

social welfare legislation should be interpreted. In that context their Lordships have observed that provisions of such a social welfare legislation providing for economic empowerment to workers and poor classes should be considered in the light of public law principles not of private or common laws. So far as the philosophy behind construing a social legislation is concerned, there are no two opinions, social legislations are primarily meant for welfare of a particular section of the Society and should be construed liberally so as to advance the cause of the public at large.

(16) In the light of facts discussed above, we do not think the contention of the respondents is well founded.

(17) In view of the above, the present petition is allowed and annexure P-5 is hereby quashed with a direction to the respondents to consider the case of the petitioner under the rules prevalent in the year 2003.

R.N.R.

Before M.M. Kumar J.

RAJINDER PAL GAUTAM & OTHERS,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 10759 of 1990

30th May, 2008

Constitution of India, 1950—Arts. 14 & 226—Discrimination—Acceptance of recommendations of pay commission for granting benefit of pay scale to all categories on basis of qualification of matriculation and ITI—No intelligible differentia between Pump Operators and those who have been granted benefit of higher pay—Action of excluding petitioners Pump Operators would have no rational basis without their being any differentia to the object sought to be achieved—Petitioners held entitled to be

granted higher pay scale provided having qualification of two years diploma of ITI with matriculation—Petition allowed.

Held, that the respondent-State has accepted the recommendations of the pay commission for granting benefit of pay scale to all categories of employees like Fitter, Electrician, Carpenter, Mason, Operator Drivers, Well-Borer and Rock Drillers etc. on the basis of their qualification of matriculation and ITI. There is no intelligible differentia between the petitioner-Pump Operators and those who have been granted the benefit of higher pay scale of Rs. 140-300 for carving out and excluding the category of Pump Operators from that benefit. The executive action of excluding the petitioners who are Pump Operators would certainly have no rational basis without their being any differentia to the object sought to be achieved.

(Para 16)

Further held, that the category of Pump Operators cannot be picked up for hostile discrimination when all other categories with qualification of matriculation and ITI have been granted the pay scale of Rs. 140-300. Accordingly, the pay scale of Rs. 140-300 deserves to be granted to the petitioners provided they have qualification of two years diploma of ITI with matriculation.

(Para 18)

S. D. Sharma, Senior Advocate with Ms. Bindu Goel, Advocate
for the petitioners.

Suvir Sehgal, Addl. A. G. Punjab, *for the respondents.*

M. M. KUMAR, J.

(1) The instant petition filed under Article 226 of the Constitution prays for issuance of directions to the respondents to grant revised pay scales as per the recommendation made by various Pay Commissions with regard to skilled and semi-skilled staff in the service of the Punjab Government. The claim in nut-shell is that the skilled and semi-skilled employees were kept to be categorized in Categories I to VI, according to the qualification and the same have already been accepted and

implemented by the State Government in respect of a number of departments. However, the benefit of revised pay scales has not been granted and implemented in respect of the petitioners.

(2) The matter came up for consideration on 13th May, 2005. I have allowed the petition in terms of the order passed in Civil Writ Petition No. 9824 of 1990 and the subsequent order by the L.P.A. Bench in L.P.A. No. 950 of 1992, decided on 21st November, 2000. The writ petition was allowed by noticing that the learned State counsel was not able to distinguish between the facts of the instant petition and those of the decided case and the matter was disposed of in the aforementioned two cases.

(3) The order dated 13th May, 2005 was challenged before the Letters Patent Bench by filing L.P.A. No. 192 of 2005, which was decided on 23rd December, 2005. In the L.P.A., the learned State counsel made a statement the appeal be dismissed as withdrawn at that with effect from 1st January, 1986 stage with liberty to move an application for review before the learned Single Judge in the light of the facts that the issues raised in Civil Writ Petition No. 9824 of 1990 were different and distinct as the aforesaid matter pertained to the State of Haryana. On the basis of the aforementioned prayer, the L.P.A. was dismissed with liberty to file review application. It is in the aforementioned manner that Review Application No. 120 of 2006 was filed and the same was allowed vide order, dated 2nd November, 2007 by recalling the order, dated 13th May, 2005.

