
(2001) 10 P&H CK 0171
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11290 of 1998

Lakhwinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 39

Citation : (2001) 10 P&H CK 0171

Hon'ble Judges : R.C. Kathuria, J;M.L. Singhal, J

Bench : Division Bench

Advocate : K.L. Arora, for the Appellant; Lakhinderbir Singh, Addl. AG, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Through this Civil Writ Petition No. 11290 of 1998 filed under Articles 226/227 of the Constitution of India against the State of Punjab and others, Lakhwinder Singh and others, petitioners have prayed for the issuance of writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction thereby directing the respondents to release regular pay scale to the petitioners in accordance with the judgment of the Hon"ble Supreme Court, Annexure P-8, Civil Appeal No. 4942 of 1997 (arising out of SLP (C) No. 1502 of 1997), State of Punjab and Ors. appellants v. Devinder Singh and Ors. respondents as also in accordance with the judgment dated 18.3.1998 of this Court. Annexure P-9, C.W.P. No. 7238 of 1995 Inderjit Singh and Ors. petitioners v. State of Punjab and Ors. respondents.

2. Lakhwinder Singh and others, petitioners are working as Pump Operators in the P.W.D. Public Health Department. It of the State of Punjab for the last 12-13 years on daily wage basis. 63 workers of the Public Health Department of the State of Punjab filed Civil Writ Petition No. 5479 of 1987, Lakhwinder Singh and 62 others v. State of Punjab and Ors., whereby they had claimed mainly two reliefs i.e. regularisation of their services and regular pay scale which is being

given to the regular counterparts on the principle of "equal pay for equal work". Other prayers were also made in the writ petition. This writ petition was admitted and remained pending for about 8 years. In this writ petition, Lakhwinder Singh etc, who are petitioners eight in number were also petitioners in C. W.P. No. 5479 of 1987 (supra), in which it was clearly mentioned that the petitioners were performing the same duties with the same responsibilities as those of the regular counterparts. This position was admitted in the written statement by the respondents. Vide order Annexure P-1 dated 6.12.1995, the said writ petition was decided by the Hon''ble Bench. Hon''ble Bench dwelt on the said two reliefs as follows :-

"The petitioners who have completed more than 5 years of service shall be regularised in service in accordance with the decision of the Hon''ble Supreme Court in State of Haryana v. Piara Singh, 1992 (3) SCT 201 : 1992 SLJ 215 and instructions issued by the Government in this behalf. Regarding grant of regular pay scale with regard to equal pay for equal work, learned counsel for the petitioners prays that the writ petition be dismissed as withdrawn with permission to the petitioners to ask for the said relief from the respondent authorities by filing representation and in case the same is not granted, the petitioners be granted permission to file the writ petition on the same cause of action. This prayer is not opposed by the learned Assistant Advocate General, Punjab. The petitioners were permitted to withdraw the relief with regard to equal pay for equal work from the present writ petition and reagitate the matter in the manner as made out from the statement of the learned counsel for the petitioners. If any such representation is made, it is directed that the same shall be decided within a period of three months by passing a speaking order."

3. The petitioners of C.W.P. No. 5479 of 1987 thereafter filed detailed representation, Annexure P-2 before the authorities. In that representation, they pointed out that they were performing the same duties with the same responsibilities as are being performed by their regular counterparts working on corresponding posts. It was also mentioned that their duties were 8 hours a day as Pump Operators. There are three shifts and the petitioners relieved the regular counterparts in shifts. The duties of the petitioners were inter- changed with the regular counterparts, which also suggests the fact that they performed the same duties with the same responsibilities while working as Pump Operators. It was also mentioned in the representation, Annexure P-2 that the respondents had admitted this position when they filed written statement in C.W.P. No. 5479 of 1987. Other details were also given in the representation. Order dated 6.12.1995 passed in the writ petition No. 5479 of 1987 was also alluded to in the representation. It was also mentioned that they had been working for the last 12 years, 9 years and so on. It was also mentioned that as per the decision of the Hon''ble Supreme Court in Piara Singh v. State of Punjab (supra), if a person is allowed to work against a particular post for 3 years, it means that the post is permanent and has to continue for all times to come. The authorities were thus requested for the release of regular pay scale of 400-600 prior to 1.1.1986 and

950-1800 with a basic start of Rs. 1000/- plus allowances from 1.1.1986 onwards in respect of class III posts, more precisely for the post of Pump Operators. Other prayers were also made. No decision was being taken on their representation and appropriate relief was not being granted to them and therefore, Lakhwinder Singh and others who were writ petitioners in C.W.P. No. 5479 of 1987 served legal notice dated 26.5.1996, Annexure P-3 on the State of Punjab requesting that the orders of the Hon"ble Bench passed on 6.12.1995 in C.W.P. No. 5479 of 1987 be complied with, viz. their services be regularised and also to release regular pay scale to them on the principle of equal pay for equal work.

