

cases.” Thus, if 1979 order is viewed in the light of judgment in *Chaman Lal's* case (supra) and also considering that the State had been accepting the principle of linking of pay to qualifications consistently from 1957 onwards and also in regard to giving of benefits to those teachers who joined on *ad hoc* basis before 19th February, 1979 but became members of the service after that date. I have no hesitation in holding that irrespective of 1979 order, the petitioners would be entitled to the pay scales according to their qualifications and placement in category ‘A’ or ‘B’, irrespective of the posts they are holding.

(10) For the reasons recorded above, these writ petitions are allowed with no order as to costs. The petitioners shall be entitled to pay scales according to qualifications possessed by them, irrespective of the fact that they joined service before 19th February, 1979 or acquired higher qualification after the said date or joined after 19th February, 1979, having higher qualification at the time of joining or having acquired subsequent thereto. Their pay scales shall be fixed from the date they acquired their qualifications, or from the date of joining, whichever is later, but shall be paid the arrears of pay in the higher grade for a period upto three years and two months, or less, as the case may be, prior to the filing of respective writ petitions, in accordance with their entitlement. They shall, of course be not entitled to any interest on the arrears of pay etc.

S.C.K.

Before : Hon'ble M. R. Agnihotri & R. S. Mongia, JJ.

S. K. SARDANA, ADDITIONAL DISTRICT & SESSIONS JUDGE
AND ANOTHER.—*Petitioners.*

versus

THE STATE OF HARYANA AND ANOTHER.—*Respondents.*

Civil Writ Petition No. 18277 of 1991.

October 14, 1993.

Constitution of India, 1950—Articles 226 and 227—Punjab Superior Judicial Service Rules, 1963—Rl. 13—Direct recruit—Promoted officer—Petitioners who are direct recruits in Superior Judicial Service claim parity of pay scale as given to promotee officers who are promoted from Subordinate Judicial service on basis of equal pay for equal work—In view of amendment of Rule 13 made effective from 1st January, 1986—Pay scale of promoted officers and

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that of direct recruits is same—Both categories placed in same identical scale of Rs. 3,200—5,600—Effect of notification is that pay scale of Rs. 4,100—5,300 for promotee officers from Subordinate Judicial service (selection grade) does not exist—Pay scale of Rs. 3,200—5,600 is higher than pay scale of Rs. 4,100—5,300 as maximum of pay scale has to seen—Which will determine the higher pay scale—No discrimination.

Held, that we are of the view that in view of the amendment of Rule 13 of the Punjab Superior Judicial Service Rules 1963—(as applicable to Haryana), made effective from 1st January, 1986, the petitioners cannot make any grievance that the pay scale of promoted officers to Superior Judicial Service and that of a direct recruit is any way more. Both categories have been placed in the identical pay scale of Rs. 3,200—5,600 with effect from 1st January, 1986. The effect of the notification is that with effect from 1st January, 1986, as if there was no pay scale of Rs. 4,100—5,300 in the Superior Judicial Service for the promotee officers from the Subordinate Judicial Service (Selection Grade). Hence there is no discrimination between the promotees and the direct recruits, so far as their pay scales are concerned. We are further of the view that the pay scale of Rs. 3,200—5,600 is higher than the pay scale of Rs. 4,100—5,300, as it is the maximum of the pay scale which should determine as to which scale is higher between the two. For the foregoing reasons, we find no merit in these petitions and the same are hereby dismissed. However, there will be no order as to costs.

(Para 9)

H. S. Gill, Senior Advocate with G. S. Gill, Advocate, for the
Petitioners.

Jagdev Sharma, Additional A.G. Haryana with Sanjeev Manrai,
A.A.G. Haryana, for the Respondents.

JUDGMENT

R. S. Mongia, J.

(1) This judgment of ours will dispose of C.W.P. No. 18277 of 1991, as also C.W.P. No. 13655 of 1991, as common questions of law and fact are involved in both these petitions. For facility of reference, facts of the former writ petition are being adverted to.

(2) Petitioners, Sarvshri S. K. Sardana and M. S. Sullar, were directly recruited to the Haryana Superior Judicial Service (hereinafter called the 'Service') and appointed as Additional District Judges on 23rd August, 1989 and 24th August, 1989 respectively, in the pay scale of Rs. 3,200—4,700. The petitioners claim the grant of pay

scale of Rs. 4,100—5,300, which according to them, was being given to the officers who were promoted to the Service from the Subordinate Judicial Service (Selection Grade), on the principle of 'equal pay for equal work'.

