IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. of 2014

1. Jagbir Singh s/o Sh Jawala Singh , Electrician Instructor presently posted at ITI Julana Distt. Jind .
2. Devender Kumar s/o Sh. Raghbir Singh ,Electrician Instructor presently posted at ITI Nissing Distt. Karnal

-------------------- Petitioners

VERSUS

1. Financial Commissioner cum Principal Secretary to Government of Haryana, Industrial Training Department, Haryana Civil Secretariat, Chandigarh.

2 The Director, Industrial Training Department Haryana, 30 Bays Building Sector-17, Chandigarh.

----------Respondents

Writ Petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction in the nature of Mandamus directing the respondents To grant the deemed date of appointment to the petitioners and benefit of seniority and notional pay fixation at par with the candidates/employees who have joined their services prior to the petitioners as per the merit list prepared at the time of selection pertaining to the advertisement dated 22.1.1988 (Ann. P-1)

AND

FURTHER issue a Writ in the nature of Certiorari for quashing the impugned action of the respondents in opening of Permanent Retirement Account Number (PRAN) instead of GPF account as applicable at the time of selection.

AND

To issue a writ of Mandamus ,directing the respondents to open the GPF account of the petitioners and apply the old pension rule applicable at the time of selection as the petitioners were given appointment against their merit number and compliance of various judgment passed by this Hon,ble High Court against the advertisement no. 22.1.1988 as the petitioners were permitted to join in May 2011, in compliance of the judgment passed by this Hon,ble High Court (Ann. P-3 ) against their merit number .

AND

Issue any other appropriate writ, order or direction as this Hon’ble Court may deem fit and proper in the peculiar facts and circumstances of the present case.

...

RESPECTFULLY SHOWETH:

1. That the petitioners are the permanent residents of State of Haryana and citizens of India and as such are entitled to invoke the extra ordinary writ jurisdiction of this Hon’ble Court under Article 226/227 of the Constitution of India.
2. .That petitioners applied for the post of Lineman Instructor in Vocational Education/ITI in response to the advertisement no 1/88 dt. 22.1.1988 issued by the then SSS Board Haryana , as many as total 25 posts of line men instructor were advertised and the petitioners applied for above said posts being fully eligible and were selected after proper procedure and petitioners were recommended for appointment by the SSS Board, even the petitioners were informed vide letters dated 26.5.1989 about their selection and recommended to the Govt. Department . A true copy of the advertisement dated 22.1.1988 and selection letter dated 26.5.1989 of the petitioner no.1 annexed as **Annexure P-1 and Annexure P-2 respectively.**
3. The petitioners were at Sr. no. 5 and 7 of the select list in general category on basis of their merit and despite recommendation by the Board they were not issued appointment letter in view of the stay order obtained by the adhoc /stop gap appointees from the Hon,ble High Court , who were holding the posts against which the petitioners were selected but four candidates who were placed at Sr. no. 1 to 4 in selection list were issued appointment letter and they were allowed to join in the department .
4. That after awaiting for a sufficient long period for the offer of appointment , the petitioners approached this Hon,ble Court by filing CWP No. 1249 of 1993 which was decided on dt. 14.5.2010 and Hon,ble High Court directed to the State of Haryana to consider the petitioners for appointment , State of Haryana filed the appeal (LPA ) No. 1517 of 2010 against the order passed by the Hon,ble Signal Bench which was also dismissed vide order dt. 10 .2. 2011. A true copy of the order dated 14.5.2010 passed by the Hon,ble Singal Banch and order dated 10.2.2011 passed by the Hon,ble Division Banch in LPA filled by the State of Haryana against the order dated 14.5.2010 annexed as **Annexure P-3 and Annexure P-4 respectively.**
5. That while deciding the L.P.A. filed by the State of Haryana, Hon,ble Division Bench of High Court in its order dated 10.2.2011 (Ann. P-4 ) also discussed and followed the directions given by the Hon,ble Supreme Court while adjudicating this issue in similar cases in SLP No. 18354 of 1991 , one such direction given by the Hon,ble Supreme Court is reproduced below:-

“ The seniority of these persons who have been recommended by the SSS Board shall be reckoned in the order in which they had been assigned ranks by the S S S Board “.

