

Before M. M. Kumar & T.P.S. Mann, JJ.

STATE OF PUNJAB,—Appellant

versus

SARABJIT SINGH AND OTHERS,—Respondents

L.P.A. No.287 of 2011

25th April, 2011

Constitution of India - Art. 14, 16 & 226/227 - Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 - Pay revision Rl. 7(vii), Schedule I - Entry No. 8 - Classification made between the graduate Clerks and non-graduate Clerks does not violate Articles 14 and 16 of the Constitution of India - Education qualification constitutes a valid and rational basis for different pay scale to employees working in the same cadre - First National Judicial Pay Commission (Shetty Commission) - State appeal allowed.

Held, that when the principles laid down in the aforesaid judgments are applied to the facts of the present appeals, no manner of doubt is left that the classification made between the graduate Clerks and non-graduate Clerks does not violate Articles 14 and 16 of the Constitution. In Gopi Kishan Sen's case (supra) it has been held by Hon'ble the Supreme Court that a person who has higher qualification is likely to discharge his duties better than a less qualified person. A graduate Clerk would be more efficient than a non-graduate and matriculate Clerk. Moreover, there was no limitation on Shetty Commission to make recommendations of identical pay scale for both graduate and non-graduate Clerks. However, the Shetty Commission preferred to recommend the pay scale of `5000-8100 for graduate Clerks leaving the non-graduate Clerks to keep working in the pay scale of `3120-5160. The view of the learned Single Judge is primarily based on the judgment of Hon'ble the Supreme Court rendered in the case of Roshan Lal Tandon (supra). The judgment in Roshan Lal Tandon's case (supra) has been distinguished by a 5-Judges Bench of Hon'ble the Supreme Court in the case of State of Jammu and Kashmir v. Triloki Nath Khosa, (1974) 1 SCC 19. In para 35 of the judgment it has been pointed out that

educational qualifications have been recognised by the Supreme Court as a safe criterion for determining the validity of classification. The judgment in *P. Narasing Rao* (supra) has been relied upon in support of the aforesaid view. In para 46 of the judgment in *Triloki Nath Khosa's case* (supra), their Lordships' have held that the judgment in *Roshan Lal Tandon's case* (supra) is no authority for the proposition that if direct recruits and promotees were integrated into one class they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. Upholding the classification, 5-Judges Bench held that it rests fairly and squarely on the consideration of educational qualifications and Graduates alone were to be considered for promotion to the higher post irrespective of the fact that they were appointed as Assistant Engineers by way of direct recruitment or by way of promotion. The position has further been clarified in the case of *Kuldeep Kumar Gupta v. H.P. State Electricity Board*, (2001) 1 SCC 475. Therefore, no reliance could have been placed on the judgment of Hon'ble the Supreme Court rendered in *Roshan Lal Tandon's case* (supra). Accordingly, the view taken by the learned Single Judge would not be sustainable in the eyes of law.

(Paras 19 and 20)

Piyush Kant Jain, Addl. AG, Punjab, *for the Appellant*.

Girish Agnihotri, Senior Advocate, with Vijay Pal, Advocate, *for the respondents*. (in LPA No. 288 of 2011)

Amit Jhanji, Advocate (in LPA No. 287 of 2011)

M.M. KUMAR, J.

(1) This judgment shall dispose of LPA Nos. 287 and 288 of 2011 filed by the State of Punjab under Clause X of the Letters Patent challenging the common order dated 13.8.2010 rendered by the learned Single Judge allowing CWP Nos. 12750 and 15623 of 2009, which were filed by the petitioner-respondents. The learned Single Judge has directed the appellant State of Punjab and the High Court of Punjab and Haryana at Chandigarh through its Registrar to place the petitioner-respondents in the pay scale of '5000-8100 with effect from the date, the said pay scale was allowed to the Graduate Clerks. They have been further directed to calculate and

pay the differential amount of the pay scale to the petitioner-respondents within a period of four months, failing which they would be entitled to interest @ 6% from the due date till realisation.