4. Devinder Singh and others who were similarly situated and employed in the Public Health Department of the State of Punjab, in which they are working, filed C.W.P. No. 14591 of 1995, Devinder Singh and Ors. v. State of Punjab and Ors. in this Court, in which they inter alia prayed for the release of regular pay scale together with allowances as are being allowed to the regular counterparts. This writ petition was allowed by a Division Bench of this Court vide order Annexure P-4 dated 20.3.1996, the operative portion of which reads as follows :-

"Under the circumstances, the writ petition is allowed with a direction to the respondents to pay to the petitioners the same salary and allowances as are being paid to the regular employees holding similar posts. The petitioners are held entitled to the payment of difference of the pay scale for a period of last three years from the date of the filing of the writ petition."

5. The petitioners of C.W.P. No. 14591 of 1995 are continuously getting salary in the regular pay scale of class III posts. Arrears of salary for a period of three years prior to the filing of the writ petition were also received by them. Similarly, another set of similarly situated employees of the Public Health Department of the State of Punjab filed C.W.P. No. 9623 of 1993, Gurmukh Singh and Ors. v. State of Punjab and Ors. in this Court. They were working on daily wage basis on class III posts. C.W.P. No. 9623 of 1993 was allowed on 12.4.1994 by a Division Bench of this Court vide order Annexure P-5, whereby they were allowed regular pay scale on the principle of equal pay for equal work, though they were working on daily wage basis. Gurmukh Singh and others in C.W.P. No. 9623 of 1993 are getting the salary in the regular pay scale since then and they are employees working alongwith the present petitioners in the same department. Gurmukh Singh and others also received arrears of salary for a period of three years and two months prior to the filing of the writ petition. Vide order Annexure P-6 passed on the representation made by Lakhwinder Singh and others in the wake of order passed on 6.12.1995 in C.W.P. No. 5479 of 1987, the respondents regularised the services only of those who had put in 10 years of service. No order was, however, passed on their prayer for equal pay for equal work on the principle of equal pay for equal work. These petitioners were neither regularised nor were granted regular pay scale on the principle of equal pay for equal work. The petitioners filed COCP No. 1316 of 1996, Lakhwinder Singh and Ors. v.

Bikramjit Singh and Ors. in this Court for wilfully and intentionally violating order dated 6.12.1995 passed in C.W.P. No. 5479 of 1987. COCP No. 1316 of 1996 was dismissed vide order dated 22.1.1997, Annexure P-7. Decision of this Court passed in C.W.P. No. 14591 of 1995, Annexure P-4 was challenged by the State in the Hon"ble Supreme Court. Hon"ble Supreme Court substantially upheld the decision of this Court dated March 20, 1996. Annexure P-4 recorded in C.W.P. No. 14591 of 1995. Following is the gist of the decision, Annexure P-8 of the Hon"ble Supreme Court :-

"In our view, the principle of equal pay for equal work can ensure to the respondents to the limited extent that when they were found to have been giving similar work as Ledger Clerks/Ledger Keepers, they could have been paid the minimum of the pay scale of a Ledger Keeper which was available to regularly appointed Ledger Keepers" Ledger Clerks. Learned counsel for the respondents could not successfully contend that such an order should not have been passed. We, therefore, allow this appeal to the limited extent that though the respondents are held limited on the principle of Equal pay for equal work to get the salary available to the Ledger Keeps/Ledger Clerks who are regularly recruited, they would be entitled to the minimum of the pay scale of the Ledger Keepers and they cannot be straightaway paid the running time scale as they were not regularly appointed as Ledger Keepers/Ledger Clerks.....The direction issued by the High Court in favour of the respondents entitling them to get the salary and allowances as regularly appointed employees is set aside and instead it is directed that the respondents will be entitled to the Ledger Keepers/Ledger Clerks with permissible allowances on that basis and the difference between the emoluments already paid to each of the respondents and those payable to them pursuant to the present order will be payable to the respondents for a period of three years prior to the filing of the writ petition and thereafter minimum salary in the t me scale of Ledger Keepers/Ledger Clerks with appropriate allowances thereon shall be available to the respondents so long they work as daily wage Ledger Keepers/Ledger Clerks."

