

Before Mukal Mudgal, C.J. Jasbir Singh & Hemant, Gupta, JJ.

STATE OF HARYANA AND ANOTHER,—Petitioners

versus

SANDEEP KUMAR,—Respondent

LPA No. 1367 of 2009

26th May, 2010

Constitution of India, 1950—Art. 226—Instructions dated 26th July, 1991 issued by State of Haryana—Petitioner working as Constable Computer Operator—Instructions provide higher scale to posts with minimum qualification matriculation and ITI certificate/polytechnic—High Court holding Computer Operators eligible to get higher pay scales noticing that when qualifications were prescribed for posts of Constable Computer Operator, none of I.T.Is in State was imparting training in computer education, hence, higher qualification of 10+2 and one year diploma from any recognized Computer Training Institute was prescribed—High Court declining relief of higher pay scales to Constable Drivers and Constable Fire Fighter—Revised higher pay scales for technical posts available only in those cases where besides possessing other minimum educational qualification candidates required to possess I.T.I./Polytechnic certificate except in case of Constable Computer Operator.

Held, that benefit to the Constables Computer Operator who were the petitioners in '**Ishwar Singh and others versus State of Haryana and another**' was given by taking note of a fact that to the similarly situated employees, the State had granted higher pay scale under orders passed by this Court, which had become final up to the Hon'ble Supreme Court. It was further noticed that when qualifications were prescribed for the posts of Constables Computer Operator, none of the I.T.Is in the State of Haryana was imparting training in computer education, on account of that fact, for this post, higher qualification of 10+2 and one year diploma from any recognized/reputed Computer Training Institute was prescribed. The aforesaid

judgment was based on the facts and circumstances of that case and an exception was carved out to the general rules that higher pay scales would be available only to those technical posts for which minimum qualification to enter in service was prescribed as matriculation with I.T.I./Polytechnic certificate.

(Para 11)

Further held, that as per instructions dated 26th July, 1991 revised pay scales for technical posts will be available only in those cases where besides possessing other minimum educational qualification, the candidates are required to possess I.T.I./Polytechnic certificate except in the case of Constables Computer Operator.

(Para 15)

Anil Rathee, Additional Advocate General, Haryana *for the Appellants*.

Namit Kumar, Advocate *for the respondent*.

JASBIR SINGH, J.

(1) The respondent in this appeal is working against the post of Constable Computer Operator. He filed CWP No. 19947 of 2008 to claim higher pay scale of Rs. 4000—6000 with effect from the date of his appointment in service on 19th June, 2002. The learned Single Judge of this Court allowed his prayer *vide* order dated 11th August, 2009.

(2) To grant relief to the petitioner, primary reliance was placed upon a Division Bench judgment of this Court in **Ishwar Singh and others versus State of Haryana and another** (CWP No. 15347 of 2006) decided on 25th March, 2008. To the contrary, the claim of the respondent was refuted by the appellant-State by placing reliance upon Division Bench judgment of this Court in **Lalit Kumar and others versus State of Haryana** (CWP No. 8745 of 2007) decided on 9th July, 2008, which did not find favour with the Court.

(3) The appellant-State has filed this appeal against the order passed in favour of the respondent. When the matter was taken up for hearing by a Division Bench of this Court on 9th December, 2009, following order was passed :—

"1. *Heard. Admitted.*

2. *The appellants are aggrieved by order of learned Single Judge which in turn is based on earlier Division Bench Judgment of this Court dated 25th March, 2008 in **Ishwar Singh and others versus State of Haryana and another** CWP No. 15347 of 2006, Annexure P-15. The respondent was appointed as Constables Computer Operator in the pay scale of Rs. 3050—85—4325-EB—100—5325. He, however, made claim for higher pay scale of Rs. 4000—6000 on the basis of Government instructions, providing for revision of pay scale of technical posts if the candidate possessed particular qualification including ITI Diploma after the Matriculation.*
3. *The claim was contested on behalf of the State by submitting that in absence of ITI Diploma, revised higher pay scale of technical posts could not be given to the respondent who was appointed to a lower pay scale.*
4. *Learned Single Judge allowed the claim, following the judgment, Annexure P-15.*
5. *Learned counsel for the State points out that even though in judgment, Annexure P-15, claim was held to be admissible, even to a person not having ITI qualification, the said claim was held not to be admissible in judgment, Annexure R-2 in **Lalit Kumar and others versus State of Haryana and others** CWP No. 8745 of 2007 decided on 9th July, 2008.*
6. *Learned counsel for the respondent/caveator submitted that there is no conflict in the judgment in **Ishwar Singh (supra)** as the petitioner therein was Constable Computer Operator as in the present case, while in the judgment in **Lalit Kumar (supra)**, the posts involved were non-technical.*
7. *Prima-facie, we find that there is conflict in the two judgments. Common issue raised in the two earlier judgments as well as in the present appeal is of applicability of instructions dated 26th July, 1991, Annexure P-3, in*

absence of ITI/Polytechnic qualification, for higher claim being admissible. It will be appropriate that the matter is placed before a larger Bench.