(2) Facts of the case may first be noticed. The petitioner respondents are all non-graduate Clerks working in various District and Sessions Divisions in the State of Punjab. They were recruited/promoted to the post of Clerk at the time when the qualification prescribed for the post of Clerk was Matriculation. In the year 1989 a Writ Petition under Article 32 of the Constitution, namely, All India Judges' Association v. Union of India [WP(C) No. 1022 of 1989] was filed before Hon'ble the Supreme Court praying for setting up an All India Judicial Service and for bringing about uniform conditions of service for members of Subordinate Judiciary throughout the country. On the basis of directions issued by Hon'ble the Supreme Court vide orders dated 13.11.1991 and 24.8.1993, the Ministry of Law, Justice and Company Affairs, Department of Justice, Government of India, constituted the First National Judicial Pay Commission, vide resolution dated 21.3.1996, which is commonly known as the 'Shetty Commission', to evolve the pay structures and emoluments of the Judicial Officers all over the country.

(3) In the All India Judges' Association case (supra), the employees working in the lower judiciary of various States moved an application for being impleaded as party for raising their grievances with regard to their service conditions and pay scales etc. Hon'ble the Supreme Court allowed the application primarily taking a view that 'Shetty Commission' has been set up to look into the service conditions and grant of pay scales to the Subordinate Judicial Officers through out the country. Pursuant to the reference made by Hon'ble the Supreme Court to the 'Shetty Commission, the grievances of the employees of the Subordinate Judiciary were taken up separately by the 'Shetty Commission'. The Shetty Commission in its report opined in the preface to the report as under:-

“We are concerned in this Report with the service conditions of the unsung heroes who work overtime but remain unnoticed and unrecognized. They are the staff who form a critical and important mass of our administration of justice in district courts and courts subordinate thereto.

When we refer to administration of justice, we think only of the judges of the courts. The judge of a court, no doubt, is indispensable to our notion of a court. But, the judge alone cannot administer justice. The working of a Court does not depend only on the work of the Judicial Officer for taking evidence, hearing arguments and rendering judgments. These functions are necessarily to be supplemented by the staff of the Court. Their work extends to pre-trial, during trial and post-trial stages of a case. Without their contribution at all these stages, there cannot be prompt and satisfactory termination of any case.

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Over the last several years, the pendency of cases in all court is on the rise. But the staff strength in every Court is generally static. During this period, almost all the government departments have swelled to the brim with additional staff and multiple of top brass, but the subordinate judiciary languish with inadequate number of courts and insufficient staff.”

(4) In the backdrop of above preface the Shetty Commission proceeded to make its recommendations. In this process before making its recommendations, in Chapter-VII of the report, the Shetty Commission made the following pertinent observations in respect of the ‘common category posts’:

“The duties and responsibilities of the common category posts in the Subordinate Courts are not comparable with those of their counterparts in the Government. The judicial employees have enormous and quite different nature of work. They are compelled to work beyond the working hours to complete the day’s work. There is no question of postponement to next day. They hardly get sufficient break during lunchtime. Their work is specialized and time bound. They are required to familiarise themselves with all the Acts, Rules and Regulations of the Central and State Governments. They have backbreaking workload in view of the everincreasing pendency in Courts. They have a higher responsibility to implement faithfully the judicial orders of Courts.

They have to keep the Courts functioning on time bound basis for which they are often forced to work beyond office hours and sometimes even on holidays. Almost all High Courts are in favour of providing adequate compensation for the arduous work done by the Court Staff. Even certain State Governments and Union Territories have come to the rescue of the Court Staff by suggesting higher pay scales to the common category posts.

Almost all District Judges of States/Union Territories agree that the Court Staff, even of common category, deserve higher emoluments. In fact, the District Judges are the best eye-witness to certify the work-load of their staff, since the staff work under their watchful eyes. It is also their version that the staff shoulder higher responsibility and work beyond office hours almost every day with an added duty to maintain Muddemal properties and original documents.”

