

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Reserved on: January 13, 2025
Pronounced on: January 20, 2025

CWP No.741 of 2017**Surinder Kumar****. . . . Petitioner**

Vs.

**Punjab Water Resources Management &
Development Corporation and others****. . . . Respondents****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present:-** Mr. G.S. Bal, Sr. Advocate with
Mr. Lovepreet Kaur, Advocate for the petitioner.

Mr. Sarthak Gupta, Advocate for respondent No.1.

Mr. Surya Kumar, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this writ petition filed under Article 226/227 of the Constitution of India, petitioner prays for issuance of the following writs:-

- (i) writ in the nature of certiorari for quashing impugned orders dated 04.10.2016 (*Annexure P-13*) passed by the Managing Director of the Respondent No.1 Corporation; and order dated 09.02.2016 (*Annexure P-9*) and order dated 07.05.2014 (*Annexure P-6*), whereby claim of petitioner for grant of parity in pay scale with Superintendent Grade-I of the Corporation has illegally been declined by respondents No 2 and 3;
- (ii) writ in the nature of mandamus by directing respondent No.1 to grant parity in pay scale to petitioner-Divisional Accounts Officer with Superintendent Grade-I in view of recommendations dated 31.01.2013 (*Annexure P-4*) made by a Committee constituted by the Managing Director of the Corporation by granting the pay scale of ₹ 10300-34800 with Grade Pay of ₹5000/- w.e.f. 01.01.2006 and Grade Pay of ₹5400/- w.e.f. 01.12.2011 and consequent entire arrears alongwith 18% compound interest.

2. Admittedly, after his initial appointment as Clerk in Punjab State Tubewell Corporation (*re-named as Punjab Water Resources Management and Development Corporation*) – respondent No.1, petitioner was promoted as Senior Assistant in 1985 and then was promoted as Divisional Accountant in September, 2001 after passing Departmental Divisional Accountant Examination. The post of the Senior Assistant is feeder post for being promoted as Superintendent Grade – I as well as Divisional Accountant.

3.1 According to petitioner, pursuant to the directions issued by the Punjab Government dated 01.10.1984 vide *Annexure P-2*, parity/near parity in respect of the posts existing in respondent No.1 Corporation was maintained by corresponding post of the Government Department in the matter of recruitment, service conditions and pay scales and it was under these circumstances that higher pay scale than that of the Senior Assistants' pay scale was granted to the Divisional Accountant, it being a promotional post.

3.2 It is alleged that though during the pay revision of 01.01.1986 and 01.01.1996, higher pay scale was granted to the category of Divisional Accountant, but in the revision of 01.01.2006, much lower grade pay was granted to Divisional Accounts Officer than the Superintendent Grade-I, inasmuch as grade pay of ₹3,800/- was granted to the Senior Assistant & grade pay of ₹4,200/- was granted to the Divisional Accountant and grade pay of ₹5,000/- was granted to Superintendent Grade-1. The said difference in the grade pay further escalated w.e.f. 01.12.2011, when feeder cadre of Senior Assistant was granted the higher grade pay of ₹4,400/-, but the grade pay of Divisional Accounts Officer (Divisional Accountant) was not correspondingly enhanced. Grade pay of Superintendent Grade-1 at that time was enhanced from ₹5,000/- to ₹5,400/-.

3.3 On the representation dated 22.08.2012 (*Annexure P-3*) made by the petitioner, a Committee of higher officers of the respondent recommended to equate the Divisional Accounts Officer with Superintendent

Grade-I, but the said recommendation was rejected by the Government by way of impugned order dated 07.05.2014 (*Annexure P-6*). Another representation dated 27.04.2015 met the same fate vide order dated 29.02.2016 (*Annexure P-9*). Thereafter, petitioner made comprehensive representation (*Annexure P-11*) and then filed CWP No.7724 of 2016, in which direction was issued on 27.04.2016 to consider the claim of the petitioner by passing a speaking order and consequent thereto, the Managing Director of respondent No.1 rejected the claim of the petitioner vide impugned order dated 04.10.2016 (*Annexure P-13*).

