

Khairati Lal Vs. State of Haryana

**In the Court of Jaswinder Singh, PCS, Civil Judge
(Jr. Division), Chandigarh.**

Civil Suit No:7344 of 14.03.2011
Computer I.D. No.36014C0040872011
Date of Decision: 07.01.2015

Khariti Lal son of Sh. Ram Lal, R/o House No.3059/2,
Ambala City.

.....Plaintiff.

Versus

1. State of Haryana through Secretary Transport Haryana,
Chandigarh.
2. The Director General Transport, Haryana, Chandigarh.
3. General Manager Haryana Roadways, Ambala.

.....Defendants.

Suit for declaration to the effect that plaintiff is entitled for step up of his pay after 1.1.1996 equivalent to his juniors from the date of his juniors pay was fixed higher to plaintiff, in compliance to the order of Hon'ble Supreme Court of India passed in SLP No.2644 of 2004 titled as State of Haryana Vs. Madan Gopal.

Suit for Mandatory injunction directing the defendants to step up his pay after 1.1.1996 equivalent to his juniors from the date his juniors were granted higher pay in compliance to the order of Hon'ble Supreme Court of India passed in SLP No.2644 of 2004 titled as State of Haryana

Khairati Lal Vs. State of Haryana

Vs. Madan Gopal and to pay the difference of pay and pensionary benefits alongwith interest at the rate of 12% per annum from the date of accrual of the same till its realisation.

Present: Sh. DR Kaith, counsel for the plaintiff.
Sh. Ram Tirath, Government pleader for defendants.

JUDGMENT

1. Instant suit was filed by the plaintiff against defendant seeking declaration and mandatory injunction and vide this judgment, I shall dispose of the same.

2. Brief facts as set up by the plaintiff in this case are that plaintiff joined under the defendants on 16.11.1970 as Helper. By dint of his hard work and good performance, plaintiff was promoted as Assistant Fitter on 1.3.1974, Fitter on 19.7.1979 and Mechanic on 6.4.1990. Plaintiff retired on superannuation on 28.2.2005. The persons, who were promoted from the post of Group-D to Group-C were not granted ACP scales as well as higher standard pay scale whereas ACP Grade and higher standard pay scale were granted to those Group-C employees, who were directly appointed to Group-C though they were juniors to those, who were promoted from Group-D to Group-C. In this way, pay of junior Mechanics was fixed higher to the seniors. Plaintiff

was given the pay scale of Rs.4000-100-4800/EB-100-6000 whereas his juniors were given the pay scale of Rs.5000-150-7100/EB-150-7850 w.e.f. 1.1.1996 or thereafter, while granting new pay scale. Madan Lal and other approached the Hon'ble High Court regarding this illegal action. Hon'ble High Court allowed the claim of Madan Gopal and others. The state of Haryana challenged the order of Hon'ble High Court before Hon'ble Supreme Court by way of SLP (civil) No.2644 titled as State of Haryana Vs. Madan Gopal and others, which was partly allowed by the Hon'ble Supreme Court. As per the directions given by the Hon'ble Supreme Court in said SLP, defendants are duty bound to grant the benefits to the plaintiff and re-fix the pay as per the directions of Hon'ble Supreme Court but defendants have not re-fixed the pay of plaintiff inspite of the fact that more than 4 years have passed. The seniority list of Mechanic is prepared at State level and are entitled for further promotion as per their seniority list. As per the seniority, Ashok Kumar son of Sikander Paul of Chandigarh depot is junior to the plaintiff because Ashok Kumar joined as Fitter on 16.11.1982 and promoted as Mechanic on 12.11.1996 whereas plaintiff was promoted as Fitter on 19.7.1979 and Mechanic on 6.4.1990. Similarly,

Khairati Lal Vs. State of Haryana

Ram Chander son of Chandan Ram of Chandigarh Depot was promoted as Fitter on 2.2.1981 and Mechanic on 1.1.1996 , therefore, both these Mechanics were junior to the plaintiff and were granted the pay scales of Rs.5000-7850/- after 1.1.1996 whereas plaintiff was given the pay scale of Rs.4000-6000 w.e.f. 1.1.1996. In view of the judgement of Hon'ble Supreme Court of India, the pay of the plaintiff was also to be stepped up equivalent to his juniors w.e.f. 1.1.1996 or from the date juniors were granted higher pay and pay scale than to the plaintiff. The implementation of judgement of Hon'ble Supreme Court of India instructions dated 23.11.2006 and 6.2.2007 was issued by the State of Haryana but inspite of that defendants have not stepped up the pay of plaintiff equivalent to juniors w.e.f. 1.1.1996 or from the date juniors were granted higher pay. After passing of judgment of Hon'ble Supreme Court of India, Baldev Singh, Mechanic, Ram Singh Mechanic, Rafiq Mohmad Mechanic and others of Chandigarh Depot filed civil suits in the Court of Civil Judge (Sr. Division), Chandigarh for stepping up their pay equivalent to their juniors as per judgment of Hon'ble Supreme Court of India. After receiving the notices in the civil suits, defendants have stepped up their pay and now their