(5) In the year 2003, the Shetty Commission made recommendations not only for the Judicial Officers but also for the Judicial Staff. After noticing the existing position, views of High Court, State Government and Staff Associations, the Shetty Commission recommended the pay scale of ‘5000-8100 to Graduate Clerks in the Courts. The relevant extract from the report of the Commission is as under:-

“A. EXISTING POSITION:

Most of the Common Category posts in the Subordinate Judiciary carry the pay scale of their counterparts in the departments of the State Government. There is, however, one exception. It is stated during the hearing that the entry level Clerical post which is styled as “Clerk” originally carried the pay scale of Rs.3120-5160 when the prescribed qualification was Matriculation. In 1999, the qualification has been raised to Graduation. But, the pay scale remains the same. It is, however, complained that similar posts in the Field Departments with the qualification of graduation have been given the pay scale of Rs.5000-8100. It is requested that similar pay scale be given to Court Clerks.

B. VIEWS OF HIGH COURT, STATE GOVERNMENT AND STAFF ASSOCIATIONS:

The High Court has given the following reasons in support of grant of higher pay scales:

- (a) Duties and responsibilities are extremely arduous and time bound; and
- (b) The Court staff have to work more number of hours compared to their counterparts in Government Departments.

The State Government has stated that the pay scales of the employees have been revised w.e.f. 1.1.1996 as per the recommendations of the Vth Central Pay Commission. If these categories of staff are given higher pay scales, then the other identical staff of the State Government will also demand the same pay scales on the ground of equal pay for equal work, as the duties performed by the staff are similar.

The Staff Associations have given the following reasons in support of their demand for higher pay scales:

- (a) duties and responsibilities are arduous;
- (b) Court work is time bound;
- (c) Responsibility of Court staff is higher than that of their counterparts; and
- (d) Higher qualification has been prescribed to the posts.

C. OUR RECOMMENDATIONS:

I. Clerks:

We consider that the request of the Court Clerks is reasonable. We see no justification for discrimination. We, therefore, recommend the pay scale of Rs. 5000- 8100 to Graduate Clerks in the Courts.” (Italics by us)

(6) However, the recommendations made by the Shetty Commission were kept pending for almost two years. Eventually, after passing of an order dated 17.1.2005 by Hon’ble the Supreme Court in the case of All

India Judges' Association (supra), the State of Punjab implemented the recommendations of the Shetty Commission, vide order dated 22.7.2005 (P-2). In the said order only the 'Graduate Clerks' were placed in the recommended pay scale of ' 5000-8100/-, whereas there is no mention what benefit has been granted to the non-graduate Clerks. Meaning thereby they were kept in the existing scale of ' 3120-5160/-. A perusal of the order dated 22.7.2005 shows that except for the non-graduate Clerks, the pay of employees of different categories have either been upgraded or they were granted the benefit of one increment at the initial rate of the pay scale. Even the allowances of some of the categories were also enhanced.

(7) Feeling aggrieved, some of the non-graduate petitioner respondents filed CWP No. 20433 of 2008 (Sarabjit Singh and others v. State of Punjab and others) in this Court for issuance of a mandamus to the appellant State of Punjab for grant of the same pay scale of '5000-8100 with all consequential benefits to them, which has been granted to the Graduate Clerks, by applying the principle of 'equal pay for equal work'. On 4.12.2008, the Division Bench disposed of the said writ petition with the direction to the respondents therein to take a final decision on the representation to be filed by the petitioner-respondents within a period of six months (P-3). On 22.1.2009 (P-4), they filed a representation for consideration, which was forwarded by the Punjab and Haryana High Court to the Secretary to Government of Punjab, Department of Home Affairs and Justice, vide letter dated 25.4.2009 (P-5). On 3.6.2009, the State of Punjab rejected the representation on the ground that the State Government had granted the pay scale of '5000-8100 to Graduate Clerks as per the recommendations of the Shetty Commission and had the Shetty Commission recommended the grant of said scale to under-graduate/Matric Level Clerks, the same could have been considered (P-6).

