

Before A.K. Sikri, Chief Justice & Rakesh Kumar Jain, J.

MOHINDER SINGH AND OTHERS—Petitioners

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 22516 of 2012

April 1, 2013

Constitution of India, 1950 - Art. 226 - Discrimination - Haryana Transport Department (Group-C) Haryana Roadways Service Rules, 1995 (as amended in 2003, 2004 and 2011) - Rules regulating service conditions of Drivers/Conductors - 2011 amendment provided fixed remuneration on appointment, even though they were recruited against regular posts through a regular selection conducted by the Staff Selection Board/Service Commission - Petitioners selected on merits - After remaining on contract for three years and rendering service satisfactorily, they are upgraded to Driver Grade-I/Conductor Grade-I in the regular pay scales - Objective sought to be achieved is to provide best services to the travelling public and make the Drivers and Conductors work sensitive - Writ petition allowed merely because they are initially recruited on contract basis, they cannot be discriminated as far as pay scales is concerned - Rules in question suffer from arbitrariness and found to be unconstitutional and, therefore, liable to be set aside - Placing the petitioners on consolidated salary is impermissible - Petitioners entitled to minimum of the pay scales from the date of their initial appointment - Principle of estoppel would not apply.

Held, that the recruitment rules for appointment to the posts of Drivers and Conductors are same whether they are appointed on contract basis initially or are given the pay scales after rendering the services for specified number of years. All these petitioners fulfil those eligibility conditions contained in the recruitment rules. It is also an admitted position on record that there was a proper selection procedure followed by issuing the advertisement and making the selection through the Staff Selection Board/Service Commission. The petitioners were selected on merits. From day

one they started doing the job of Driver and Conductor which is the same as performed by the Drivers/ Conductors who are placed in the regular pay scale. It is, thus, not in dispute that the posts in question were advertised for open competition for direct recruitment and all the petitioners were appointed through the selection process made by the Staff Selection Commission after giving opportunity to each and every eligible person. The only reason for putting them on contract/fixed salary in the beginning and bringing them on the regular pay scale after they render service for specified period is that the provisions are made with objective to recruit best Drivers and Conductors who can provide best services to the commuting public. It is not understood as to how this objective is achieved by putting the Drivers and Conductors initially on the fixed salary and bringing them in graded pay scales after 4/6 years. The aforesaid objective can well be achieved by putting the Drivers and Conductors after their appointment initially on probation and watching their work and conduct during the period of probation. The respondents have not been able to dislodge the weighty and meritorious contention of the petitioners that paying different salary even after getting same work offends the principle of 'equal pay for equal work'. Position would have been different if the petitioners were not appointed against the sanctioned posts or they were not fulfilling the requisite qualifications for the posts or they were not appointed after regular selection process.

(Para 11)

Held further, that we also agree with the contention of the petitioners that the impugned amendments are contrary to the Standing Orders Act of 1946 which permits classification of the workmen only on the basis of tenure of the post and not on any other basis. In any case, we are of the opinion that once these Drivers and Conductors are appointed after due selection, they cannot be discriminated as far as grant of pay scales is concerned merely on the basis that they are recruited initially on contract basis and would be considered for granting pay scales after 4/6 years of service.

(Para 12)

Held further, that no doubt, the petitioners have filed these petitions after few years of their appointment. However, if the rules in question suffer from the vice of arbitrariness and are found to be unconstitutional being

violative of Article 14 of the Constitution, the principle of estoppel would not apply. Moreover, in such a case, the relief can be restricted but writ petitions cannot be dismissed on this ground alone.

(Para 13)

Held further, that we are, therefore, of the opinion that placing the petitioners on consolidated salary is impermissible and the rules to this extent are unconstitutional and, therefore, liable to be set aside. The placing of the petitioners in pay scales meant for Grade-II and two years thereafter in Grade-I cannot be permissible. The petitioners, thus, would be entitled to the minimum of the pay scale from the date of their initial appointments and their pay shall be fixed accordingly. However, insofar as arrears of pay are concerned, they will be entitled to the arrears for three years and two months' period prior to the date of filing of these petitions.

(Para 14)

R.K. Malik, Senior Advocate with Samrat Malik, Advocate, for the petitioners in CWP Nos.22516 and 17357 of 2012

R.S. Chauhan, Advocate for the petitioners in CWP-25975-2012

G.P. Singh, Advocate for the petitioners in CWP-3084-2012

Sandeep Panwar, Advocate for the petitioners in CWP-1257-2013

B.S. Rana, Additional Advocate General, Haryana

A.K. SIKRI, CHIEF JUSTICE

(1) These five writ petitions rake up identical controversy concerning the pay structure admissible to Drivers/Conductors recruited in Haryana Roadways and hence all these cases were heard together and are now being disposed of by this common judgment.