3.4 The grievance of the petitioner is that promotional post cannot have a pay either lower or equivalent to the pay scale of a feeder cadre post. Though, w.e.f. 01.01.2006, the grade pay of Senior Assistant was ₹3,800/-, that of Divisional Accountant as ₹4,200/- and Superintendent as ₹5,000/-, but w.e.f. 01.12.2011, the grade pay of Senior Assistant was enhanced to ₹4,400/- and that of Superintendent as ₹5,400/-, but as far as Divisional Accountant is concerned, the same was maintained at ₹4,200/-.

4. Contention of learned Senior counsel for the petitioner is that petitioner is not only entitled for correspondence increase in the grade pay comparing to the grade pay granted to the Senior Assistant w.e.f. 01.12.2011, the grade pay to the petitioner is liable to be granted as equivalent to that of Superintendent Grade – I.

5. In the initial reply filed by respondent No.1; and the joint reply filed by respondent Nos.2 and 3, it was contended that fixation of pay scale was purely an executive function, as principle of equal pay for equal work does not apply in the present case. It was further pleaded that though the post of Superintendent Grade – I and that Divisional Accounts Officer emanates from the post of Clerk, which is a feeder cadre, but line and channel of promotion is different, as the work and duties performed are also different. The Divisional Accounts Officer deals with the accounts section only, whereas Superintendent works in supervisory capacity in different branches and not restricted to accounts. The respondents, thus, defended

the impugned orders in not granting the grade pay of Superintendent Grade - I to the post of Divisional Accountant/Divisional Accounts Officer, i.e. the post held by the petitioner.

6. I have heard learned counsel for the parties and have appraised the record carefully.

7. In the order dated 11.05.2023, this Court observed that the pay scale attached to the post of Divisional Accounts Officer in comparison to the one attached to the post of Senior Assistant and that of Superintendent was as under:-

Dates	Senior Assistant	Divisional Accountant	Superintendent
Prior to 1.1.1986	570-1080	700-1200	620-1200 Gr.-II
01.01.1986	1500-2640	1640-3200	1800-3200
1993	1800-3200	2000-3500	2000-3500
Post of Superintendent Gr.-1 was created in the Corporation in 1996			
01.01.1996	5800-9200	6400-10640	6400-10640
01.01.2006	10300-34800 + GP 3800	10300-34800 + GP 4200	10300-34800 + GP 5000
01.12.2011	10300-34800 + GP 4400	10300-34800 + GP 4200	10300-34800 + GP 5400

It was noticed further in order dated 11.05.2023 that w.e.f. 01.12.2011, the pay of the petitioner, who was working as Divisional Accounts Officer after his promotion from the post of Senior Assistant, was reduced at a scale lower even to his feeder cadre of senior assistant, leave aside treating him at par with the Superintendent. It was noticed further that recommendations of respondent No.1-Corporation had been annulled by the Government of Punjab (*Annexures P-6 and P-9*) without any reasoning despite the fact that anomaly viz-a-viz the feeder cadre of Senior Assistant with that of the promotional cadre of Divisional Accounts Officer was written large. Therefore, the Secretary (Finance), Government of Punjab was asked to file his affidavit explaining the reasons behind Annexures P-6 and P-9.

8.1 Consequent to the aforesaid order dated 11.05.2023, the Secretary Finance, Department of Finance, Government of Punjab filed his affidavit dated 06.11.2023, as per which the post of Divisional Accountant as held by the petitioner was re-designated that Divisional Accounts Officer, a Group-B post in the meeting of Board of Directors of the Corporation held on 25.04.2005 and that as per terms and conditions of the change of the designation of Divisional Accountant to that of Divisional Accounts Officer, an undertaking was to be given by the Divisional Accountants, as per which they will neither claim any financial benefits/revision of pay scale nor any promotion to the post of Assistant Controller (Finance and Accounts) as in the Head Officer of the Corporation. Such undertaking was also given by the petitioner, the copy of which is Annexure R-1.