It may be noticed here that when the petitioners had joined the Service, all the members of the Service, whether appointed by direct recruitment or by promotion from the Subordinate Judicial Service, were given the same pay scale of Rs. 3,200—4,700. Prior to that the time scale of the members of the Service was Rs. 1,200—2,000, but on the basis of the recommendations in the Fourth Pay Commission's report, the same was revised to Rs. 3,200—4,700 with effect from 1st January, 1986. The pay scale of the members of the Haryana Subordinate Judicial Service was also revised on the basis of the Fourth Pay Commission's report and they were given the time scale of Rs. 2,200—4,000 and after completion of five years' service, the members of the Haryana Subordinate Judicial Service were entitled to be placed in the pay scale of Rs. 3,000—4,500. Further, a selection grade of Rs. 4,100—5,300 after completion of 12 years of service was provided for 20 per cent of the posts in the Subordinate Judicial Service.

(3) One Shri P. L. Goyal, a member of the Haryana Subordinate Judicial Service was in the Selection grade of Rs. 4,100—5,300. On 4th May, 1988, he became a member of the Haryana Superior Judicial Service, on being promoted as Additional District and Sessions Judge. A day prior to his date of promotion, i.e. 3rd May, 1988, said Shri Goyal, as a member of the Subordinate Judicial Service (Selection Grade), was drawing basic pay of Rs. 4,475 in the pay scale of Rs. 4,100—5,300, which, as observed above, was the Selection grade of the Subordinate Judicial Service. On promotion to the Superior Judicial Service on 4th May, 1988, he was placed in the then existing pay scale (time scale) of Rs. 3,200—4,700, and his pay was fixed at Rs. 3,825. However, the difference in the basic pay and the pay he was actually drawing was protected as his 'personal pay' to be adjusted against annual increments or till he was confirmed in the Superior Judicial Service whichever was earlier. The decrease in the pay scale and the loss of annual increments was made the subject-matter of challenge in this Court by said P. L. Goyal by filing C.W.P. No. 16385 of 1989. The said writ petition was allowed by a Division Bench of this Court on 30th May, 1990, and the judgment is now reported as *P. L. Goyal v. The State of Haryana and others* (1). It may be observed that the challenge was also made

(1) 1990(5) S.L.R. 108.

regarding the vires of Rule 13 (1) of the Punjab Superior Judicial Service Rules, 1963 (as applicable to the State of Haryana). While allowing the writ petition, the Divisional Bench observed as under :—

“For the reasons recorded above, we allow the writ petition and declare Rule 13(1) of the Rules to be *ultra vires* Articles 14 and 16 of the Constitution of India and direct that the petitioner and other similarly situated members of the Haryana Superior Judicial Service shall continue to get the pay scale of Rs. 4,100—5,300 which they were getting immediately before being promoted to the Superior Judicial Service. This Court can only remove the discrimination and this is the only way open to us to do so. Accordingly, we issue a writ of *mandamus* that the petitioner would continue to get the pay scale of Rs. 4,100—5,300 even on promotion made on 4th May, 1988 and his arrears in accordance with this judgment and order be paid within a reasonable time, not later than four months from the receipt of this order. Similarly situated other members of the Haryana Superior Judicial Service would also get the benefit of this judgment and similar order and directions are issued in their behalf as well. The petitioner will have his costs which are quantified at Rs. 1,000.”

(4) As regards providing proper pay scale and to frame the necessary rules in that behalf, we direct the State Government to do as early as possible and it will be reasonable for the State Government to create the grade of Rs. 4,500—5,700 for the members of the Haryana Superior Judicial Service as suggested by this Court on the administrative side and since a direction is now being issued on the judicial side, we have no doubt that this time the Government would consider the matter favourably without delay.

In pursuance of the above judgement of this Court, all officers who had been promoted to the superior judicial service from the subordinate Judicial Service (Selection Grade), were placed in the pay scale of Rs. 4,100—5,300 and their pay was fixed accordingly. As observed earlier, the petitioners who are direct recruits in the Superior Judicial Service, claim parity with the promotee Officers from the Subordinate Judicial Service (Selection Grade), so far as their pay scales are concerned.

The learned Single Judge, who heard the petition, by his order dated 4th May, 1993, referred the case for decision by a larger Bench,

as according to him the point involved in the case was an important point of law and not only Superior Judicial Service but other services also were likely to be affected by the decision of this Court. That is how the matter has been placed before us.