(8) The petitioner-respondents challenged the order dated 3.6.2009 (P-6) by filing CWP Nos. 12750 and 15623 of 2009. The learned Single Judge allowed the petitions vide impugned order dated 13.8.2010, by observing as under:-

“I have considered the recommendations of the Shetty Commission. There is nothing in the report/recommendations of the Shetty Commission, which may justify the different pay scales for

Graduate and under-Graduate Clerks. Shetty Commission has only taken into consideration the enhancement of the qualification for Clerks after 1999 whereas their nature of job, duties and the fact that they constitute a common cadre, has not been discussed at all. The recommendations also do not contain any condition or suggestion for different pay scales in the same cadre. It appears that the State Government has totally misunderstood the recommendations of the Shetty Commission and consequential mis-applied the same to create discrimination between the employees, constituted in the same cadre. Admittedly, there is a discrimination between the Graduate and under- Graduate Clerks even though they constitute the same cadre and both categories were fully qualified and eligible at the time of their recruitment to the service. Such discrimination is impermissible in law. Hon'ble Supreme Court in case of ***Roshan Lal Tandon Vs. Union of India AIR 1967, Supreme Court, 1889***, held as under:-

“The recruits from both the sources to Grade ‘D’ were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade ‘C’. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade ‘C’.”

Apart from the question of discrimination, the petitioners are also entitled to equal pay and wages as they are performing the duties of same nature being members of the same cadre. There is absolutely no distinction in the performance of their duties and the nature of job irrespective of their qualification. Doctrine of equal pay for equal work fully applicable in such situation.”

(9) It is against the aforesaid order dated 13.8.2010 that the State of Punjab has preferred these appeals.

(10) Having heard learned counsel for the parties and perusing the paper books with their able assistance, we find that the only substantial questions of law involved in these appeals for determination of this Court would be:

Whether education qualification could constitute a valid and a rationale basis for different pay scale to employees working in one cadre?

(11) At the outset we deem it appropriate to deal with the rules governing the service of the petitioner-respondents. Prior to 1999, the service of the Clerical Ministerial Staff working in the Civil Courts other than the High Court in the States of Punjab, Haryana and U.T. Chandigarh were governed by the rules framed by the High Court of Punjab and Haryana under Section 35(3) of the Punjab Courts Act, which were contained in Chapter-18, Part-A, Volume-1, Part-1 of the Rules and Orders of Punjab and Haryana High Court (Practice and Procedure). As per Rule III(2) of the said Rules no person could be appointed to or accepted as a candidate for any clerical ministerial post unless he has passed the Matriculation Examination in IInd Division or 10+2 of the Panjab University or an equivalent examination. In other words, the minimum educational qualification prescribed for appointment to the post of Clerical Ministerial Staff was Matriculation in IInd Division.

(12) On 5.2.1999, in respect of the State of Punjab the aforesaid Rules contained in Chapter 18, Part A, were substituted by the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (for brevity, 'the 1997 Rules'). Rule 7 of the 1997 Rules prescribes the mode of appointment and qualifications to various posts mentioned therein. The post of Clerk, which is a Class-III post, has been mentioned at clause (vii) of Rule 7 of the 1997 Rules. Rule 7(vii) of the 1997 Rules reads thus:

“(vii) Clerks: Appointment to the post of clerk shall be made in the ratio of 90% in case of direct recruitment and 10% by way of promotion.

Appointment to the post of clerk shall be regulated as under-

- (a) No candidate for direct recruitment shall be eligible to apply for the post of clerk unless he holds a degree of Bachelor of Arts or Bachelor of Science or equivalent

thereto from a recognised University and has passed matriculation examination with Punjabi as one of the subject.