6. Another set of similarly situated employees of the Public Health Department of the State of Punjab filed C.W.P. No. 7238 of 1995 Inderjit Singh and Ors. v. State of Punjab and Ors., in this Court for the grant of regular pay scale with allowances. This writ petition was allowed by this Court on 18.3.1998 following the judgment of the Hon"ble Supreme Court Annexure P-8. Inderjit Singh and others were allowed the minimum pay scale available to regular employees with permissible allowance and they were also allowed arrears of salary for a period of three years prior to the filing of the writ petition. Order is Annexure P-9. Similarly 3/4 other writ petitions filed by the employees of the same department were allowed on 18.3.1998 by the same Bench in which the present petitioners are working. Those writ petitions are bearing C.W.P. No. 7533 of 1995 Talwinder Singh and Ors. v. State of Punjab and Ors. and C.W.P. No. 8264 of 1995 Balraj Singh Shekhon and Ors. v. State of Punjab and Ors.

7. In this writ petition, thus Lakhwinder Singh and others petitioners have claimed regularisation of their services as also regular pay scale at par with regular employees on the principle that the services of similarly situated employees as they are have been regularised as also they have been given regular pay scale. It will be inequitable to single them out and not to grant them the relief which has been granted to others. They have claimed that the regular pay scale of the post of Pump Operator i.e. Rs. 400-600 prior to 1.1.1986 revised to Rs. 950-1800 with a basic start of Rs. 1000/-plus allowances from 1.1.1986 and further revised to Rs. 3150/- from 1.1.1996 be granted to them and also the permissible allowances attached to the scale.

Respondent-State of Punjab contested this petition and urged that as per policy of the Government, the department regularised the services of workers who had completed 10 years as on 31.8.1992 and 30.11.1994. On the representation of workers i.e. Lakhwinder Singh and others, they were granted the benefit as was applicable to them in compliance of the orders of the Court. Hon''ble Supreme Court in Civil Appeal No. 14223 of 1996, State of Haryana and Ors. v. Jasmer Singh and Ors. decided on 7.11.1996 has held that the persons employed on daily wage basis cannot be treated at par with the persons in regular service holding similar posts and they are not entitled to get the same pay as is being paid to the regular employee. The claim of the petitioners for the wages in the regular pay scale at par with regular employee has no merit in view of the law laid down by the Hon''ble Supreme Court in 1997(1) RSJ 445 It was also urged that in case State of Haryana and Ors. v. Jasmer Singh and Ors., the Hon''ble Supreme Court considered the authority reported as Dhirendra Chamoli v. State of U.P., 1996 (1) SCC 637 and ruled that daily rated workers cannot be treated at par with persons in regular service and they cannot be paid minimum of regular pay scales. In C.W.P. No. 10658 of 1994 Ranbir Singh and Ors. v. State of Haryana decided on 3.2.1998. Hon''ble the Full Bench of this Court has held that daily rated workers cannot be treated at par with persons in regular service and they cannot be paid minimum regular pay scales.

8. We have heard the learned counsel for the petitioners and the learned Additional Advocate General, Punjab for the State of Punjab and have gone through the record.

9. There can be no doubt that the petitioners cannot continue to be labelled as daily wage workers for years together Lakhwinder Singh, Randhir Singh, Gurmeet Singh, Saroop Singh, Jaspal Singh, Balkar Singh, Satnam Singh and Mohan Singh petitioners joined as Pump Operators on 1.3.1986, 1.1.1985, 2.9.1985, 14.2.1984, 28.9.1986, 8.12.1986, 9.7.1986 and 15.2.1985 respectively. In the year 1998, when they filed this petition, though they had put in 12/13 years of services, they were being labelled as daily wagers. They are entitled to be considered for being regularised in terms of the observations of the Hon''ble Supreme Court made in State of Haryana v. Piara Singh, 1992 SLJ 1.