Instead of such a clear and categorical direction issued by the Hon,ble Supreme Court in similar matters involving exactly similar controversy, the petitioners were allowed to be joined as fresh candidates /appointees by the respondents /department, whereas as per the above said direction s of Hon,ble Supreme Court and followed by this Hon,ble Court in above said LPA , the petitioners were entitled to be joined with a deem date of appointment at par with the candidate /employees of the same select list who were allowed to join at prior dates then the petitioners and further the petitioners were to be given all other consequential benefits arising out of it, such as notional pay fixation , seniority as per their merit list in original select list issued by the SSS Board and the old pension rules should have been made applicable to the petitioners i.e. the Pension Rules in vogue at the time when the original select list was issued or some candidates of that select list were allowed to joined prior to the petitioners.

1. That respondents after finding the petitioners entitled for the appointment as per their merit number ,issued the appointment letters dated 24.5.2011 .The petitioners after conducting medical examination meant for the first entry in to Govt. service .joined with the department on 30.5.2011. A true copy of the appointment letter dated 24.5.2011 of the petitioner no.1 is annexed as **Annexure P-5.**
2. That petitioners after joining the duties, gone through the terms and conditions of the appointment letter, which shows appointment on the post of Electrician Instructor in the Grade of Rs. 9300+3200 plus usual allowance from the date of joining the duty and further mentioned in terms and condition no.( xii) of the appointment letter that your seniority will be fixed in accordance with rules and instructions on the subject. But in the terms and conditions of appointment letters of the petitioners, no where mentioned that their service will be governed under the New Pension Scheme- 2006 of the Haryana Govt. and the petitioners remained under the impression that they were governed by old service rule and old pension scheme is applicable to them whereas after some time , department opened the Permanent Retirement Account Number (PRAN) of the petitioners according to the new pension schemewhich is applicable w.e.f. 1.1.2006 instead of not opening the GPF account as applicable at the time of their selection .Thereafter the petitioners submitted an application dated 4.9.2011 to the respondent no 2 for opening the GPF account as per the prevailing pension scheme at the time of candidates /employees from the same merit list were allowed to join and to grant deemed date of appointment to the petitioners as that has been given to other appointed candidates in pursuance of the same selection process, said application of the petitioners is still pending no action has been taken till date.

8 In this regard, the petitioners represented to the department many times praying for open the GPF account which they are entitled for the pension and other matters as per the rules prevailing at that point of time and according the old service rules which were prevail at the time of petitioner’s selection but this prayer has not yet been considered by the department. .

9 That the petitioners are entitled to grant of deemed date of appointment as that has been given to other appointed candidates in pursuance of the same selection process and same selection list and grant of the benefit of seniority and notional pay fixation at par with the candidates/employees who have joined their services prior to the petitioners as per the merit list prepared at the time of selection pertaining to the advertisement no. dated 22.1.1988. (Ann.P-1)

10 That since the appointment of the petitioners was made against their merit number in pursuant to the selection list dated 25.1.1989,so in any eventuality ,the petitioners can not be denied for the benefit either of pay or pension and other service benefits as the similar situated candidates as per the merit are already having their GPF accounts as per the rules prevailing at that point of time i.e. at the time of selection . It is held by the Hon,ble Court in similar cases in CWP no. 7703 of 2009 titled as Bir Singh and Others v/s State of Haryana , “ involving same issue that the pay of the petitioners would be notionally fixed from the date they have been assigned seniority . No arrear shall be paid from the date of seniority to the date of appointment. However ,the arrear from the date of appointment onwards on the basis of notional fixation of pay shall be paid. “ A true typed Copy of the said judgment dated 7.9.2011 is attached herewith as **Annexure P- 6.**

11. That it is further necessary to mention here that in another case this Hon,ble Court in CWP no. 1600-7 cat of 2007were pleased to issue the direction for appointment to the petitioners on the post of Sub-Inspector subject to suitability in accordance with the rule, further directing to the respondents to grant deemed date of appointment to the petitioners as that has been given to other appointed candidate in pursuance of the same selection process, but the petitioners will not be entitled for arrears of salary .However, such deemed date of appointment shall be taken into consideration for seniority and other consequential benefits etc.