(2) The Haryana Government initially framed the rules called 'Haryana Transport Department (Group-C) Haryana Roadways Service Rules, 1995' to regulate the service conditions of Group-C staff recruited in the Haryana Roadways. These rules were amended in the year 2003 and published vide notification dated 4th August 2003. The amended rules were

known as 'Haryana Transport Department (Group-C) Haryana Roadways Service (Amendment) Rules, 2003'. By way of amendment, a provision was inserted as per which all the drivers were to be appointed initially on a fixed salary of Rs.3000/- per month. After two years, the pay was to be increased to Rs.4,000/- per month and when these Drivers had satisfactorily performed duties for two years drawing the salary of Rs.4,000/-, they become entitled to be placed in the pay scale of Rs.3050-4590/-. After serving two years in that scale, the Drivers were to be given regular pay scale meant for the post of Drivers i.e. Rs.4000-6000/-. In the same manner, Conductors were to be appointed initially on daily-wage basis and given the normal scale only after six years.

(3) It is pertinent to mention that the Drivers/Conductors are inducted in service after undergoing the selection process conducted by the Subordinate Services Selection Board/Haryana Staff Selection Commission. Their qualifications, responsibilities and duties are also the same as that of regular Drivers/Conductors. It is also worth noticing that in the year 2004 the Government of Haryana further amended the rules known as 'Haryana Transport Department (Group-C) Haryana Roadways Service (Amendment) Rules, 2004' and thereby words 'Daily Wages basis' were added along with words 'contract basis' to amend the nature of the posts. In the year 2011, yet another amendment was made in the rules of 1995 and the amended rules were notified as 'Haryana Transport Department (Group-C) Haryana Roadways Service (Amendment) Rules, 2011' whereby the number of pay scales admissible to the Drivers/Conductors on completion of specified years of service, as noted above, was reduced to three instead of four besides certain other amendments. The precise rules, in the context of present controversy, read as under:

“Amendments proposed and approved under the Rules of 2003:

Sr. No.	Name of Post	Qualification	Period of Service	Remuneration
11(i)	Contract/Daily Wages basis Conductor Class-B	(i)Matric with Hindi (ii)Should hold Conductor's licence	--	2500/- per Month fixed

Sr. No.	Name of Post	Qualification	Period of Service	Remuneration
(ii)	Contract/Daily Wages basis conductor Class-A	--	Two years service and required level of satisfactory service as Contract/Daily wages basis Conductor Class-B in Haryana Roadways	3500/- per Month fixed
(iii)	Conductor	--	Two years satisfactory service as Contract/Daily Wages basis Conductor Class-A in Haryana Roadways	2650-65-3300-EB-70-4000
(iv)	Conductor Grade-I	--	Two years satisfactory service as Conductor Grade-II in Haryana Roadways. Explanation:- The words "satisfactory service" shall mean apart from attaining 70% Annual Confidential Reports of good and above category, the integrity of the person should not have been doubted and he should not have been punished for a major penalty in the last five years.	3050-75-3950-EB-80-4590

Amendments proposed and approved in the Rule, 2011

Sr. No.	Name of Post	Qualification	Period of Service	Remuneration
11(i)	Contract/Daily Wages basis Conductor	(i) Matric with Hindi/Sanskrit (ii) Should hold Conductor's licence	--	8000/- per month fixed
(ii)	Conductor Grade-II	--	Three years Satisfactory service as Contract/Daily Wage basis Conductor in Haryana Roadways	4440-7440+1650 (grade pay)
(iii)	Conductor Grade-I	--	Two years satisfactory service as Conductor Grade-II. Explanation:- The words "satisfactory service" shall mean apart from attaining 70% of Annual Confidential Reports of good and above category, the integrity of the person should not have been doubted and he should not have been punished for a major penalty in the last five years.	5200-20200+1900 (grade pay)