pay have also been re-fixed in the pay scale of Rs.5000-7850 w.e.f. 1.1.1996 but claim of plaintiff has not been considered at all till date which act on the part of defendants is illegal and against the law. In view of above facts, plaintiff is entitled for stepping up of his pay equivalent to his juniors w.e.f. 1.1.1996 and re-fixation of his pay and pension and pensionary benefits. Further, plaintiff is also entitled for arrears of difference of pay, pension and pensionary benefits alongwith interest from the date of accrual of the benefits till its realisation at the rate of 12% per annum. Plaintiff has requested defendants time and again lastly through representation dated 2.6.2009 but defendants failed to accept the claim of the plaintiff. As per letter dated 30.4.2010, defendant no.2 directed defendant no.3 to consider the case but till date nothing has been done. Plaintiff served a legal notice under Section 80 CPC dated 24.12.2010/5.1.2011 which was duly received by the defendants but inspite of expiry of notice period, the defendants failed to grant the benefits. Hence, the present suit.

3 Upon notice of the suit being served, defendants appeared through government pleader and filed their joint written statement taking preliminary objections that the

present suit is time barred. The alleged cause of action arose after notification dated 7.1.1998 providing for revision of pay scales accordingly the pay of plaintiff was revised and fixed in the new pay scale of Rs.4000-6000 in the year 1998. His grievance is that as per another notification of the same date 7.1.1998 providing for grant of ACP pay scales, his pay should have been fixed in the ACP pay scale of Rs.5000-7850, so after 1998 the suit is barred by limitation. Further, plaintiff also retired from service on 28.2.2005. The cause of action stopped recurring after retirement, so even after 28.2.2005, the suit is beyond 3 years and so barred by limitation.

On merits, it is admitted that ACP scale is not granted to an employee if he has been given promotion within the period of 10 year of service. ACP scale was granted by the government w.e.f. 1.1.1996 vide notification dated 7.1.1998. The object of ACP scale was to remove stagnation on a particular post, where there is no channel of promotion or the employee was not promoted for 10 years from his post of initial appointment. Plaintiff was appointed initially on the post of Helper on 16.11.1970, from that he was promoted to Assistant Fitter on 1.3.1974 (within 10 years) and from that to

Fitter on 19.7.1979 (within 10 years) and from Fitter to Mechanic on 6.4.1990. He retired from Government service on 28.2.2005, so it becomes clear that he was not eligible for ACP pay scale in view of having been promoted three times. Secondly, initially he was appointed on Group-D post of helper and from that promoted to Group- C post, so his pay scale as fixed w.e.f. 1.1.1996 was correct in the pay scale of 4000-6000. Plaintiff never raised any demand for stepping up his pay at par with that of alleged juniors. At this stage, when he has already retired from service on 28.2.2005, he can not say that injustice has been done to him. The claim of plaintiff is without any basis and also time barred. It is admitted that seniority list of Mechanics is prepared at state level. It is also admitted that Sh. Ashok Kumar and Sh. Ram Chander, Mechanics are junior to the plaintiff and are presently working at Chandigarh Depot. However, the plaintiff's case is different from that of the above named employees. Plaintiff was promoted from Group-D to Group -C, whereas above named employees were initially appointed to Group C post of Mechanic. It is admitted that instructions dated 23.11.2006 were issued by the government but these are not applicable to the case of plaintiff. Rest of the averments of plaint have been

denied and a prayer for dismissal of the suit was made.

4. From the pleadings of the parties, following issues were framed on 21.11.2011:-

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP
2. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP
3. Whether the present suit is time barred? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Relief.

No other issue was claimed or pressed or arose for consideration of this court.

5. In plaintiff evidence, plaintiff Khariti Lal himself stepped into witness box as PW-1 and tendered his duly sworn affidavit Ex.PW1/A wherein he reiterated the contents of his plaint. He further produced on record documents i.e. copies of instructions dated 23.11.2006 and 6.2.2007 as Ex.P-1 & Ex.P-2, copy of representation dated 2.6.2009 and letter dated 30.4.2010 as Ex.P-3 & Ex.P-4, copy of legal notice, postal receipts and acknowledgement as Ex.P-5 to Ex.P-9 and directions given by Hon'ble Supreme Court as Ex.P-10 & Ex.P-11.