8. *Accordingly, the papers be placed before Hon'ble the Chief Justice for constitution of an appropriate Bench.*
9. *Pending further hearing, there will be stay of operation of the impugned order."*

It is how this Full Bench has been constituted.

(4) Before proceeding further, it is necessary for us to note down qualifications for some of the technical posts, which are relevant for the purpose of this litigation.

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| (1) <i>Draftsman:</i> | <i>Matriculation with either a diploma/certificate in draftsmanship from an industrial training institute or certificate/diploma in industrial drawing from ITI.</i> |
| (2) <i>Motor Mechanic</i> | <i>Matriculation with either a diploma certificate in Motor Mechanic trade from an ITI with minimum one year's work experience.</i> |
| (3) <i>Computer Operator</i> | <i>10+2 with one year diploma from any recognised or reputable computer training institute. Graduates should be given preference.</i> |
| (4) <i>Constable Driver:</i> | <i>Matriculation from a Board/ University recognized by Board of School Education, Haryana. However, for SC/ST category, the minimum educational qualification shall be 8th class pass.</i> |

- Experience:* *Candidate must hold driving licence to drive heavy motor vehicle which should be minimum three year old from the date of last day of submitting application form.*
- (5) *Constable Fire Fighters:* *Matriculation plus two years experience in fire fighting from Government/Local Body or Semi Government Organization or has undergone a course on fire fighting for a duration of at least 6 months."*

(5) As in the present case, in the case of **Ishwar Singh** (supra), the petitioner was working as a Constable Computer Operator, whereas in the case of **Lalit Kumar** (supra), the petitioners were working as Constables Driver and Constable Fire Fighters.

(6) It is necessary to mention here that the State of Haryana issued instructions on 26th July, 1991 (P3) to provide higher pay scales for the technical posts in various departments of State of Haryana. Relevant entry 40 in that regard reads thus :—

<i>Sr. No.</i>	<i>Name of post</i>	<i>Existing pay scale as on 1-5-1985</i>	<i>Modified scale of pay 1-5-1990</i>
40	<i>General recommendations regarding technical posts in various departments for which minimum educational qualification prescribed is matric with ITI certificate/ polytechnic</i>	<i>750—940 775—1025 800—1150 950—1400 950—1500</i>	<i>1200—4000</i>

(7) It is necessary to mention here that the above said pay scale has further been revised to Rs. 4000—6000.

(8) The instructions dated 26th July, 1991 were initially applied by the State of Haryana to the employees working in its departments other than the police department. Some of the Constables Computer Operators filed CWP No. 15535 of 1999, claiming relief of higher pay scale. A Division Bench of this Court vide judgment dated 12th September, 2002 (P5) held that the instructions mentioned above were general in nature and are also applicable to the employees working in the police department. It was further held that the Computer Operators were eligible to get higher pay scales of Rs. 1200—2040. As per admitted fact, the State of Haryana filed SLP No. 6402 of 2003 against that order, which was disposed of by the Hon'ble Supreme Court on 18th February, 2005, by passing the following order :—

“We find no reason to interfere with the order of the High Court. The Special Leave Petitions are dismissed.

However, we clarify that the benefit of pay scale given to the respondents will be effective from the dates of their appointment on the basis of their technical qualification, if it is later than 23th August, 1990, the date of the Notification”.

(9) It is an admitted fact that the appellant-State of Haryana had implemented the order mentioned above and gave benefit not only to the petitioners in CWP No. 15535 of 1999 but to many other persons working as Constables Computer Operator.

(10) In the case of **Ishwar Singh (supra)**, the petitioners therein were also working as Constable Computer Operator and were possessing qualification of 10+2 with one year diploma from a recognized/reputed Computer Training Institute. By taking note of separate qualifications prescribed for entry in technical posts and their entitlement to get higher pay scales, the Divisions Bench in **Ishwar Singh's case (supra)**, opined as under :—

“We are of the opinion that the order, Annexure P12 has been passed without any application of mind. In this writ petition the petitioners have specifically stated in para 12(iii) that in the year 1993, there was hardly any ITI in the State of Haryana which was imparting computer education. It has further been stated that in the relevant year, the students were getting diploma in computer training from recognized