Drivers

Amendments proposed and approved under the Rules of 2003

Sr. No.	Name of Post	Qualification	Period of Service	Remuneration
9(i)	Heavy Vehicle Contract/Daily wages basis Driver Class-B	(i) Middle with Hindi (ii) Holding driving license of Heavy passenger Transport Vehicle with three years experience of driving of heavy vehicle	--	3000/- Per Month fixed
(ii)	Heavy Vehicle Contract/Daily wages basis Driver Class-A	--	Two years service and required level of satisfactory service as Heavy Vehicle Contract/Daily Wages basis Driver Class-B in Haryana Roadways	4000/- Per Month fixed
(iii)	Heavy Vehicle Driver Grade-II	--	Two years satisfactory service as Heavy Vehicle Contract/Daily Wages basis Drivers Class-A in Haryana Roadways	3050-75-3950-EB-80-4590
(iv)	Heavy Vehicle Driver Grade-I	--	Two years satisfactory service as Heavy Vehicle Driver Grade-II in Haryana Roadways Explanation:- The words "satisfactory service" shall mean apart from attaining 70% of Annual	4000-100-4800-EB-100-6000

Sr. No.	Name of Post	Qualification	Period of Service	Remuneration
			Confidential Reports of good and above category, the integrity of the person should not have been doubted and he should not have been punished for a major penalty in the last five years and he should not have caused any major accident due to his negligence and rash driving."	

Amendments proposed and approved in the Rule, 2011

Sr. No.	Name of Post	Qualification	Period of Service	Remuneration
9(i)	Heavy Vehicle Contract/Daily wages basis Driver	(i) Matriculate with Hindi/Sanskrit (ii) Holding driving license of Heavy Passenger Transport Vehicle with three years experience of driving of heavy vehicle	--	10000/- per month fixed
(ii)	Heavy Vehicle Driver Grade-II		Three years satisfactory service as Heavy Vehicle Contract/Daily Wages basis Drivers in Haryana Roadways	5200-20200+1900 (grade pay)

Sr. No.	Name of Post	Qualification	Period of Service	Remuneration
(iii)	Heavy Vehicle Driver Grade-I	--	Two years satisfactory service as Heavy Vehicle Driver Grade-II Explanation:- The words "satisfactory service" shall mean apart from attaining 70% of Annual Confidential Reports of good and above category, the integrity of the person should not have been doubted and he should not have been punished for a major penalty in the last five years and he should not have caused any major accident due to his negligence and rash driving."	5200-20200+2400 (grade pay)

(4) Various legal submissions are made on behalf of the petitioners which can be paraphrased as under:

(i) The impugned amendment offends Article 23 of the Constitution of India. In this behalf, it is submitted that classification of a post of Conductor or Driver for the purpose of pay scale only is exploitative and has no objective to achieve. Giving less wages than what is admissible to the petitioners amounts to 'Begaar' and is, thus, violative of Article 23 of the Constitution. It is argued that every law should be in consonance with the constitutional scheme, as held by the apex

Court in *A. Satyanarayana and Anr. versus Purshotam and Ors. (I)*, wherein following observations were made:

“32. A statutory rule, it is a trite law, must be made in consonance with constitutional scheme. A rule must not be arbitrary. It must be reasonable, be it substantive or a subordinate legislation. The Legislature, it is presumed, would be a reasonable one. Indisputably, the subordinate legislation may reflect the experience of the Rule maker, but the same must be capable of being taken to a logical conclusion.”

(ii) It is also argued that the impugned amendments are contrary to Industrial Employment (Standing Orders) Act, 1946 (for short ‘Standing Orders Act’). In view of Article 254 of the Constitution of India, the classification made vide impugned amendments is liable to be declared null and void; it is contended in this behalf that provisions of the aforesaid Standing Orders Act are applicable to the respondents. This Act permits classification of the workmen only on the basis of tenure of the post and not for any other purpose. It is settled proposition of law that if the provisions of any Rules or State Legislations are contrary to Central Legislations, they are void to that extent (Article 254 of Constitution of India). Admittedly, the Drivers/Conductors are employed on permanent basis by way of a selection process of regular employment against the regular vacancies, hence they cannot be further classified only for the purpose of pay scale. In view of Article 254 of the Constitution, the classification made under the offending Rules is liable to be declared as void being contrary to Central Legislation;

(iii) Challenging the impugned amendments as irrational, unreasonable, arbitrary and offensive of Article 14 of the Constitution, it is submitted that classification between the Drivers recruited initially and those who are given regular pay scale is not based on any reasonable classification within the same group. There is no intelligible differentia and no nexus with the objective sought to be achieved. It is argued that no explanation is coming forth from the State for providing pay scales in this manner;