Plaintiff also examined PW-2 Mr. Parkash Chand,

Clerk, O/O Haryana Roadways, Industrial Area, Phase-I, Chandigarh as PW-2, who produced the summoned record i.e. complete service book of Ashok Kumar son of Sikander Paul, Mechanic and service book of Ram Chander son of Sh. Chandan Ram Mechanic. Copies of same are Ex.P-12 and Ex.P-13. As per service book, the date of joining of Ashok Kumar is 16.11.1982 as Fitter and thereafter, he was promoted on 12.11.1996 as Mechanic. The pay scale of Ashok Kumar as on 1.1.96 was Rs.5000-7850/- and he was drawing salary of Rs.5150/-. Ashok Kumar was drawing pay of Rs.5300/- as on 1.1.1997. As per service book, the date of joining of Ram Chander is 1.4.1972 as Helper and thereafter, he was promoted on 1.4.74 as Assistant Fitter. Pay scale of Ram Chander as on 1.1.96 was Rs.4000-6000 and was drawing a salary of Rs.5100/-. Ram Chander was drawing a pay of Rs.5300/- as on 1.1.97. Ram Chander was promoted as Fitter on 20.2.81 and was promoted as Mechanic on 14.11.1996.

PW-3 Gurdev Singh, Cashier, Office of Haryana Roadways, Ambala produced the summoned record i.e. record pertaining to service book of plaintiff Khairiti Lal, the copy of same is Ex.P-14. As per service book, plaintiff joined service

on 3.11.70 as a Helper. He was promoted as Assistant Fitter on 1.3.1974 and then Fitter on 19.7.1979. Thereafter, he was promoted as Mechanic on 6.4.1990 and he retired as a Mechanic. He further deposed that it is correct that Ex.P-10 was passed by the Hon'ble Punjab and Haryana High Court. Ex.P-10 was filed by Dev Singh, Head Mechanic. Order Ex.P-10 has since been implemented vide order dated 19.8.11 by General Manager, Haryana Roadways, copy of which is Ex.P-11. He deposed that it is wrong that the post of Mechanic is not at depot level.

Thereafter, learned counsel for plaintiff closed evidence on behalf of plaintiff in affirmative.

6. On the other hand, defendants examined DW-1 Gurnek Singh, Cashier, O/O General Manager, Haryana Roadways, Ambala, who tendered his duly sworn affidavit Ex.DX in his examination in chief on 29.4.2013 and his cross examination was deferred but he did not appear for his cross examination, therefore, his statement cannot be looked into evidence being incomplete.

Thereafter, defendants examined Mukesh Yadav (inadvertently written as DW-1 be read as DW-2) Resident Section Officre, General Manager, Haryana Roadways,

Ambala, who tendered his duly sworn affidavit Ex.D1/A, wherein he reiterated the contents of written statement. He further produced on record copy of letter dated 18.2.08 as Ex.D-1.

Thereafter, learned Government pleader closed evidence on behalf of defendants.

7. No evidence in rebuttal was led by the plaintiff.

8. I have heard the learned counsel for the parties and have perused the case file as well as written arguments filed by learned counsel for plaintiff very carefully. My issue wise findings are as under:-

Issues no.1 & 2

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP

2. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP

9. Onus to prove these issues was upon the plaintiff. It is argued by learned counsel for the plaintiff that plaintiff joined on 16.1.1970 as a Helper i.e. Class-D employee and was promoted to the post of Assistant Fitter on 1.3.1974, Fitter on 17.7.1979 and Mechanic on 6.4.1990. Pay of Fitter and Mechanic was the same, therefore, no benefit in pay was given to plaintiff on his promotion to Mechanic. Pay scale of Mechanic was revised to Rs.4000-6000/- w.e.f. 1.1.1996.

Plaintiff remained stagnated after 17.7.1979, therefore, plaintiff was entitled to ACP Scale of Rs.5000-7850/- w.e.f. 1.1.1996 as per order dated 2.3.1998. It is further argued that subsequently it was interrupted by the Government that the employees who have got promotion from Group-D to Group-C and not within Group-C in higher pay Scale, they shall not be entitled because they have got promotion and up gradation in pay scale in their service and due to above interpretation, pay scale of plaintiff was revised to Rs.4000 – 6000/- only, whereas the pay of plaintiff was required to be stepped up equivalent to his juniors. Above act of defendants is against the law laid down by Hon'ble Apex Court in case titled as Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others 2007 (2) SCT 476 (Supreme Court).

10. On the other hand, learned Government pleader has argued that the object of ACP was to remove stagnation on a particular post where there was no channel of promotion and the employee was not promoted for 10 years from his post of initial appointment but the plaintiff was promoted from time to time. He was initially appointed to Group -D post of Helper and thereafter, promoted to Group -C, so his pay scale was

fixed w.e.f. 1.1.1996 and he was in correct pay scale of Rs.4000- 6000/-. As the plaintiff had already got three promotions, therefore, he is not entitled to relief claimed by him.