10. Now the question that arises is whether they are entitled to be paid the same

salary as is being paid to a regular Pump Operator. Till they are regularised, they are not entitled to be paid the salary which is being paid to regular Pump Operators. This is what has been laid down by the Hon''ble Supreme Court in State of Punjab and Ors. v. Devinder Singh and Ors., Civil Appeal No. 4492 of 1997, arising out of SLP (C) No. 1502 of 1997, Annexure P-8. It was contended before the Hon''ble Supreme Court that the respondents were doing the same work as regular Ledger Clerks who were recruited by the employer. As such, they must be paid equal pay on the ground of equal work. Hon''ble Supreme Court held that the principle of equal pay for equal work can ensure to the respondents to the limited extent that when they were found to have been giving similar work as Ledger Clerks/Ledger Keepers, they could have been paid the minimum of the pay scale of a Ledger Keeper which was available to regularly appointed Ledger Keepers/Ledger Clerks. Hon''ble Supreme Court allowed this appeal to the limited extent that though the respondents are held entitled on the principle of equal pay for equal work to get the salary available to the ledger Keepers/Ledger Clerks who were regularly recruited, they were entitled to the minimum of the pay scale of the Ledger Keepers which may be available to the regularly appointed Ledger Keepers and they cannot be straightaway paid the running time scale as they were not regularly appointed as Ledger Keepers/Ledger Clerks. Direction issued by the High Court in favour of the respondents entitling them to get the salary and allowance as regularly appointed employees was set aside and instead it was directed that the respondents would be entitled to get the minimum of the pay scale available to the Ledger Keepers/ledger Clerks with permissible allowances on that basis. It was the judgment of the Hon''ble Supreme Court comprising two Hon''ble Judges. Ratio of this judgment is that daily wagers would not be paid the same salary as was being paid to a regular employee and the principle of equal pay for equal work could be invoked to a limited extent in their case namely that they could be paid only the minimum of the pay scale. In this ratio of the judgment of the Hon''ble Supreme Court what is inherent is that if they are paid the same salary and allowances as are being paid to regular employee, there will be no difference between them and regular employees.

11. In another judgment, the Hon''ble Supreme Court comprising Hon''ble the Chief Justice of India and another Hon''ble Judge, reported as State of Haryana and Ors. v. Jasmer Singh and Ors. 1997(2) SCT 151 : 1997(1) RSJ 445 held that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations and even in the same organisation. The principle was originally enunciated as a part of the directive principle of the State policy in Article 39(d) of the Constitution. In the case of Randhir Singh Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court held that this was a constitutional goal capable of being achieved through constitutional remedies and held that the principle had to be read into Articles 14 and 16 of the Constitution. In that case a driver-constable in the Delhi Police Force under the Delhi

Administration claimed equal salary as other drivers and this was granted. The same principle was subsequently followed for the purpose of granting relief in *Dhirendra Chamoli and Anr. v. State of U. P.* 1986 (1) SCC 63 and *Jatyal and Ors. v. State of Haryana and Ors.* JT 1988 (2) SC 528. In the case of *Federation of All India Customs and Central Excise Stenographers (Recognised) and Ors. v. Union of India and Ors.* JT 1988 (2) SC 519, the Hon"ble Supreme Court explained the principle of equal pay for equal work by holding that differentiation in pay scales among government servants holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. In that case different pay scales fixed for Stenographers (Grade I) working in the Central Secretariat and those attached to the heads of subordinate offices on the basis of recommendation of the Pay Commission was held as not violating Article 14 and as not being contrary to the principle of equal pay for equal work. In the case of *State of U. P. and Ors. v. J.P. Chaurasia and Ors.* 1989 (1) SC 121, the Hon"ble Supreme Court again sounded a note of caution. It pointed out that the principle of equal pay for equal work has no mechanical application in every case of similar work. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of-course These qualities and characteristics must have a reasonable relation to the object sought to be achieved. In the case before the Hon"ble Supreme Court, the Bench Secretaries in the High Court of Allahabad claimed the same pay as Section Officers. While negating this claim, the Hon"ble Supreme Court held that in service matters merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. That apart, a higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. Hon"ble Supreme Court observed that although all Bench Secretaries may do the same work, their quality of work may differ. Bench Secretaries (Grade-I) are selected by a Selection Committee on the basis of merit with due regard to seniority and a higher pay scale granted to such Bench Secretaries who are evaluated by competent authority cannot be challenged. In case of *Harbans Lal and Ors. v. State of Himachal Pradesh and Ors.* JT 1989 (3) SC 296, where carpenters employed by the Himachal Pradesh Handicraft Corporation on daily wages sought parity of wages with carpenters in regular service. Hon"ble Supreme Court negated this contention holding that a comparison cannot be made with counterparts in other establishments with different managements or even with the same management. The quality of work which is produced may be different and even the nature of work assigned may be different. The application of the principle of equal pay for equal work requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It must be left to be evaluated and determined by an expert body. In *Harbans Lal and Ors. v. State of Himachal Pradesh* (supra), the Hon"ble Supreme Court held that daily rated workmen who were before the Court in that case were entitled to be paid