- (b) Candidates shall have to take a written examination in the following subjects:-

Sr. No.	Subject	Max. Marks	Qualifying Marks
1.	English Composition	50	33%
2.	General Knowledge	50	33%

- (c) No candidate shall be considered for appointment unless he obtains 40% marks in aggregate in the written examination and having proficiency in operation of computers.
- (d) Select list of successful candidates in order of merit shall be prepared as a result of competitive examination which shall remain in force for one year from the date of declaration of the result.
- (e) 10% vacancies in the cadre of clerks shall be filled up by promotion from amongst the Bailiffs, Process Servers, Daftri and Record Lifter possessing minimum Matric qualification or equivalent thereto having 5 years service as such subject to his having proficiency in operation of computers.”

(13) From a bare perusal of Rule 7(vii) of the 1997 Rules it is clear that now 90% of the posts of Clerk could be filled in by direct recruitment out of such a candidate who holds a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognised University and has passed matriculation examination with Punjabi as one of the subject. Such a candidate is also required to pass the written examination, obtain minimum 40% aggregate marks in the written examination and having proficiency in operation of computers. The remaining 10% posts are to be filled by way

of promotion from amongst the Bailiffs, Process Servers, Daftri and Record Lifter possessing minimum Matric qualification or equivalent thereto having 5 years service as such subject to his having proficiency in operation of computers. Meaning thereby, for a Clerk to be directly recruited, the minimum qualification has been enhanced from Matriculation to a Bachelor Degree plus passing of matriculation examination with Punjabi as one of the subject as also passing of written examination with 40% minimum aggregate marks and proficiency in operation of computers. On the other hand in the case of promotion, a person who has worked for 5 years on either of the posts of Bailiff, Process Server, Daftri and Record Lifter and possess minimum Matric qualification or equivalent thereof, is eligible to be promoted as Clerk, subject to the further rider that he is having proficiency in operation of computers. Schedule-I of the 1997 Rules further contains a statement showing the posts and their old and revised pay scales. At Entry No. 8, the post of Clerk with different nomenclatures has been shown with the un-revised scale of ' 950-1800 and revised scale of '3120-5160.

(14) The substantive question of law proposed in para 10 of this judgment is no longer *res integra* and has been answered by Hon'ble the Supreme Court in a plethora of judgments. It is well settled that Article 14 of the Constitution forbids class legislation but it does not prohibit reasonable classification. A 7-Judges Constitution Bench of Hon'ble the Supreme Court in the case of **State of W.B. versus Anwar Ali Sarkar (1)**, formulated the principles to test the statutory provision on the touchstone of Article 14. It was held that to pass the test of Article 14, two conditions must be fulfilled, namely, - (a) the classification must be founded on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and (b) the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. The aforesaid tests were applied by a 5-Judges Constitution Bench in the case of State of **Mysore versus P. Narasinga Rao (2)**. Their Lordships' were answering the question whether creation of two scales for Tracers on the basis of educational qualification in the Mysore State, who

(1) AIR 1952 SC 75

(2) AIR 1968 SC 349

were doing the same kind of work amounted to a discrimination which violate the provisions of Articles 14 and 16(1) of the Constitution. Placing reliance on the observations made in the case of **General Manager, Southern Railway versus Rangachari (3)**, it was held that there could be no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. The formulations made in Anwar Ali Sarkar's case (supra) were again echoed in the concluding part of para 4 and different pay scales granted to Tracers on the basis of educational qualifications were upheld. These principles were again applied in the case of **V. Markendeya versus State of Andhra Pradesh (4)**, where the engineer graduate Supervisors and non-graduate Supervisors were treated differently on the basis of educational qualifications.