(5) Much of the sting in the arguments of the learned counsel for the petitioners has been taken away by the two notification issued during the pendency of the writ petition, to which reference at this stage would be necessary. First notification is dated 6th July, 1993, [published in the Haryana Government Gazette (Extra.), dated July 6, 1993], by which Rule 13 of the Punjab Superior Judicial Service Rules, 1963 (as applicable to the State of Haryana), was amended. The same is reproduced below :—

- “1. These rules may be called the Punjab Superior Judicial Service (Haryana Second Amendment) Rules, 1993.
2. In the Punjab Superior Judicial Service Rules, 1963, in rule 13,—
 - (a) for sub-rule (1) the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 1st day of January, 1986, namely :—
 - (1) The scale of pay of the members of the Service, other than those placed in the selection grade, shall be Rs. 3,200—100—3,700—1,25—4,700—150—5,600 or as revised from time to time by the Haryana Government. The pay in the aforesaid a scale shall be fixed in accordance with the Punjab Civil Services Rules, Volume I, Part I, as applicable to the State of Haryana and instructions that have been issued or may hereinafter be issued by the Government with regard to fixation of pay.”
 - (b) for sub-rule (2), the following sub-rule shall be substituted, namely :—
 - (2) Notwithstanding anything contained in sub-rule (1), the initial pay of a direct recruit, shall be fixed in the permissible time scale after allowing one increment for every two completed years of practice at the Bar beyond the practice of ten years provided in clause (ii) of sub-rule (1) of rule 9, subject to a maximum of five increments :

Provided that while making calculation of length of practice at the Bar, the fraction of 0.5 or above shall be taken as a whole number.”

After reconsidering the matter, a uniform pay scale of Rs. 3,200—5,600 created by the above notification for the promoted Officers as well as for the direct recruits of the Haryana Superior Judicial Service was made effective retrospectively, with effect from 1st January, 1986, by a subsequent notification.

(6) The learned counsel for the petitioners submitted that according to the judgment of this Court in *P. L. Goyal's case* (supra), the time scale of the Superior Judicial Service has to be higher than the Selection grade of the Subordinate Judicial Service. According to the learned counsel, the time scale of Rs. 3,200—5,600 of the Superior Judicial Service is lower than the Selection grade of Rs. 4,100—5,300 available to the members of the Subordinate Judicial Service. It was argued that the vice and the discrimination pointed out in Rule 13 of the Superior Judicial Service Rules, in *P. L. Goyal's case* still subsisted. There was still discrimination between a promotee Officer from the Subordinate Judicial Service (Selection Grade) and a direct recruit to the Superior Judicial Service in spite of the notification dated 6th July, 1993, by which the pay scale of Rs. 3,200—5,600 was granted both to the promotees as well as direct recruit Officers to the Superior Judicial Service. It was also argued by the learned counsel for the petitioners that for seeing as to which pay scale is higher between the two scales, the initial pay in the particular scale i.e. the minimum of the pay scale has to be seen and not the maximum.

(7) The learned counsel on behalf of the respondents, on the other hand submitted, that,—vide notification dated 6th July, 1993, the pay scale of both promotee Officers from the Selection Grade as well as direct recruits to the Superior Judicial Service, had been made equal with effect from 1st January, 1986 and both had been placed in the pay scale of Rs. 3,200—5,600. In other words, there was no pay scale of Rs. 4,100—5,300 in existence for the promoted Selection Grade Officers to the Superior Judicial Service with effect from 1st January, 1986. All officers who were in the Selection grade of Rs. 4,100—5,300 in the Subordinate Judicial Service and were promoted to the Superior Judicial Service, have been placed in the pay scale of Rs. 3,200—5,600 and their pay has been accordingly fixed depending on the basic pay they were drawing in the Selection grade of Rs. 4,100—5,300 in the Subordinate Judicial Service. The learned counsel for the respondents further argued that for seeing as to which pay scale is higher out of the two pay scales, the maximum of the pay scale is to be taken into consideration and not the minimum of

the pay scale, and, accordingly, the pay scale of Rs. 3,200—5,600 was higher than the pay scale of Rs. 4,100—5,500. In support of his submissions, the learned counsel referred to the criteria laid down by Government of India, Ministry of Finance, which is to the following effect :—

“Determination of higher posts for pay fixation. The criteria for determination of relative degree of duties and responsibilities of two posts for the purpose of fixation of pay, was laid down by Government of India, Ministry of Finance (Department of Expenditure) in their letter No. 434. E.II(A)/64, dated 4th April, 1964.