12. That it is settled proposition of law that once the appointment is made strictly on the merit basis ,an employee cannot be discriminated only on the ground that he could not be issued appointment letter on the ground that he could not be issued appointment letter either due to pendency of the litigation or by adopting pick and choose method or due to the pendency of the litigation in that regard and on the other hand in that situation a condition which was not applicable over the candidates who have been selected in the same selection list ,cannot be made applicable over the present petition as even in the compelling circumstances when the petitioners have been issued the appointment letter after a long span .

13. That imposition of the condition pertaining to the applicability of New Pension Scheme is unjust ,unfair ,illegal, arbitrary and discriminatory because the said selection was made way back in the year 1989 and admittedly the petitioners are permitted to join againsttheir merit number in the same selection list, whereas ,the new pension scheme is made applicable with effect from 1.1.2006.

14. that it is settled law that the method of ‘No Work No Pay” will be applicable in the case of present petitioners but in none of the circumstances the petitioners can be denied for notional pay fixation at par with the similarly situated employees and who have been permitted to join at the time of declaration of selection and seniority as well became the controversy has already been decided by various judgment. passed by this Hon,ble Court as well as by the Hon,ble Apex court.

15. That as per the judgment passed by this Hon,ble Court, the petitioners cannot be deprived of the benefits of seniority, notional pay fixation and other consequential benefits as the similar benefits have already been granted to the other similarly situated employees who have been appointed from the same merit list/select list.

16**.** That the petitioners represented to the respondents many times in person or through representation to grant the benefit of seniority , pay fixation and to opening of GPF Account for pension but their genuine request not considered by the respondent . it is pertinent to mention here that when the grievances of the petitioners were not redressed by the department, ultimately, the petitioners got served upon a Legal Notice to the respondents on dated 20.5.2014 through their Counsel. but till today no response has been received from the respondents. A copy of the Legal Notice dated 20.5.2014 is attached herewith as **Annexure P- 7.**

17 . That the main questions of law arises for the kind consideration of this Hon’ble Court are as :-

1. Whether great manifest injustice has been done to petitioners ?
2. Whether the action of the respondents is arbitrary, illegal and violative of article 14 and 16 of the constitution of India ?
3. Whether the impugned action of the respondents is not opening of the GPF account, without assigning any reason is justified and legal
4. Where the case of the present petitioners is not covered with the rule/policies/schemes issued by the government of Haryana from time to time

18. That the petitioners has not earlier filed any such or similar writ petition either in this Hon’ble High Court or in the Hon’ble Supreme Court of India.

19. That the petitioners is not left with any other alternative remedy of appeal or revision except to approach this Hon’ble Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India.

It is, therefore, respectfully prayed that this Hon’ble Court may kindly be pleased to :-

(i) to Issue a Writ of Mandamus, directing the respondents to grant deemed date of appointment to the petitioners and benefit of seniority and notional pay fixation at par with the candidates/employees who have joined their services prior

to the petitioners as per the merit list prepared at the time of selection pertaining to the advertisement dated 22.1.1988 .

ii) further issue a Writ in the nature of Certiorari for quashing the impugned action of the respondents in opening of Permanent Retirement Account Number (PRAN) instead of GPF account as applicable at the time of selection.

iii) to issue a writ of Mandamus ,directing the respondents to open the GPF account of the petitioners and apply the old pension rule applicable at the time of selection as the petitioners were given appointment against their merit number and compliance of various judgment passed by this Hon,ble Court against the advertisement no. 22.1.1988 as the petitioners were permitted to join in May 2011, in compliance of the judgment passed by this Hon,ble Court against their merit number.

iv ) Issue any other appropriate writ, order or direction as this Hon’ble Court may deem fit and proper in the peculiar facts and circumstances of the present case.

v ) Filing of true typed copies and certified copies of Annexures P1- to P- 7 may kindly be dispensed with.

CHANDIGARH

DATED: Petitioners Through

( SURESH AHLAWAT)

ADVOCATE

Counsel for the Petitioners.

VERIFICATION:

Verified that the contents of the above writ petition from Para No. 1 to 16 and 18 & 19 are true and correct and is based on the information derived from the official record. Para No. 17 is legal and is believed to be true and correct being made on the advice of the Counsel. No part of it is false and nothing has been kept concealed therefrom.

