

PERSONAL ATTENTION

No. FIN(PR)-B(7)-51/2010
Government of Himachal Pradesh
Finance (Pay Revision) Department.

From

Principal Secretary (Finance) to the
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of the Departments In Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.

Dated: Shimla-171 002, the 30th March, 2015.

Subject:-

Regarding allowing pay scales on Punjab pattern- judgment of High Court of Himachal Pradesh in CWP No. 8425/2010- Balwinder Singh Mahal Vs. State of Himachal Pradesh.

Sir/Madam,

I am directed to invite a reference to the subject cited above and to send herewith a copy judgment dated: 16.10.2014 delivered by Hon'ble High Court, Himachal Pradesh, in CWP No. 8425/2010- Balwinder Singh Mahal Vs. State of Himachal Pradesh. It is requested that while defending the cases in the Hon'ble Courts or dealing with the representations/ requests of employees to grant pay scales on Punjab pattern, the law laid down by the Hon'ble Apex Court and Hon'ble High Court of Himachal Pradesh, in the following cases may strictly be kept in view:-

- (1) State of Himachal Pradesh Vrs. P.D. Attri and others (1999) 3 SCC 217.
- (2) State of Himachal Pradesh and another Vrs. Tilak Raj, Civil Appeal No. 9124 of 2014 arising out of SLP (C) No. 404 of 2011.

2. The broad conclusion which can be drawn from the aforesaid judgments is that the State Government is not bound to follow Punjab or any other government's pattern of pay scale in view of the fact that it is not based on any Constitutional or any other legal provisions when the parity is claimed with the posts similarly designated in Punjab or any other State Government and their pay-scales from the same date as there is no violation of any Constitutional provision or any other provision of law. Each State has its own way of governance under the Constitution. One State is not bound to follow the rules and regulations applicable to the employees of the other State

afbrary

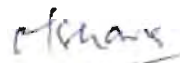
or if the State has adopted the same rules and regulations, It is not bound to follow every change brought in the rules and regulations in the other State. The parity of post is to be seen within State. Further without looking into nature of work done by the persons working in different States in departments belonging to different employers, one cannot jump to the conclusion that all the persons were doing similar type of work or shouldering the same kind of responsibility.

3. Thus the observations of the Hon'ble High Court, including the Apex Court cited in above judgments may be invariably considered while examining demand/ cases of allowing of pay scales etc. on Punjab pattern.

4. Apart from the above, the replies to the petitions filed by the employees for claiming the pay scales on Punjab pattern may also be prepared and defended in the light of law laid down in the above judgments before the appropriate fora. In the cases where replies have already been filed; supplementary reply/affidavits may be filed on the basis of the above.

5. These instructions may be brought to the notice of all concerned and are also available on <http://himachal.gov.in/finance/PayRevision.htm>.

Yours faithfully,

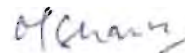


{Om Parkash Sharma}
Under Secretary (Finance) to the
Government of Himachal Pradesh.

Endst. No. As above. Dated: Shimla-171 002, the 30th March, 2015.

Copy forwarded to the following for information and necessary action:-

1. The Principal Resident Commissioner, Government of Himachal Pradesh, Himachal Bhawan, 27-Sikandra Road, New Delhi.
2. The Secretary, H.P. Vidhan Sabha, Shimla-171004.
3. The Secretary, H.P. Public Service Commission, Nigam Vihar, Shimla-2.
4. The Secretary, H.P. Electricity Regulatory Commission, Khalini, Shimla.
5. The Secretary, H.P. Subordinate Services Selection Board, Hamirpur.
6. The Resident Commissioner, Pangi, District Chamba, Himachal Pradesh.
7. All the Managing Directors, Boards/ Corporations/ Public Sector Undertakings in Himachal Pradesh.
8. The Registrars, HP University, Shimla/ Dr. YS Parmar UHF, Nauli (Solan)/ CSK HPKV, Palampur (Kangra)/ HP Technical University, Hamirpur.
9. The Section Officers of all the branches of Department of Finance, H.P. Secretariat, Shimla-171 002.