8.2 It was further submitted that w.e.f. 01.12.2011, pay scale for the post of Superintendent Grade-I in the Department of State of Punjab was revised to ₹15,600-39,100 + ₹5,400 grade pay and therefore, the petitioner, who was placed in the pay scale of ₹10,300-34,800 + ₹4,200 grade pay could not claim parity with the abovesaid pay scale of Superintendent Grade -1. It was further mentioned in the said affidavit that after implementation of the 6th Punjab Pay Commission, the pay scales granted in the year 2011 stood rationalized.

8.3 The affidavit dated 06.11.2023 further mentioned as under:-

“11. That, now after implementation of the 6th Punjab Pay Commission, the pay scales granted in the year 2011 stands rationalised. The Pay Commission in its report submitted on 30.04.2021, has clearly held that the anomalous situation which had arisen because of re-revision and enhancement of salaries ordered in the month of October, November and December, 2011 for numerous categories of Government employees, just after about two years of implementation of the recommendation of 5th Punjab Pay Commission was unprecedented in its scale and timing. Considering the same, the Pay Commission has made a conclusive finding in its report in its Para 5.3, which inter alia reads as here under:-

1) ‘.....The revision was discriminatory and lacked transparency. The revision benefitted only a select category of employees. The Minutes of the Cabinet Sub-Committee or the Cabinet Memoranda do not contain any criteria for selecting the categories of employees for re-revision of wages. From the procedure followed, it is not clear if all employees were even given an opportunity through a public notice or internal Government circular to submit their representations to the Cabinet Sub Committee. It is a case where equal opportunity was denied to all employees of the Government. In view of these recommendations of 6th Pay Commission, the midterm re-revision of pay scales done into 2011 has been duly looked into.

2) That now after implementing the recommendations of the 6th Punjab Pay Commission by the Government of Punjab, the anomalous situation which arose in 2011 has been removed.”

9. After noticing the abovesaid contents of the affidavit dated 06.11.2023 of the Secretary Finance, Department of Finance, Government of Punjab, this Court observed in its order dated 12.02.2024 that though it had been mentioned that after implementation of the recommendations of the 6th Pay Commission by the Government of Punjab, the anomalous situation which had arisen in 2011 had been removed, but no details have been given as to how the same had been removed viz-a-viz the case of the petitioner.

10. The State counsel sought time to clarify the above said query of the court and consequent thereto, additional affidavit dated 16.09.2024 by the Secretary Finance, Department of Finance, Government of Punjab, was filed, the relevant portion of which reads as under:-

“6. That, w.e.f. 01.12.2011, on the recommendations of Cabinet Sub Committee, the Pay Scales for the post of Senior Assistant and Superintendent Grade-I in the Departments of State of Punjab were revised to 10300-34800 + 4400 Grade Pay and 15600-39100 + 5400 Grade Pay respectively. It is pertinent to mention here that the pay scale of Divisional Accounts Officer was not revised, as there existed no such post in the Departments of Government of Punjab. Furthermore, the pay scales revisions of the year 2011 were limited to only a number of categories of posts in the Departments of Government of Punjab. Due to the above-said

revision of scales in the year 2011, the pay scale for the post of Superintendent Grade-1 became equivalent to the pay scale for the post of Assistant Controller (Finance and Accounts) as in the Head office of the Corporation. However, the petitioner had already submitted an undertaking (*Annexed as Annexure R-1 with the Affidavit filed on 06.11.2023*) in which he had duly accepted terms and conditions, whereby he will not claim any financial benefits of revision of pay scales and benefits pertaining to the post of Assistant Controller (Finance and Accounts) as in the Head office of the Corporation.