11. In this suit, plaintiff is claiming relief on the basis of the judgment of the Hon'ble Apex Court in case titled as **Commissioner and Secretary to Government of Haryana (Supra)**. In the above judgement, it was held by Hon'ble Apex Court that if the employees, who on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly.

12. In view of the law laid down in above judgment, it is clear that if the pay scale of Junior becomes higher than the pay scale of his senior after grant of ACP scale, the pay scale of senior has to be stepped up equal to the pay scale of junior from the date when the junior started getting higher pay scale. After passing of above judgment by Hon'ble Apex Court, State of Haryana enforced the directions contained in the same through instructions dated 23.11.2006 and 6.2.2007 (Ex.P-1 and Ex.P-2), but the benefit of above judgment was not given to the plaintiff. It is admitted fact that juniors of the plaintiff

got the ACP scale w.e.f. 1.1.1996 or thereafter but the pay scale of the plaintiff was not stepped up equal to the pay scale of his juniors. In these circumstances, this Court is of the considered opinion that in view of the law laid down by Hon'ble Apex Court in case titled as **Commissioner and Secretary to Government of Haryana (Supra)**, the plaintiff is also entitled for stepping up of his salary equal to his juniors from 1.1.1996 or from the date when the pay of his junior was fixed higher to the plaintiff and the defendants are liable to pay the difference of pay and pensionary benefits alongwith interest @ 9% per annum from the date of accrual of the same till the filing of the suit alongwith future interest @ 6% per annum from the date of filing of this suit till actual realisation. Hence, these issues are decided in favour of plaintiff and against the defendants.

Issues no.3

Whether the present suit is time barred? OPD

13. Onus to prove this issue was upon the defendants. It is argued by learned Government pleader that the present suit is barred by limitation as the cause of action arose after notification dated 7.1.1998 providing for revision of pay scales, so after 1998 the suit of plaintiff is barred by

limitation. Further, plaintiff also retired from service on 28.2.2005, so the cause of action stopped recurring after his retirement and the present suit is beyond three years from the date of retirement of the plaintiff. On the other hand, learned counsel for plaintiff argued that this suit is based upon the judgment of Hon'ble Apex Court, the benefit of which has been given by the defendants to various employees, so it is not barred by limitation. It was the statutory duty of the defendants to extend the benefits to the plaintiff. It is further agreed by learned counsel for plaintiff that the right of the plaintiff was created after notification dated 6.2.2007 and 2.6.2008 and thereafter, plaintiff made representation on 2.6.2009 but defendants have not passed any order on the same, so the present suit is not barred by limitation.

14. In case titled as **Nirmaljit Singh and others Vs. Punjab State Electricity Board 2008 (1) SCT 494 (P&H)**, wherein the benefit of judgment in case of similarly situated persons was sought as the benefit of the judgment was restricted to those, who approached the Court and it was contended that the claim of the petitioner was barred by limitation. In these circumstances, it was held by Hon'ble Punjab and Haryana High Court that question of

limitation would not arise because anomaly in pay scale is a recurring cause of action as in view of the order in case titled as **Smt. Om Pati Vs. State of Haryana and others 2007 (1) SCT 294 (P&H)**, concerned authorities are duty bound to implement judicial pronouncements not only qua those, who approached Court but in every case where similar situation is involved to avoid unnecessary rush in Courts and discourage apathy on part of bureaucracy.

15. In view of the law laid down in the above cited cases, this Court is of considered opinion that the cause of action of the plaintiff was recurring and thus, this suit is not barred by limitation. Hence, this issue is decided against the defendants and in favour of plaintiff.

Issue no.4

Whether the plaintiff has no cause of action to file the present suit? OPD

16. Onus to prove this issue is upon the defendants. During the disposal of issues no.1 to 3, it has already been observed by this Court that the plaintiff had a recurring cause of action and the defendants were duty bound to extend the benefits to the plaintiffs as per the law laid down by Hon'ble Apex Court in case titled as **Commissioner and Secretary to Government of Haryana (supra)**, so this Court is of

the considered opinion that the plaintiff was having a cause of action to file the present suit. Hence, this issue is decided against the defendants and in favour of plaintiff.

Relief

17. In view of my findings on above mentioned issues, the suit of the plaintiff is decreed with costs and it is declared that plaintiff is entitled for step up of his pay after 1.1.1996 equivalent to his juniors from the date, his juniors' pay was fixed higher to plaintiff and defendants are directed to step up his pay accordingly equivalent to his juniors and to pay the difference of pay and pensionary benefits alongwith interest at the rate of 9% per annum from the date of accrual of the same till the date of filing of this suit and future interest at the rate of 6% per annum from the date of filing of this suit till actual realisation. Decree sheet be prepared. File be consigned to the record room.

Pronounced.
07.01.2015

(Jaswinder Singh)
Civil Judge (Jr. Division),
Chandigarh