{Om Parkash Sharma}
Under Secretary (Finance) to the
Government of Himachal Pradesh.

Copy of Order/ Judgment/ Statement/ passed/ delivered/ recorded
on 16-10-2014 by the Single Bench consisting of
Hon'ble Mr. Justice TARLOK SINGH CHAUDHARY Judge.
In CWP No. Titled:-

84257/2010

FOR GENERAL USE
Section Officer (Judicial)
High Court of Himachal Pradesh
Dated 5/12/14

Balvinder Singh Mahal s/o late Shri Harnam Singh, aged 56
years, presently working as Station Fire Officer, Chamba,
Distt. Chamba, R/O Village Sarah, Tehsil, Dharamsala, Distt.
Kangra(HP).

.....Petitioner

VERSUS

1. State of H.P Through its principal Secretary (Home) to the,
Govt. of H.P Shimla.
2. The Additional Director General of Police-cum-
Commandant General Home Guards, Civil Defence and
Director of Fires Service, U.S. Club , Shimla-1.
3. The Principal Secretary (Finance) to the, Govt. of H .P
Shimla

..... Respondents

COPY OF ORDER/JUDGMENT STATEMENT/ RECORDED/ISSUES.
IN THE HIGH COURT OF HIMACHAL PRADESH

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High Court of Himachal Pradesh

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.8425 of 2010-J.

Judgment reserved on :09.10.2014.

Date of decision: 16th October, 2014.

Balvinder Singh MahalPetitioner.

Versus

State of H.P. and others Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes

For the Petitioner : Mr.Neel Kamal Sood, Advocate.

For the Respondents : Ms.Meenakshi Sharma, Additional
Advocate General with Ms.Parul
Negi, Deputy Advocate General.

Tarlok Singh Chauhan, Judge

The petitioner has approached this Court for grant of the following substantive reliefs:-

"1. To quash the order dated 27.11.2010 passed by Respondent No.1 rejecting the case of the petitioner regarding grant of revised pay scale on Punjab pattern and to direct the respondents, to grant the revised pay scale to the petitioner, on the Punjab pattern or in the alternative Delhi pattern (where certain categories of Fire Officers do not exist in Punjab) right from his initial date of appointment i.e. January, 1980 (as Sub Fire Officer) and subsequently higher pay scale after his promotion as Station Fire Officer, w.e.f. 25.5.2005, strictly in accordance with the policy of the State Government in the matter of grant of pay scales to its employees on Punjab pattern/Delhi pattern, which practice and pattern is being followed by the State of Himachal Pradesh as per the past practice.

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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Clerk (Judicial)
High Court of Himachal Pradesh

- II. *To direct the respondents to grant promotional avenues to the petitioner on the pattern of Home Guards Department as the respondents can not be allowed to discriminate between the two categories i.e. personnel working in the Fire Service Wing and those working in the Home Guards.*
- III. *In view of relief at (i) & (ii) above to grant all consequential benefits flowing therefrom including arrears accruing thereto alongwith interest @ 18% per annum, from the due date till the date of actual payment."*

2. The petitioner was appointed as Sub Fire Officer in the Directorate of Fire Services in January, 1980, and thereafter promoted as Station Fire Officer on 23.05.2005. The petitioner's case is that he is entitled to pay scale on the pattern of his counterparts in Punjab for which he has been repeatedly making representations from the year 1986. It is also claimed that his case along with similar situate persons was also recommended by the respondent No.2 to the respondent No.1 vide letter dated 01.07.2009, however, their cases were rejected without according any reasons vide letter dated 11.03.2010. This constrained the petitioner to file CWP No.4378/2010 wherein the petitioner sought relief of grant of revised pay scale. This petition was disposed of on 30.07.2010 with a direction to the respondent No.1 to consider the case of the petitioner on the basis of the averments made therein and also consider the representation submitted by the petitioner. The respondent No.1 after hearing the petitioner and also perusing all the documents annexed by him rejected his case vide order dated 27.11.2010.