7. That, it is worthwhile to mention here that the channel of promotion and the cadre of both the posts (i.e. Divisional Accounts Officer and Superintendent Grade-1) are distinct from each other. Furthermore, the scale of Superintendent Grade-1 had always remained higher than the scale of Divisional Accountant/ Divisional Accounts officer. Comparison of the two posts, within the ambit of previously applicable pay scales is as under:-

Name of the post	Pay Scales		
	1/1/1996	1/1/2006	1/12/2011
Superintendent Grade-1	7220-11660	10300-34800 + 5000 Grade Pay	15600-39100 + 5400 Grade Pay
Divisional Accountant/Divisional Accounts Officer	6400-10640	10300-34800 + 4200 Grade Pay	No revision

Therefore, if the pay scale of Divisional Accounts Officer was equated to pay scale of Superintendent Grade-1, it would lead to the anomalies in other posts. Even the work profile, duties, responsibilities of both the posts are separate and the Divisional Accounts Officer cannot claim parity with the Pay Scale for the post of Superintendent Grade- 1 present in the Departments of State of Punjab.

8. That the instructions dated 23.05.2012 (Annexure P-10 as appended with writ petition) are clear that an anomalous situation is said to have arisen only in those cases, where on account of implementation of the recommendations of the Cabinet Sub Committee, the Pay Scales of the promotional post have become less as compared to the Pay Scales of the junior post, only such cases were to be considered by the Government. The post of Divisional Accountant/Divisional Accounts Officer is not a

promotional post of Senior Assistant in the Departments of Government of Punjab, and the next promotional post from Senior Assistant is Superintendent in the Government Departments, carrying the pay scale of 15600-39100 + 5400 w.e.f. 01.12.2011. Therefore, in view of these instructions dated 23.05.2012, advices dated 07.05.2014 (Annexure P-6 as appended with writ petition) and dated 29.02.2016 (Annexure P-9 as appended with writ petition) were duly issued. The Government had duly examined the said case of pay parity and it was found that if the scale of this one cadre (i.e. Divisional Accounts Officer) serving under the Corporation is modified, the same would have repercussions on various other numerous categories in various Departments of Government of Punjab.

9. That, now after implementation of the 6th Punjab Pay Commission, the pay scales granted in the year 2011 stand rationalised. The Pay Commission in its report submitted on 30.04.2021, decided to treat the revision ordered in 2011 on the recommendations of the Cabinet Sub Committee as non-est for the purpose of determining the wage increase w.e.f. 01.01.2016. The recommendations of the new pay structure in 6th Punjab Pay Commission has been based on the scales of pay granted by the 5th Punjab Pay Commission. As per the recommendations of 6th Punjab Pay Commission, following matrix levels have been defined for the above-said categories of posts, removing the earlier anomaly of the pay scales therein –

Name of the post	Pay Scales recommended by 5 th Punjab Pay Commission and adopted by State Government vide notification dated 27 th May 2009.	Scale as per recommendations of a Cabinet Sub-Committee of the year 2011 w.e.f. 01.12.2011 (not drafted by a Pay Commission)	Pay Scales recommended by 6 th Punjab Pay Commission after rationalization and due approval of Cabinet and adopted by State Government vide notification dated 5 th July 2021.
Senior Assistant	10300-34800 + 3800 Grade Pay	10300-34800 + 4400 Grade Pay	38500 (Matrix Level 11)
Divisional Accounts Officer	10300-34800 + 4200 Grade Pay	No revision (remains same as per 5 th PPC)	43000/- (Matrix Level 12)
Superintendent Grade – 1	10300-34800 + 5000 Grade Pay	15600-39100 + 5400 Grade Pay	48700/- (Matrix Level 16)

Thus, as already mentioned above, the enhancement of salaries ordered in the month of October, November and December 2011 was unprecedented in its scale and timing. However, it is worth mentioning here that with the implementation of 6th Punjab Pay Commission, the concept of grade pay has been done away with (as elaborated in the table above). After the implementation of 6th Pay Commission and its adoption by the said Corporation, the pay of petitioner has been fixed in a higher matrix from Senior Assistant and below the Superintendent Grade -1 as has been in all earlier Pay Commissions: thereby invalidating the 211 Cabinet Sub-Committee recommendations and removal of earlier pay anomaly created thereto."