(4) Brief facts of the case are necessary to be noticed in order to put the controversy in its proper perspective. The petitioners were appointed on the post of Pump Operators in the Public Health Department of the respondent-State between the years 1967 to 1980. They were granted un-revised pay scale of Rs. 110-180. The principal contention of the petitioners is that matriculation certificate and ITI training certificate would show that during the course of ITI they had undergone training from August, 1971 to July, 1973. As many as 99 petitioners have placed on record copies of their metric as well as ITI certificates (Annexures P-8 to P. 205) and most of them acquired the same qualification which is evident from the aforementioned certificates.

(5) The case of the petitioners is that the Pay Commission in its report submitted in 1968 had made recommendations linking the educational qualification to the pay scales. A detailed reference has been made to Chapter-XII of the Pay Commission Report (Annexure P-214). In Item No. 12.33, the reasons for categorization of post and linking of pay scales to qualifications have been mentioned, namely, that there is a large variety of posts such as those of blacksmiths, Carpenters, Mechanics, Electricians, Fitters Masons, Machinememen, Plumbers, Turners etc. It was considered necessary that various posts are categorized by linking their pay scales to academic and technical qualifications. The thinking of the Pay Commission appears to be that by associating the pay scale to academic and technical qualifications, the multiplicity of pay scale would come to an end. The pay commission created various categories in para 12.35 and recommendations of pay scale of Rs. 140-300 were made in respect of category (IV) which covered those persons who have qualification of matriculation with two years ITI training certificate. The aforementioned recommendation made by the Pay Commission in 12.35 deserves to be noticed, which reads as under :—

“12.35. In consultation with the Heads of Departments as also after studying the existing categories obtaining in the various Departments and the available courses, the Commission proposes the following categorization :—

Scale proposed

- Category I** : No academic or technical qualifications Rs. 80-120 but a certain amount of experience, which would enable handling of minor technical Work and assistance to qualified Technicians.
- Category II** : Middle pass with one year's trade certificate of the ITI or any other recognized institute. Rs. 100-160
- Category III** : Middle pass with two year's certificate Rs.120-250 Course or Matriculation with one year's Certificate course in the ITI or any other recognized Institute.

Category IV : Matriculation with two year's technical Rs. 140-300
Training in the ITI or any other
recognized Institute.

Category V : Matriculation with three year's trade Rs.160-400
Certificate course, it may include
between one or two years of
theoretical course followed by
apprenticeship training of 2 or
1 years duration so as to make
the total number of years spent
in training three years.

Category VI : Matriculation with Diploma of three Rs.200-450
years duration in the polytechnic or
10% equivalent selection Grade of
Rs. 450-500 if called for.)”

(6) The petitioners have also asserted that on the basis of aforementioned recommendations, the Punjab Government, *-vide* letter dated 4th February, 1969, addressed to the Deputy Secretary, PWD, Punjab (Annexure P-3) has asked them that the Pay Commission in its report have evolved common categories in order to assess the skill proficiency of the workers and categorized the technician, which include category (iv) like the petitioners and they are entitled to grant of pay scale of Rs. 140-300. Accordingly, in the concluding para of letter, dated 4th February, 1969, the Administrative department was advised by the Government that the matter should be examined afresh in the changed circumstances and the pay scale of work charged posts which are to be brought on regular side should be rationalized by keeping in view the position given above. Another letter from the Chief Engineer, dated 25th April, 1990, shows that in respect of one Parmod Kumar, Electrician, who was earlier in the pay scale of Rs. 100-160, but had qualification of Matriculation with two years Trade Certificate from ITI, the pay scale of Rs. 140-300 was given. The aforementioned relief was given on the basis of Punjab Government letter, dated 4th February, 1996, which stipulates that the person having a qualification of two

years certificate from ITI with Matriculation is entitled to the pay scale of Rs. 140-300. The Chief Engineer, Punjab, PWD, Public Health (RWS) South, Patiala had sent the aforementioned recommendation to the Government. The Government,—*vide* letter, dated 21st August, 1990 (Annexure P-209) has accorded approval by observing as under :—