(iv) It is next argued that the impugned amendments also result in unfair labour practice which is statutorily prohibited under the provisions of the Industrial Disputes Act, 1947;

(5) Respondents have filed the counter-affidavit refuting the claim of the petitioners. In the first instance, it is submitted that the writ petitions are filed after a period of more than four years from the date when the petitioners were appointed; the petitioners did not make any grievance at the time of applying for the post and appointment to said post(s) was based on aforesaid structure of salary and, therefore, they cannot raise such an issue now at the belated stage. It is also contended that rules in question have been framed under Article 309 of the Constitution of India which is the exclusive domain of the State Government. Giving justification for such a rule, it is submitted that the provisions in question have been made in the rules with the objective to recruit the best Drivers and Conductors who can provide best services to the passengers. Moreover, the safety of passengers and commuters also depends on the quality and expertise of the Drivers/ Conductors. The purpose of providing different pay structures in the service rules was with the intent to recruit better Drivers and Conductors after testing their skills and efficiency over the specified period of time.

(6) It is further argued that irresponsible or negligent Drivers or Conductors can become a liability and can even lead to loss of lives. The rules envisage that Drivers and Conductors shall be employed on contract basis for four years and thereafter, if their performance is satisfactory and there are no complaints against them, they will be upgraded to the status of regular employees. After conferment of regular status, the Drivers and Conductors shall be granted regular pay scales as provided in the rules. The idea behind this graded structure is to provide incentive for good work and conduct and the logic is to ensure the weeding out of the undesirable ones and keeping in service the deserving ones. As per the rules amended in the year 2011, the Drivers and Conductors have been provided the fixed remuneration of Rs.10,000/- and Rs.8,000/- per month, respectively. In addition to the fixed salary, the Drivers and Conductors while serving on contract shall also be eligible to the other allowances including overtime allowance as is being paid to the regular Drivers and Conductors. The amendment has further been made to the effect that the Drivers and Conductors shall remain on contract for a period of three years and after

rendering the said period of service satisfactorily, they are upgraded to the rank of Driver Grade-I/Conductor Grade-I in the regular pay scales.

(7) It is also contended on behalf of the respondent-State that the principle of 'equal pay for equal work' shall not be applicable in the present case despite all persons in the cadre of Drivers and Conductors being performing the similar duties. It has been pleaded that the classification has been made in the rules on the basis of length of service and thereby the experience gained by the employees which has a rational nexus with the object sought to be achieved. Thus, the pay structure and nomenclature of the post of Drivers and Conductors, as provided in the service rules in question, do not amount to any discrimination and exploitation of the petitioners.

(8) Replying to the argument of unreasonable classification, the contention of the respondents is that a perusal of the provisions made would reveal that the classification of the Drivers and Conductors has been made on the basis of experience gained by them in the department and the experience gained by them prior to their recruitment. It is contended that the initial recruitment of Drivers is to be made by way of direct recruitment and thereafter on the basis of regular satisfactory performance for a particular period. The Conductors are also to be promoted to the next higher rank and to be paid salary accordingly. The Haryana (Punishment and Appeal) Rules, 1987 have not been made applicable to the Drivers and Conductors till they remain on contract basis. The upgradation in salary, as envisaged in the service rules, has been extended to the Drivers and Conductors on the basis of their satisfactory service rendered on contract basis. It is, thus, clear that the pay structure has been provided in the rules as a measure of incentive and to provide best service to the travellers in the Haryana Roadways buses and the provisions made in the rules cannot be said to be an exploitation by the employer. Rather, the provisions have been made to encourage the Drivers and Conductors to put in their best services which would also provide better travelling experience to the commuting public in the Haryana Roadways buses. The classification in the pay structure on the basis of the status of the Drivers and Conductors is sought to be justified, saying that it has a rational nexus with the object sought to be achieved, viz., to provide best services to the travelling public and make the Drivers and Conductors work sensitive.

(9) The argument of the petitioners predicated on Article 309 of the Constitution is also sought to be repelled with the submission that the aforesaid provision applies in the case of trafficking in human beings and 'Begaar' and other similar forms of forced labour which is not the case here. The petitioners are paid salary in accordance with the service rules notified under Article 309 of the Constitution. It is, thus, contended that there is no merit in these petitions which should be dismissed.

(10) We have bestowed our serious consideration to the respective submissions of learned counsel for the parties on either side and have also gone through the case record with their able assistance.