- (a) — — — — —
- (b) — — — — —
- (c) As between two posts, say A and B, post B shall be deemed to carry higher duties and responsibilities than those attached to post A—(i) If the maximum of the time-scale of pay of post B is higher than the maximum of the time scale of pay of post A and the rate of increment in the time-scale of pay of post B is also higher/equal to the rate of increment in the time-scale of post A, and (ii) if the maximum of the time-scale of pay of post B is the same as that of post A, provided that the rate of increment in the time-scale of pay of post B is higher than the rate of increment in the scale of pay of post A.”

(8) The learned counsel also pointed out that in various Services, the Selection grade of the feeder post is higher than the time of the promoted post. He referred to pay scales of the members of the Punjab Civil Service (Judicial Branch) (Selection Grade) and the Selection grade of the feeder post is higher than the time-scale of Punjab.

Pay Scales of members of the P.C.S. (Judicial Branch) with effect from 1st January, 1986:—(Feeder Post for Superior Judicial Service)

Time scale	Rs. 2,200—4,000.
Senior Scale (After completion of 8 years' service).	Rs. 3,000—4,500.
Selection Grade (After completion of 18 years' service).	Rs. 4,125—5,600.

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Pay Scale of Punjab Superior Judicial Service :

Time Scale —	Rs. 3,000—5,600.
Selection Grade (After completion of 8 years' service).	Rs. 5,000—6,700.

*Pay Scale of H.C.S. Executive Branch
(Feeder Post for I.A.S.)*

Selection Grade —	Rs. 4,100—5,300.
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Pay Scale of I.A.S. Officers

Time Scale —	Rs. 3,200—4,700.
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*Pay Scale of D.S.P. in Haryana
(Feeder Post for I.P.S.)*

Selection Grade of D.S.P.	Rs. 4,100—5,300.
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Pay Scale of I.P.S.

Time Scale —	Rs. 3,000—4,500.
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From the above illustrations, the learned counsel for the respondents wanted to emphasise that it is not necessary that the time-scale of the promoted post must be higher than the selection grade of the feeder post.

(9) After hearing the learned counsel for the parties, we are of the view that in view of the amendment of Rule 13 of the Punjab Superior Judicial Service Rules, 1963 (as applicable to Haryana), made effective from 1st January, 1986, the petitioners cannot make any grievance that the pay scale of promoted Officers to Superior Judicial Service and that of a direct recruit is in any way more. Both categories have been placed in the identical pay scale of Rs. 3,200—5,600 with effect from 1st January, 1986. The effect of the notification is that with effect from 1st January, 1986, as if there was no pay scale of Rs. 4,100—5,300 in the Superior Judicial Service for the promotee officers from the Subordinate Judicial Service (Selection Grade). Hence there is no discrimination between the promotees and the direct recruits, so far as their pay scales are concerned. We are further of the view that the pay scale of Rs. 3,200—5,600 is higher than the pay scale of Rs. 4,100—5,300, as it is the maximum of the

pay scale which should determine as to which scale is higher between the two. Even according to the criteria laid down by the Central Government, it is the maximum of the pay scale which determines as to which post is higher and carries higher duties and responsibilities. A person who is promoted from the Selection grade of the Subordinate Judicial Service to Superior Judicial Service, who may be getting even the maximum of Rs. 5,300 would get further annual increments up to Rs. 5,600 in the time scale of Rs. 3,200—5,600.

(10) From the illustrations of the pay scales of various Services, including the Judicial service in the State of Punjab, it would be seen that the time scale in the higher post is sometimes less than the Selection grade of the lower post. We are not opining as to whether the same is justifiable in law or not, but the fact remains that there are certain posts whose time scale is less than the Selection grade of the lower post.

(11) For the foregoing reasons, we find no merit in these petitions and the same are hereby dismissed. However, there will be no order as to costs.

J.S.T.

Before Hon'ble V. K. Bali, J.

THE LUDHIANA GURU NANAK CO-OPERATIVE HOUSE BUILDING SOCIETY, LUDHIANA,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 14284 of 1991.

November 5, 1993.

Constitution of India, 1950—Arts. 226, 227 and 14—Petitioner purchased land measuring 48308 Sq. yds. for developing residential colony—Ludhiana Improvement Trust framed housing scheme—Petitioner represented to Trust for exemption of its land from acquisition for execution of scheme—Exemption charges paid—Exemption granted regarding only 36089 Sq. yds. as Land Acquisition Collector had paid compensation with regard to the remaining area to those who had sold their land to petitioner as far back as 1968—Exemption later on granted for remaining land on payment of development charges etc which are highly excessive—Such action challenged—Held that delay in exempting remaining land is wholly