“It is observed that Government/Department of Finance’s instructions are very clear. Promotion of Shri Parmod Kumar Electrician in the lower grade is an administrative lapse on the part of the appointing authority. It is not understood as to why Government approval is sought for at this belated stage. You are, requested to take immediate necessary action in the light of relevant instructions within a period of one month and dispose of this long period case and report be sent to Government.

Endorsement No. 41340 Dated 12th September, 1990

Copy of above is forwarded to the Superintending Engineer Public Health (GW) Circle, Chandigarh w.r.t., his letter No. 13400, dated 5th October, 1989 for taking necessary action in the matter within a period of fortnight under intimation to this office.”

(7) Even the Superintending Engineering (Monitoring) of the Public Health Department, Head Office, Patiala had addressed a letter on 30th May, 2003 to the Principal Secretary, Punjab Government, Public Health Department, Chandigarh, indicating that all other categories have been given their pay scales in accordance with the categorization made by the Pay Commission to which reference has already been made, but the category of Pump Operators has not been given their scales as per their qualification. The concluding 3 paras of this letter are worth noticing, which reads as under :—

“It is also hereby being clarified that as per the Schedule (B) issued through Notification No. 1696, dated 21st January, 1969 by the Finance Department the employees of six different categories have been given pay scale of their entitlement.

The in list of scales issued,—*vide* letter No. 8123-S/(5)/70/33771, dated 14th February, 1970 by Punjab Government the different categories have been categorized in six technicians scale but the category of pump operator have not been given the scale as per their qualification.

Keeping in view the aforesaid it is recommended to the Government that keeping in view of the educational/ Technical qualification of the pump operators the pay scale of Rs. 140-300 from 16th February, 1960 be ordered to be given to them.”

(8) It is needless to add that most of the petitioners possess the qualification of Matric with Science and two years ITI Electrician Diploma and are fully qualified to claim the pay scale of Rs. 140-300.

(9) The petitioners have also clarified that they have been working on the post of Pump Operators by attaching letter, dated 18th December, 1985 (Annexure P-216) attached with the C.M. No.200 of 2007, which has been allowed on 12th January, 2007. The aforementioned communication was sent by the office of Executive Engineer, Public Health Division, Ludhiana, which mentioned names of some of the petitioners. The petitioners have also attached a communication, dated 10th June, 1990 (Annexure P-218), sent by the Superintending Engineer, Public Health (S. K.) Circle, Ludhiana, issuing directions to the Executive Engineer to take necessary action by granting the pay scale of Rs. 140-300 to those employees who have done ITI for two years Electrician Course with Matric. Then reliance has been placed on letter, dated 2nd May, 2005, issued by the Punjab Government, Water Supply and Sanitation Department, Buildings and Roads to the Superintending Engineer, Water Supply and Sanitation Circle, Ludhiana, again reiterating that the Pump Operators who have qualification of two years ITI with Matriculation be given pay scale of Rs. 140-300 with effect from 16th February, 1970. The Government has requisitioned information from the Superintending Engineer regarding the number of aforementioned Pump Operators working in the department from 16th February, 1970 to that date and also the financial burden.