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3. It is this order which has been challenged by the petitioner before this Court on the ground that the respondent No.1 failed to take into consideration that there is no government department of fire services in Punjab and, therefore, there are no pay scales notified as such by the Government of Punjab since the fire services are under the control of Municipal Committees and the administrative control of such Committees in turn is under the Local Self Government. The pay scales of pay pattern applicable in Punjab Municipalities ought to have been adopted by the respondents since it is following the Punjab pattern in matters of grant of pay scales. It is also claimed that State Government has made departure from Punjab in the matters of grant of pay scales to the certain categories which are non-existent in Punjab State and the State Government has taken magnanimous/broader view with regard to grant of pay scales so as to give its employees incentives. It is further claimed that the petitioner is entitled to the grant of the pay scale on the basis of equal pay for equal work.

4. The respondents have filed their reply wherein preliminary objection has been taken to the effect that the petitioner does not have any right to claim the pay scale on the basis of the Punjab pattern, because in Himachal Pradesh the Fire Services Organization is a Government department, whereas, in Punjab fire services officials are under the control of Municipal Committees and there is no Government department of fire services. Therefore, the petitioner has no legal right to file the petition.

5. On merits, it is submitted that the posts under the H.P. Fire Services Department have been equated with the posts either

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in H.P. Home Guards Department or in Punjab Police Department and have not been equated with the posts of fire services in Punjab as the fire services in Punjab are under the control of Municipalities. This position cannot be disturbed at this stage since it is liable to lead to new anomalies and inviting further demands from various sections of employees. It is also contended that the staffing structure of the Fire Services Department in H.P. is different from the staffing structure of the fire services personnel in Punjab Municipalities where there are no posts of Divisional Fire Officers and Chief Fire Officers. Similarly, a category of Assistant Divisional Fire Officers exists in Punjab, whereas, this is not existing in Himachal Pradesh. It is then claimed that there are more promotional avenues to the Fire Services Officers of H.P., who can go up to the level of Chief/Divisional Fire Officers which are not available to the counterparts in Punjab. The State of Himachal Pradesh has its own staffing structure, relevant to its requirements, for the employees and officers of the department of Fire Services.

6. I have heard the learned counsel for the parties and gone through the records of the case. At the outset, it may be observed that the State of Himachal Pradesh is not bound to follow the rules and regulations as are applicable to the employees of the State of Punjab or any other State and if it has adopted the same rules and regulations, it is not bound to follow every change brought in the rules and regulations in the other States. This was so held by the Hon'ble Supreme Court in **State of Himachal Pradesh versus P.D.Attri and others (1999) 3 SCC 217** in the following terms:-

"5. The case of the respondents is not based on any Constitutional or any other legal provisions when they

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claim parity with the posts similarly designated in the Punjab & Haryana High Court and their pay-scales from the same date. They do not allege any violation of any Constitutional provision or any other provision of law. They say it is so because of "accepted policy and common practice" which, according to them, are undisputed. We do not think we can import such vague principles while interpreting the provisions of law. India is a union of States. Each State has its own individualistic way of governance under the Constitution. One State is not bound to follow the rules and regulations applicable to the employees of the other State or if it had adopted the same rules and regulations, it is not bound to follow every change brought in the rules and regulations in the other State. The question then arises before us is whether the State of Himachal Pradesh has to follow every change brought in the States of Punjab & Haryana in regard to the rules and regulations applicable to the employees in the States of Punjab & Haryana. The answer has to be in negative. No argument is needed for that as anyone having basic knowledge of the Constitution would not argue otherwise. True, the State as per 'policy and practice' has been adopting the same pay-scales for the employees of the High court as sanctioned from time to time for the employees of the Punjab & Haryana High Court and it may even now follow to grant pay-scales but is certainly not bound to follow. No law commands it to do so.