minimum wages admissible to such workmen as prescribed and not the minimum in the pay scale applicable to similar employees in regular service unless the employer had decided to make such minimum in the pay scale applicable to the daily rated workmen. Hon"ble Supreme Court refused to treat Jasmer Singh and others who were employed on daily wages at par with persons in regular service of the State of Haryana holding similar posts. Daily rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not rigorous. They are liable to be transferred subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes of their wages, nor they can claim the minimum, of the regular pay scale of the regularly employed. Appeals of the State of Haryana were allowed and judgments and orders of the High Court were set aside. Jasmer Singh and others were employed as Mali-cum-Chowkidars/ Pump Operators on daily wages by the State of Haryana from different dates. They claimed that on the basis of equal pay for equal work they should be paid the same salary as is being paid to regularly employed persons holding similar posts in the services of the State of Haryana. This prayer found favour with the High Court, but did not find favour with the Hon"ble Supreme Court.

12. In case The Dharwad District P.W.D. Literate Daily Wage Employees Association and Ors. v. State of Karnataka and Anr. 1990(2) S.L.R. 43, the Hon"ble Supreme Court formulated the following scheme for the daily rated and monthly rated employees who claimed directions to confirm the daily rated and monthly rated employees as regular Government servants and for payment of normal salaries at the rates prescribed for the appropriate categories of Government servants and other service benefits :-

1. The casual/daily rated employees appointed on or before 1.7.1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs. 780/- per month without any allowances with effect from 1.1.1990. They would be entitled to an annual increment of Rs. 15/- till their services are regularised. On regularisation they shall be put in the minimum of the time scale of pay applicable to the lowest Group D cadre under the Government but would be entitled to all other benefits available to regular government servants of the corresponding grade.

Those belonging to the B or C Groups upon regularisation shall similarly be placed at the minimum of the time scale of pay applicable to their respective grounds under government service, and shall be entitled to all other benefits available to regular government servants of these grades.

2. From amongst the casual and daily rated employees who have completed ten years of service by 31.12.1989, 18,600 shall immediately be regularised with effect from 1.1.1990 on the basis of seniority-cum-suitability.

There shall be no examination but physical infirmity shall mainly be the test of suitability.

3. The remaining monthly rated employees covered by the paragraph 1 who have completed ten years of service as on 31st December, 1989, shall be regularised before 31st December, 1990, in a phased manner on the basis of seniority-cum-suitability being understood in the same way as above.

4. The balance of casual or daily rated employees who become entitled to absorption on the basis of completing ten years of service shall be absorbed/regularised in a phased manner on the same principle as above on or before December 31, 1997.

5. At the point of regularisation, credit shall be given for every unit of five years of service in excess of ten years and one additional increment in the time scale of pay shall be allowed by way of weightage."

13. While formulating this scheme, the Hon''ble Supreme Court felt that unduly burdening the State for implementing the constitutional obligation forthwith would create problems which the State may not be able to stand, as fifty thousands such workers were concerned before the Hon''ble Supreme Court, who were employed in different Government establishments and many of them had put in 16 to 20 years of continuous service and they had not been regularised in their service and were not being paid equal pay for equal work, as is the dream of the framers of the Constitution of India while enshrining the Directive Principles of State Policy in the constitutional scheme.

14. Here the number of such employees may not be much. So, their writ petition is allowed. In consequence, the respondents are directed to regularise the services of the petitioners in terms of the judgment of the Hon''ble Supreme Court in State of Haryana v. Piara Singh 1992 SLJ 1 and the instructions issued by the Government from time to time in this behalf. The respondents are further directed to allow the minimum of the time scale of the post of Pump Operator which is paid to regular Pump Operator upto the date they were regularised. Until the date they remain daily wagers, they shall continue to be paid at the minimum of the time scale. They shall be paid arrears for a period of three years prior to the filing of this writ petition.

15. Petition allowed.