Computer Training Institutes. In para (v) it has further been stated that other computer operators who were petitioners in Civil Writ Petition No. 15535 of 1999 (Annexure P7) have also obtained their diploma from the private institutions. The benefit of higher pay scale was granted to them under order of this Court as modified by Hon'ble the Supreme Court and that benefit has not been withdrawn from them. In reply to the facts mentioned in paras 2, 3 and 5 of the writ petition, very vague averments have been made. Even before us, the learned Counsel has failed to show any document to say that in the year 1993-1994, when the petitioners were selected, any Government run ITI was granting diploma in computer training. If that is so, merely because the petitioners have got diploma from a private institute, the benefit of higher pay scale cannot be withdrawn from them. The fact that Government run ITIs were not granting diploma in computer training becomes clear from document, Annexure P1 itself, wherein with regard to the Draftsman and Motor Mechanics it has been stated that the candidates are supposed to have diploma in the requisite trade from ITIs. As against this, for computer operators it was specifically stated that the conditions who have got diploma in computer training from any recognized or reputed institution were eligible for the post. If that is so, higher pay scale cannot be withdrawn from the petitioners on the ground that they have got their diploma from private institutions. Not only this, once the respondents have granted higher pay scale to other Constables Computer Operators, who were the petitioners in Civil Writ Petition No. 15535 of 1999 (Annexure P7) and most of them have also got diploma from the private institutions, it is not open to the respondents to withdraw higher pay scale from the petitioners. Otherwise also the order under challenge having been passed against the principles of natural justice, also deserves to be set aside. It is also brought to our notice that in Civil Writ Petition No. 7176 of 216, petitioner No. 1 and 4 who are similarly situated higher pay scale was granted to them, by the respondents,

during the pendency of that writ petition. In that event it is very surprising that how benefit can be withdrawn from the petitioners in this case.” (Emphasis supplied).

(11) It is apparent from the records that benefit to the Constables Computer Operator who were the petitioners in **Ishwar Singh’s case (supra)**, was given by taking note of a fact that to the similarly situated employees, the State had granted higher pay scale under orders passed by this Court, which had become final up to the Hon’ble Supreme Court. It was further noticed that when qualifications were prescribed for the posts of Constable Computer Operator, none of I.T.I.s in the State of Haryana was imparting training in computer education, on account of that fact, for this post, higher qualification of 10+2 and one year diploma from any recognized/reputed Computer Training Institute was prescribed. The aforesaid judgment was based on the facts and circumstances of that case and an exception was carved out to the general rules that the higher pay scales would be available only to those technical posts for which minimum qualification to enter in service was prescribed as matriculation with I.T.I./Polytechnic certificate.

(12) On the contrary in **Lalit Kumar’s case, (supra)**, the petitioners therein were working against the posts of Constables Driver and Constables Fire Fighter. As has been mentioned earlier, for entry in service against those posts, requirement of possessing I.T.I./Polytechnic certificate was not necessary. Taking note of the above said fact in **Lalit Kumar’s case (supra)**, a Division Bench of this Court observed as under ;—

*“Admittedly, the petitioners do not possess the qualification of ITI in all these writ petitions. It is apparent from the instructions, referred to above, that higher scale was available only for those posts for which, the minimum qualification was matric with ITI certificate/polytechnic. Similar matter came up for consideration before this Court in **Ram Karan and others versus State of Haryana and others (CWP No.10131 of 2007)**, decided on 13th May, 2008 and after considering the instructions, referred to above, it was observed thus :—*

“To claim above said relief, besides placing reliance upon letter dated July 26, 1991 (P5) counsel for the petitioner has sought support from judgments of this Court placed on record as Annexures P-7 and P-9.

So far as order dated December 1, 1993 (P-7) is concerned, it is not clear as to whether the petitioners therein were appointed on the basis of their having qualification of Matric with ITI or not. Similarly in judgment dated September 17, 2002 (P-9), it was not in dispute that the petitioners therein were appointed on the basis of their possessing qualification of Matric with ITI certificate.

So far as the present case is concerned, there is nothing on record to show that the petitioners were taken in service by taking note of their qualification of Matric with ITI certificate. At the time when they entered service with the respondents, requisite qualification for the post of Helper was only that the candidate can read and write Hindi language."

(13) By noting as above, relief was declined to the petitioners in that case because to claim higher pay scale, their case was not covered under the instructions dated 26th July, 1991 (P3).

(14) In view of the facts mentioned above, we do not see any contradiction so far as judgments in **Ishwar Singh's case (supra)** and **Lalit Kumar's case (supra)** are concerned.

(15) Therefore, as per instructions dated 26th July, 1991 (P3), revised higher pay scales for technical posts will be available only in those cases where besides possessing other minimum educational qualification, the candidates are required to possess I.T.I./Polytechnic certificate except in the case of Constables Computer Operator, in view of reasons mentioned earlier.

(16) Consequently we answer the reference to the Full Bench in the above terms. The petitioner shall be granted the benefit pursuant to this judgment within 8 weeks from today. This appeal stands dismissed. No order as to costs.