6. The State of Punjab was reorganised into States of Punjab, Haryana and Himachal Pradesh. Himachal Pradesh, to begin with, was a Union Territory and was given the status of full statehood in 1970. Since employees of the composite States of Punjab were taken in various Departments of the State of Himachal Pradesh in order to safeguard the seniority, pay-scales etc., the State of Himachal Pradesh followed the Punjab pattern of pay-scales. After attaining the status of full statehood, High court of Himachal Pradesh formulated its own rules and regulations for its employees. It adopted the pattern of

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Punjab & Haryana High Court rules of their employees. When Punjab & Haryana High court gave effect to certain portion of its Rules from 25-9-1985 by notification dated 23-1-1986 as a result of which redesignation of the posts of Senior Translators and Junior Translators were equated to the posts in the Punjab Civil Secretariat, in the Himachal Pradesh High court similar effect was given to In its rules for its employees. When the Punjab & Haryana High court gave effect to those rules from 23-1-1975, the State Government did not agree to the recommendations of the chief justice of the Himachal Pradesh High Court to follow the same suit. It is true that till now, the Himachal Pradesh High Court has been following the rules applicable to the employees of the Punjab & Haryana High Court and it may go on following those rules as may be amended by the Punjab & Haryana High Court from time to time, but certainly it is not bound to so follow. No law commands the State government to follow the rules applicable to the employees of the Punjab & Haryana High Court to the employees of the Himachal Pradesh High Court. That being the position, it is not necessary for us to examine different qualifications for appointment to the posts of Senior Translators and Junior Translators that may exist between the Punjab & Haryana High Court and the Himachal Pradesh High Court and also as to the mode of their recruitment/placement in the service. Moreover, any change in the pay-scale following Punjab & Haryana High Court can set in motion chain reaction for other employees which may give rise to multiplicity of litigation among various categories of employees. Rules of each High court have to be examined independently. There cannot be any such law that Himachal Pradesh High Court has to suo motu follow the same rules as applicable to the employees working in the Punjab & Haryana High Court."

7. In view of the exposition of law in **P.D. Attri's case** (*supra*), it has to be seen as to whether the petitioner has been able to establish violation of any constitutional or any other legal provision

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when he has laid claim based upon parity with the posts with similarly situate persons in the State of Punjab and claiming pay scales granted in the said State.

8. The petitioner nowhere in the petition has made even a whisper regarding the nature of the work done by him so as to compare it with his counterparts in State of Punjab. Further, he has not even mentioned the educational qualifications, the working conditions and other relevant factors so as to make it possible for this Court to come to a conclusion with regard to similarity in the nature of work performed by the petitioner vis-a-vis his counterparts in the adjoining State of Punjab. The petitioner has simply relied upon the judgment of the Hon'ble Supreme Court in **Union of India versus Dineshan K.K. (2008) 1 SCC 586, State of Kerala versus B.Renjith Kumar and others (2008) 12 SCC 219 and Hukam Chand Gupta versus Director General, Indian Council of Agricultural Research and others (2012) 12 SCC 666.**

9. No doubt, the aforesaid cases deal with the doctrine of equal pay for equal work, but the same is not an abstract doctrine capable of being enforced in a Court of law. However, this principle has no mathematical application in every case and a number of factors have to be considered before applying this principle. This principle requires consideration of various dimensions of a given job and normally the applicability of this principle must be left to be evaluated and determined by an expert body and the Court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary

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proof and that there is equal work of equal quality and all other relevant factors are fulfilled.