(15) In the case of **State of Rajasthan versus Gopi Kishan Sen (5)**, the grant of different scales to the trained and un-trained teachers was upheld. The dispute in this case before Hon'ble the Supreme Court was with regard to grant of different pay scales to the trained and un-trained teachers. It was contended that the trained and untrained teachers have been performing identical duties and there should, therefore, be parity in their salary in accordance with the doctrine of 'equal pay for equal work'. Rejecting the said contention, in para 5 of the judgment Hon'ble the Supreme Court has held as under:-

"5.The efficiency of a person having a higher qualification is likely to be better than a less qualified person, provided of course, the qualification is of a nature likely to enable him to perform his duty better, and for this reason, there cannot be any legitimate objection to the grant of a better scale of pay. In the present case, the additional qualification of being trained is of such a nature as to enable the teacher to do his duty better and for that reason the distinction made in the Rules must be upheld as valid." (emphasis added)

(3) AIR 1962 SC

(4) 1989 (3) SCC 191

(5) 1993 Suppl. (1) SCC 522

(16) The same principles were followed in the case of **Shyam Babu Verma versus Union of India (6)**, wherein it has been held that it is always open to the State Government to put its employees in the same service in different categories for the purpose of the scale of pay according to the qualifications possessed by them. Hon'ble the Supreme Court after interpreting Section 31 of the Pharmacy Act, 1948, came to the conclusion that when the said Section itself conceives of different types of Pharmacists with reference to their academic qualifications and experience, then no fault can be found either with the Pay Commission or the respondents in putting the Pharmacists Grade-B in two categories with reference to their qualifications and experience and prescribing two scales of pay. It has further been observed that in most of the services the scale of pay is linked with the academic performance and experience. Therefore, it cannot be held that for one service there should be only one scale of pay ignoring the persons who possess the higher qualifications. The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies the classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14. The observations made in paras 8 and 9 reads thus:

“8. The basis of the claim of the petitioners, is that prior to January 1, 1973 there was only one scale of Rs. 130-240 for Pharmacists who possessed the qualifications mentioned in Clauses (a) to (c) of Section 31 as well as those who were covered by Clause (d) of Section 31 i.e. who did not possess the qualifications mentioned in Clauses (a) to (c). It is always open to the State Government to put its employees in the same

service in different categories for the purpose of the scale of pay according to the qualifications possessed by them. When Section 31 itself conceives of different types of Pharmacists with reference to their academic qualifications and experience then no fault can be found either with the Third Pay Commission or the respondents in putting the Pharmacists grade-B in two categories with reference to their qualifications and experience and prescribing two scales of pay. In most of the services the scale of pay is linked with the academic performance, experience and it cannot be held that for one service, there should be only one scale of pay ignoring the persons who possess the higher qualifications.

9. It was then urged on behalf of the petitioners that on principle of 'equal pay for equal work', they were entitled to pay scale of Rs. 330-560. It was pointed out that they have been performing the same nature of work, which was being performed by other Pharmacists Grade-B, who have been given the scale of Rs. 330-560. The nature of work may be more or less same, but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. The principle of 'equal pay for equal work' has been examined in *State of Madhya Pradesh v. Pramod Bhartiya*, (1993) 1 SCC 539, by this Court. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination within the meaning of Article 14 of the Constitution."

(17) The essence of the aforesaid judgments has been repeatedly followed in the cases of **Rajasthan State Electricity Board Accountants Association, Jaipur versus Rajasthan State Electricity Board (7)**; **Government of West Bengal versus Tarun K. Roy (8)**; **M.P. Rural Agriculture Extension Officers Association versus State of M.P. (9)**. Some pertinent observations were made in para 20 of the judgment in the case of M.P. Rural Agriculture Extension Officers Association (supra), which reads thus:-

“20.despite the fact that the employees have been performing similar duties, and functions and their posts are interchangeable, a valid classification can be made on the basis of their educational qualification.”

(18) Similarly in **U.P. State Sugar Corporation Ltd. versus Sant Raj Singh (10)**, the observations which are relevant for decision of these appeals have been made in paras 16 and 22, which reads as under:-

“16. The doctrine of equal pay for equal work, as adumbrated under Article 39(d) of the Constitution of India read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher qualification has all along been treated by this Court to be a valid basis for classification of two categories of employees.”