(11) The admitted facts, which are appearing on record, are that the recruitment rules for appointment to the posts of Drivers and Conductors are same whether they are appointed on contract basis initially or are given the pay scales after rendering the services for specified number of years. All these petitioners fulfil those eligibility conditions contained in the recruitment rules. It is also an admitted position on record that there was a proper selection procedure followed by issuing the advertisement and making the selection through the Staff Selection Board/Service Commission. The petitioners were selected on merits. From day one they started doing the job of Driver and Conductor which is the same as performed by the Drivers/Conductors who are placed in the regular pay scale. It is, thus, not in dispute that the posts in question were advertised for open competition for direct recruitment and all the petitioners were appointed through the selection process made by the Staff Selection Commission after giving opportunity to each and every eligible person. The only reason for putting them on contract/fixed salary in the beginning and bringing them on the regular pay scale after they render service for specified period is that the provisions are made with objective to recruit best Drivers and Conductors who can provide best services to the commuting public. It is not understood as to how this objective is achieved by putting the Drivers and Conductors initially on the fixed salary and bringing them in graded pay scales after 4/6 years. The aforesaid objective can well be achieved by putting the Drivers and Conductors after their appointment initially on probation and watching their work and conduct during the period of probation. The respondents have not been able to dislodge the weighty and meritorious contention of the

petitioners that paying different salary even after getting same work offends the principle of 'equal pay for equal work'. The matter is squarely covered by the Full Bench judgment of this Court in **Avtar Singh vs. State of Punjab and others** (CWP-14796-2003) decided on 11.11.2011. In this detailed judgment, after taking note of every possible case law of the Supreme Court and this Court on the subject, the Full Bench categorically held that even a daily wager, *ad hoc* or contractual appointee against a regular sanctioned post, if appointed after undergoing a regular selection process based upon fairness and equality of opportunity to all other candidates, shall be entitled to minimum of the regular pay scale from the date of engagement. Position would have been different if the petitioners were not appointed against the sanctioned posts or they were not fulfilling the requisite qualifications for the posts or they were not appointed after regular selection process.

(12) We also agree with the contention of the petitioners that the impugned amendments are contrary to the Standing Orders Act of 1946 which permits classification of the workmen only on the basis of tenure of the post and not on any other basis. In any case, we are of the opinion that once these Drivers and Conductors are appointed after due selection, they cannot be discriminated as far as grant of pay scales is concerned merely on the basis that they are recruited initially on contract basis and would be considered for granting pay scales after 4/6 years of service.

(13) No doubt, the petitioners have filed these petitions after few years of their appointment. However, if the rules in question suffer from the vice of arbitrariness and are found to be unconstitutional being violative of Article 14 of the Constitution, the principle of estoppel would not apply. Moreover, in such a case, the relief can be restricted but writ petitions cannot be dismissed on this ground alone. In **A.P. Dairy Development Corporation Federation versus B. Narasimha Reddy and Ors. (2)**, the Supreme Court explained the principle of reasonable classification enshrined in Article 14 of the Constitution in the following manner:

"It is well settled law that Article 14 forbids class legislation, however, it does not forbid reasonable classification for the purpose of legislation. Therefore, it is permissible in law to have class legislation

provided the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question. Law also permits a classification even if it relates to a single individual, if, on account of some special circumstances or reasons applicable to him, and not applicable to others, that single individual may be treated as a class by himself. It should be presumed that legislature has correctly appreciated the need of its people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. There is further presumption in favour of the legislature that legislation had been brought with the knowledge of existing conditions. The good faith on the legislature is to be presumed, but if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The law should not be irrational, arbitrary and unreasonable in as much as there must be nexus to the object sought to be achieved by it. (Vide: *Budhan Choudhry & Ors. v. State of Bihar*, AIR 1955 SC 191 ; and *Ram Krishna Dalmia v. Justice S.R. Tendolkar & Ors.*, AIR 1958 SC 538).”

(14) We are, therefore, of the opinion that placing the petitioners on consolidated salary is impermissible and the rules to this extent are unconstitutional and, therefore, liable to be set aside. The placing of the petitioners in pay scales meant for Grade-II and two years thereafter in Grade-I cannot be permissible. The petitioners, thus, would be entitled to the minimum of the pay scale from the date of their initial appointments and their pay shall be fixed accordingly. However, insofar as arrears of pay are concerned, they will be entitled to the arrears for three years and two months' period prior to the date of filing of these petitions.

(15) Petitions allowed in the aforesaid terms.