11. It is evident from the above-said affidavit dated 16.09.2024 of the Secretary Finance, Department of Finance, Government of Punjab that the 6th pay commission in its report submitted on 30.4.2021 has decided to treat the revision ordered in 2011 on the recommendation of Cabinets Sub Committee as non-est for the purpose of determining the wages increased w.e.f. 01.01.2016. It is further evident that recommendations of the new pay structure in the 6th Punjab Pay Commission is now based on the scale of pay granted by 5th Punjab Pay Commission.

12. The recommendations of 6th Punjab Pay Commission would reveal that the pay scale of the Senior Assistant has now been recommended to 38,500/- (Matrix level 11), whereas for Divisional Accounts Officer, i.e. the post held by the petitioner prior to his retirement, the same is 43,000/- (Matrix level 12), i.e. higher than the pay scale of Senior Assistant. As such, the grievance of the petitioner to the effect that the grade pay of Senior Assistant, i.e. feeder post was higher than that of promotional post of Divisional Accountant/ Divisional Accounts Officer w.e.f. 01.12.2011 has been treated as non-est; and thus, the higher pay scale in Matrix level-12 comparing to the post of Senior Assistant in Matrix level-11 has been granted to the Divisional Accounts Officer, as per the recommendations of the 6th Punjab Pay Commission and thus, the grievance of the petitioner regarding

the anomalous condition stands removed. As such, relief sought by the petitioner in this regard has become infructuous.

13. As far as the claim of the petitioner for grant of parity in pay scale with Superintendent Grade -1 is concerned, it has not merit. As has been pointed out by the respondents that though the feeder post for both the posts, i.e. Divisional Accounts Officer and the Superintendent Grade – 1 is the same, i.e. Senior Assistant/ clerk, but the channel of the promotion and cadre of both the posts are distinct from each other. Even their work profile, the duties and responsibilities for the two posts are separate and as such, the Divisional Accounts Officer cannot claim parity with the pay scale of the post of Superintendent Grade – 1, simply because at some point of time, the pay scale of the two posts was same.

14. Reliance in this regard can be placed upon ***“Union of India and others v. Hiranmoy Sen and others”, (2008) 1 Supreme Court Cases 630,*** wherein it was held by Hon’ble Supreme Court as under:-

“5. Learned counsel for the respondents submitted that the auditors and assistants have been historically treated on a par in the matter of pay scales. Although this fact has been denied by the appellant, we are of the opinion that even if it is correct, that will not be of any help to the respondents. To give an illustration, if post A and post B have been carrying the same pay scales, merely because the pay scale of post A has been increased that by itself cannot result in increase in the pay scale of post B to the same level. It is entirely on the Government and the authorities to fix the pay scales and to decide whether the pay scale of post B should be increased or not. The judiciary must exercise self-restraint and not encroach into the executive or legislative domain.”

15. Apart from above, it has been held by Hon’ble Supreme Court in ***“State of Madhya Pradesh Through Principal Secretary & Ors. v. Seema Sharma”, 2022(3) SCT 445*** as under: -

“23. The fixation of scales of pay is a matter of policy, with which the Courts can only interfere in exceptional cases where there is discrimination

between two sets of employees appointed by the same authority, in the same manner, where the eligibility criteria is the same and the duties are identical in every aspect.”

16. In view of the aforesaid legal position, it is held that simply because the post of Superintendent Grade – 1 and that of Divisional Accounts Officer have the same feeder post of Senior Assistant, that cannot be a reason to grant the same pay scale to both of them, as it is entirely for the Government and the Authorities to fix the pay scales and to decide whether the pay scale for one post should be equivalent to the other or different.

17. Consequent to above discussion, the present petition is hereby dismissed.

January 20, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No