(10) The stand of the respondents in their written statement is that demand of higher scale of pay on the basis of recommendations by the 1st, 2nd and 3rd pay commissions is not tenable at this belated stage once the petitioners have been granted pay scale in accordance with the recommendations of 4th pay commission w.e.f. 1st January, 1996. They have also raised objection that a joint writ petition on behalf of 160 petitioners without giving detailed particulars of each petitioner in respect of their scales of pay, nature of work, responsibility involved in the job cannot be adjudicated. However, the fact with regard to issuance of letter, dated 4th February, 1969 (Annexure P-3) by the Government to Administrative Departments has not been disputed. It has been claimed that it was not sanction of the scales but it was simply a suggestion to examine the recommendations of the pay commission in order to bring uniformity. It is further stand of the respondents that after considering the suggestion a proposal was to be made to frame the departmental rules before taking steps to implement the recommendation regarding scales of pay. The recommendation for the implementation of the scales could not be effected as the rules were not finalised. It is claimed that such a letter or letter, dated 10th July, 1987 (Annexure P-7) cannot be accorded any legal sanctity without the approval of the finance department. In nut shell the stand taken is that recommendations of pay commission are not binding.

(11) In response to the written statement of the respondents, the petitioners have filed replication by giving details of the categories of technical employees in the Public Health Department which includes Fitter, Electrician, Carpenter, Mason, Operator, Driver, Well Borer, Rock Driller and Pump Operator etc. who have qualification of matric with two years ITI. Further every category has been given the pay scale of Rs. 140-300 and the Pump Operators have been excluded despite the fact that all of them were treated as technicians. A large number of petitioners have placed on record copies of their certificates of matriculation and ITI. They have controverted the preliminary objection of the respondents that writ petition is not maintainable and that the correct conversion of pay scale of Rs. 140-300 should have been given at the time of revision but actual revision has been made from the unrevised pay scale of Rs. 110-180. They have placed reliance on a

judgement of this Court rendered in the case of Haryana employees in CWP No. 9824 of 1990 which has been allowed on 15th July, 1997 and L.P.A. No. 669 of 1997 filed by the respondent-State has been partly allowed by restricting the period of payment of arrears to 38 months. The petitioners have claimed arrears of salary by issuance of directions for re-fixation.

(12) Shri S. D. Sharma, learned senior counsel appearing for the petitioners has argued that once the pay scale has been linked with the educational qualification, there was no rationale basis for the respondents to continue the petitioners in the pay scale of Rs. 110-180 because they have qualifications of Matriculation and ITI. According to the learned counsel all the six categories as per the categorization made by the Pay Commission have been granted the recommended pay scale and all employees as per category IV have been granted the pay scale of Rs.140-300 with effect from 16th February, 1970, because they had the qualification of ITI Diploma of two years along with Matric. Learned counsel has maintained that once the pay scale on the basis of the aforementioned qualifications has been given to a person like Parmod Kumar and repeatedly orders have been issued in respect of the petitioners who are Pump Operators, there is no rationale basis to exclude the category of the petitioners from the grant of benefit of higher pay scale of Rs. 140-300. In that regard, learned counsel for the petitioners has placed reliance on the Constitution Bench judgement of Hon'ble the Supreme Court in the case of **Purshottam Lal versus Union of India (1)**.

(13) Shri Suvir Sehgal, learned State counsel has however, opposed the prayer made by the learned counsel for the petitioners by arguing that the writ petition is liable to be dismissed on the ground of inordinate delay. According to the learned counsel, the petitioners are not entitled to pay scale of Rs. 140-300 merely because they have acquired the educational qualification of ITI with Matric. The recommendations made by the Pay Commission in respect of petitioners' category have never been approved by the Government. Learned State counsel has argued that at best the petitioners could be given the pay scales with effect from the date the writ petition has been filed and

(1) AIR 1973 S.C. 1088

on the aforementioned date they were already drawing the higher pay scale.

(14) After hearing the learned counsel for the parties and taking into account the fact that the pay scales have been linked since 1969 with the education qualification and all other categories like Fitters, Electricians, Carpenters, Masons, Operators, Drivers Well Borer and Rock Drillers etc. have been granted benefit of higher pay scale of Rs. 140-300 there is no reason to segregate the category of the petitioners for refusing grant of higher pay scale of Rs.140-300. Such a segregation would not stand the test of Article 14 of the Constitution. According to the classical test of classification enunciated by Hon'ble the Supreme Court while interpreting article 14 of the Constitution two following conditions are required to be fulfilled :

- (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group ; and
- (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action.