22.We, therefore, cannot accept the contention of Shri Dwivedi that only because no such qualification was prescribed at the time of recruitment, the classification made on that basis would be bad in law. Even otherwise the said contention is not correct as scale of pay was determined by the award of the Wage Board.”

(19) When the principles laid down in the aforesaid judgments are applied to the facts of the present appeals, no manner of doubt is left that the classification made between the graduate Clerks and non-graduate

(7) 1997 (3) SCC 103

(8) 2004 (1) SCC 347

(9) 2004 (4) SCC 646

(10) 2006 (9) SCC 82

Clerks does not violate Articles 14 and 16 of the Constitution. In Gopi Kishan Sen's case (supra) it has been held by Hon'ble the Supreme Court that a person who has higher qualification is likely to discharge his duties better than a less qualified person. A graduate Clerk would be more efficient than a non-graduate and matriculate Clerk. Moreover, there was no limitation on Shetty Commission to make recommendations of identical pay scale for both graduate and non-graduate Clerks. However, the Shetty Commission preferred to recommend the pay scale of '5000-8100 for graduate Clerks leaving the non-graduate Clerks to keep working in the pay scale of '3120-5160.

(20) The view of the learned Single Judge is primarily based on the judgment of Hon'ble the Supreme Court rendered in the case of Roshan Lal Tandon (supra). The judgment in Roshan Lal Tandon's case (supra) has been distinguished by a 5-Judges Bench of Hon'ble the Supreme Court in the case of **State of Jammu and Kashmir versus Triloki Nath Khosa (11)**. In para 35 of the judgment it has been pointed out that educational qualifications have been recognised by the Supreme Court as a safe criterion for determining the validity of classification. The judgment in P. Narasing Rao (supra) has been relied upon in support of the aforesaid view. In para 46 of the judgment in Triloki Nath Khosa's case (supra), their Lordships' have held that the judgment in Roshan Lal Tandon's case (supra) is no authority for the proposition that if direct recruits and promotees were integrated into one class they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. Upholding the classification, 5- Judges Bench held that it rests fairly and squarely on the consideration of educational qualifications and Graduates alone were to be considered for promotion to the higher post irrespective of the fact that they were appointed as Assistant Engineers by way of direct recruitment or by way of promotion. The position has further been clarified in the case of **Kuldeep Kumar Gupta versus H.P. State Electricity Board (12)**. Therefore, no reliance could have been placed on the judgment of Hon'ble the Supreme Court rendered in Roshan Lal Tandon's case (supra). Accordingly, the view taken by the learned Single Judge would not be sustainable in the eyes of law.

(11) 1974 (1) SCC 19

(12) 2001 (1) SCC 475

(21) As a sequel to the above discussion, these appeals succeed. The judgment of the learned Single Judge is set aside and the different pay scales granted to the graduate and non-graduate Clerks are upheld because it did not contravene Articles 14 and 16(1) of the Constitution.

(22) A photocopy of this judgment be placed on the file of connected appeal.

V. Suri

Before Adarsh Kumar Goel-ACJ & Ajay Kumar Mittal, J.

**MUNICIPAL CORPORATION, CHANDIGARH
AND OTHERS,—Appellants**

versus

COL. RETD. DALJIT SINGH AND OTHERS,—Respondents

L.P.A. No.258 of 2010

19th May, 2011

Punjab Municipal Act, 1911- S. 56 - Punjab Municipal (Executive Officers) Act, 1931 - Schedule I - Letters Patent Appeal - Clause X - Resumption - Powers of the President/ Committee/ Executive Officer - Property was of the Committee and allotment was made on behalf of the Committee - Agreement entered into by the parties expressly authorised power to be exercised by a duly authorised functionary - Power conferred on President to resume was also the power of the Committee - Such conferment did not exclude exercise of power as per statutory scheme - A juristic person could function through lawful representative, particularly as per statutory provision - Deposit during pendency of the writ petition - By itself not enough for setting aside order of resumption - It is only after exercise of power is found illegal, question of setting aside resumption can arise - Matter remanded to writ Court for fresh decision.