Shri. Kishori Lal who deposed that the control of Thermal Plant Faridabad and that of Thermal Plant Panipat prior to 1985 was separate but after 1985 both were brought under one administrative control and respondent Nos. 1 to 11 who were senior technicians were designated as Grade I Technicians while respondent Nos. 12 to 16 who were technicians were designated as Grade II Technicians. It has also come in the statement of this witness that since the administrative control had come under one head, the employees of thermal power house Faridabad could be transferred in the same capacity to the Thermal Power House Panipat. When the posts are inter-changeable and when the employees of both the plants are working same nature of duties how can be a different scale. In other words, one employee can put in a disadvantage position if he is transferred to Faridabad from Panipat. Similarly one technician can be put in a better scale if he happens to be transferred from Faridabad to Panipat. The principle of equal pay for equal work has always been recognised when the nature of duties are the same, qualifications are the same, employers are the same, the posts are interchangeable then the employees cannot be treated with discrimination in the matter of pay scales.

15. The counsel for the appellant has not been able to show that the qualifications for the posts of technicians and senior technicians of the employee working at Faridabad and Panipat are different. Prior to 1st Jan. 1986 the Unit were independent but w.e.f. 1st January. 1986 and on account of the circular dated 19.8.1987, all the thermal plants in Haryana have been brought under one employer. The recruitment and promotion policies are now governed by the same set of rules whether the employees are at Faridabad or at Panipat. In these circumstances, I am of the considered opinion that the plaintiffs are entitled to the same pay scales as were given to their counter parts working at Panipat but in the cadre of senior technicians and technicians, both the courts have rightly held that the principle of equal pay for equal work is applicable in the present case and the plaintiffs could not be discriminated.

16. Resultantly, I hold that the plaintiff Nos. 1 to II are entitled to the pay scale of Rs.700-1250 w.e.f. 1.4.1979. Thus they are entitled to the grade of Rs.1600-2660 as senior technician w.e.f. 1.1.1986. Similarly, plaintiff Nos. 12 to 16 are entitled to the pay scale of Rs.600-1100 w.e.f. 1.4.1979 and further they are entitled to the pay scale of Rs. 1400-2600 w.e.f. 1.1.1986 as technician.

17. Further, I give the declaration to the plaintiffs that all the petitioners are

entitled to the grade of Rs.1640-2900 w.e.f. 15.1.1986 and the grade of Rs.1800-3105 w.e.f. 1,5.1990. They shall also be entitled to the standard scale after 10 years regular service of Rs. 2100-3315 as per the recommendation of the 4th Pay Commission. Further they shall be entitled to the grade of Rs.6500-9900 w.e.f. 1st Jan. 1996 as per the recommendation of the 5th Pay Commission.

18. I further give declaration that all the petitioners shall be designated as Foreman Grade I w.e.f. 15,1.1986 so that they may be able to claim the grade which I have awarded to them.

19. The net result is that Appeal No.800 of 1992 fails and the same is hereby dismissed, while C.W.P. No.1632 of 1999 is hereby allowed. The parties shall bear their own costs.

Directions are also given that the Reard shall release all the arrears of pay within two months.