(15) For the aforementioned proposition, reliance may be placed on **A. Peeriakaruppan (Minor) versus State of T. N.** (2) **State of Kerala versus N. M. Thomas** (3) and **Pandurangarao versus V. P. Public Service Commission** (4).

(16) The respondent-State has accepted the recommendations of the pay commission for granting benefit of pay scale to all categories of employees like Fitter, Electrician, Carpenter, Mason , Operator, Drivers, Well-Boreer and Bock-Drillewr etc, on the basis of their qualification of matriculation and ITI. There is no intelligible differentia between the petitioner-Pump Operators and those who have been granted the benefit of higher pay scale of Rs. 140-300 for carving out

(2) (1971) 1 SCC 38
(3) (1976) 2 SCC 310
(4) AIR 1963 S.C. 268

and excluding the category of Pump Operators from that benefit. The executive action of excluding the petitioners who are Pump Operators would certainly have no rational basis without their being any differentia to the object sought to be achieved. It was in somewhat similar circumstances in **Parshottam Lal's case** (*supra*) when the report of the 2nd Pay Commission in respect of certain posts was not implemented whereas it was given effect in respect of other categories then in paras 15 and 16 of the judgement, their Lordships observed as under :

“15. Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or its has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a situation. This is what the Government has done as far as these petitioners are concerned.

(16) The learned counsel next contends that there has been great delay in bringing this petition and we should not exercise our discretion. There has been some delay but on the facts of this case we are of the opinion that there has not been undue delay, especially as in his letter, dated March 23, 1967 the President, Forest Research Institute and Colleges said that the points were being examined and if necessary the Ministry would be consulted.”

(17) The aforementioned view has been followed and applied in the cases of **State of Haryana versus Haryana Civil Secretariat Personal Staff Association (5)** and **Laljee Debey versus Union of India (6)**.

(18) When the facts of the present case are examined in the light of the principles laid down by Hon'ble the Supreme Court it becomes

(5) (2002) 6 S.C.C. 72

(6) (1974) 1 S.C.C. 230

evident that the category of Pump Operators cannot be picked up for hostile discrimination when all other categories with qualification of matriculation and ITI have been granted the pay scale of Rs. 140-300. Accordingly the aforementioned pay scale of Rs. 140-300 deserves to be granted to the petitioners provided they have qualification of two years diploma of ITI with matriculation.

(19) In view of the above, the writ petition is allowed. The petitioners who have qualifications of ITI of two years diploma course with matriculation and have been working on the post of Pump Operators are held entitled to the pay scale of Rs. 140-300 w.e.f. the date they have joined the service. Their pay shall be fixed in the scale of Rs. 140-300 from the aforementioned date but the arrears would be restricted to a period of 38 months preceding the date of filing of the petition which has been filed on 8th August, 1990. We make it clear that those petitioners who do not possess the qualification of two years ITI diploma course and matriculation would not be entitled to the aforementioned relief.

R.N.R.

Before Hemant Gupta & Rajesh Bindal, JJ.

NAND KISHORE & COMPANY,—*Petitioner*

versus

STATE OF PUNJAB & ANOTHER,—*Respondent*

C.W.P. No. 46 OF 2008

13th August, 2008

***Constitution of India, 1950—Art. 226, 301 and 304 (a)—
Notifications dated 5th November, 2007 issued by State of Punjab—
Discrimination—Imposition of sales tax on imported sugar from
outside of Punjab—Challenge thereto—Levy of tax on imported
sugar violates Articles 301 and 304 (a) as the same creates
discrimination in levy of tax on sale of sugar brought from outside
State—Petition allowed, notification adding entry 152 in Schedule
'B' to the VAT Act struck down.***