10. Without looking into nature of work done by the persons working in different States in departments belonging to different employers, one cannot jump to a conclusion that all these persons were doing similar type of work or shouldering the same kind of responsibility. This has been so held in a recent judgment of the Hon'ble Supreme Court in **State of Himachal Pradesh and another versus Tilak Raj, Civil Appeal No.9124 of 2014 arising out of SLP (C) No.404 of 2011** wherein the Hon'ble Supreme Court held as under:-

"It is clear that the respondents had prayed for pay scale which was being given to persons holding a promotional post by contending that the nature of work was similar. It is pertinent to note that pay scale of Laboratory Attendants in different departments are different and the qualifications of the respondents are also different. As Laboratory Attendants, the respondents were in the pay scale of Rs.750-1350(revised) whereas upon getting promotion to the post of Laboratory Assistant, they would be getting pay scale of Rs.950-1800(revised). It is, thus, clear that the posts of Laboratory Attendant and Laboratory Assistant are different and therefore, the respondents could not have been paid pay scale which was being paid to the persons belonging to a higher cadre. It is also clear that disputed question of facts were involved in the petitions because according to the respondents, who were petitioners before the High Court, nature of work done by them was similar to that of the work of other Laboratory Attendants or Laboratory Assistants.

Without looking at the nature of work done by persons working in different cadres in different departments, one cannot jump to a conclusion that all these persons were doing similar type of work simply because in a civil suit one particular person had succeeded after adducing evidence.

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There is nothing on record to show that the High Court had examined the nature of work done by the respondents and other persons who were getting higher pay scale.

The High Court had also not considered the fact that qualifications required for appointment to both the posts were different. In our opinion, the High Court should not have entertained all these petitions where disputed questions of fact were required to be examined. Without examining relevant evidence regarding exact nature of work, working conditions and other relevant factors, it is not possible to come to a conclusion with regard to similarity in the nature of work done by persons belonging to different cadres and normally such exercise should not be carried out by the High Court under its writ jurisdiction.

It is settled law that the work of fixing pay scale is left to an expert body like Pay Commission or other similar body, as held by this Court in several cases, including the case of S.C.Chandra v. State of Jharkhand (2007) 8 SCC 279. Moreover, qualifications, experience, etc. are also required to be examined before fixing pay scales. Such an exercise was not carried out in this case by the High Court...."

11. The petitioner has **not** demonstrated on record any material on the basis of which the doctrine of equal pay for equal work can be applied to the case of the petitioner. As already observed earlier, the principle of equal pay for equal work would depend upon many factors like nature of work done, volume of work, quality of work, qualitative difference as regards reliability and responsibility of work even in cases where the functions may be the same but the responsibilities are different, this principle is not attracted.

12. Tested on the touchstone of the aforementioned broad guidelines and taking into account the exposition of law in *Titak Raj's case* (supra), it can conveniently be concluded that the

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petitioner has failed to establish on record his entitlement to the pay scale as being paid to his counterparts in Punjab and the petitioner is not otherwise entitled to claim the same merely on the basis of Punjab pattern in view of judgment in **P.D.Attri's case** (supra).

13. The net result of aforesaid discussion is that there is no merit in this petition and the same is dismissed along with pending application(s), if any, leaving the parties to bear their own costs.

(Signature)
(Tarlok Singh Chauhan),
Judge.

October 16, 2014.
(krt)

(Signature)
01/12/14

No of application 31153
 Name of applicant AD
 Date of presentation of application 22-10-14
 Probable date of delivery of copy 31-10-14
 Date of acquisition of record 22-10-14
 Date of receipt of receipt 29-11-14
 Name prepared by Sh. Kishan
 Name compared by Sh. Zaid
 Name of witnesses Yes
 Name of person 29-11-14
 Name of counterpart 1-12-14
 Date of alteration 1-12-14
 No. of words 3300
 Copying fee ---
 URGENT fee ---
 Agency ---
 Date of delivery 8/12/14

(Signature)
5/12/14

Section Officer
High Court of Jammu and Kashmir
Authorised under section 16 of
Indian Evidence Act, 1872