CHANDIGARH

DATED: Petitioners

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO.\_\_\_\_\_\_ OF 2014

Devender Kumar and another ...Petitioners

Versus

State of Haryana & Ors. ...Respondents

Jagbir Singh s/o Sh Jawala Singh , Electrician Instructor presently posted at ITI Julana Distt. Jind .

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That deponent has gone through the contents of accompanying writ petition which are true and correct, the same be read as part and parcel of this affidavit for the sake of brevity.

2. That the deponent has not filed any such or similar petition for either before this Hon'ble Court or in the Hon'ble Apex Court of India.

CHANDIGARH

DATED: .9.2014

VERIFICATION:-

Verified that the contents of para 1 to 2 of my above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed therein.

CHANDIGARH

DATED: .9.2014

**LIST OF EVENTS**

* + 1. Haryana Subordinate Staff Selection Board ( S S S Board) advertised the 25 post of Lineman Instructor in Vocational Education/ITI and the petitioners applied for above said posts being fully eligible and were selected after proper procedure and petitioners were recommended for appointment by the SSS Board**, (P-1)**
    2. That even the petitioners were informed vide letters dated 26.5.1989 by the SSS Board about their selection and recommended to the Govt. Department . **( P-2)**

The petitioners were at Sr. no. 5 and 7 of the select list in general category on basis of their merit and despite recommendation by the Board they were not issued appointment letter in view of the stay order obtained by the adhoc /stop gap appointees from the Hon,ble High Court , who were holding the posts against which the petitioners were selected but four candidates who were placed at Sr. no. 1 to 4 in selection list were issued appointment letter and they were allowed to join in the department .

1993 That after awaiting for a sufficient long period for the offer of appointment , the petitioners approached this Hon,ble Court by filing CWP No. 1249 of 1993 which was decided on dt. 14.5.2010 and Hon,ble High Court directed to the State of Haryana to consider the petitioners for appointment , State of Haryana filed the appeal (LPA ) No. 1517 of 2010 against the order passed by the Hon,ble Signal Bench which was also dismissed vide order dt. 10 .2. 2011**. (P -3 and P-4)**

* + 1. That respondents after finding the petitioners entitled for the appointment as per their merit number ,issued the appointment letters dated 24.5.2011 .The petitioners after conducting medical examination meant for the first entry in to Govt. service .joined with the respondent in the month of May-2011 as fresh appointees where as petitioners were entitled to grant deemed date of appointment as that has been given to other appointed candidates in pursuance of the same selection process and were entitled to grant the benefit of seniority and notional pay fixation at par with the candidates /employees who have joined their services prior to the petitioners as per the merit list prepared at the time of selection pertaining to the advertisement dated 22.1.1988.
    2. That the petitioners have submitted application to the respondents for granting them deemed date of appointment as that has been given to other appointed candidates in pursuance of the same selection process and also for opening the GPF Account as per the Pension Scheme at the time of said selection and as per the scheme of other candidates ,employees from the same merit list have been permitted but instead of opining of GPF Account, their permanent retirement account no. are being opened without deciding the application for opening of the GPF Account .By this action of the respondents the petitioners shall be discriminated from the pension scheme applicable for the candidates appointed from the same selection list.
    3. That the petitioners represented to the respondents many times in person or through representation to grant the benefit of seniority , notional pay fixation and to opening of GPF Account for pension but their genuine request not considered by the respondent . it is pertinent to mention here that when the grievances of the petitioners were not redressed by the department, ultimately, the petitioners got served upon a Legal Notice to the respondents on dated 20.5.2014 through their Counsel. but till today no response has been received from the respondents. ( **Annexure P- 7.)**

**Hence this petition.**

CHANDIGARH

DATED: SURESH AHLAWAT

ADVOCATE

Counsel for the Petitioners.

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.\_\_\_\_\_\_of 2014

Devender Kumar and other ...Petitioners

Versus

State of Haryana and another ... Respondents

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Note:

1. That the main law points involved in the writ petition contained in paragraph No. at page\_ \_\_\_\_.

2. Relevant Rules: ) The Constitution of India Articles 14,16

3 Similar case: CWP no.24271 of 2013 titled Balwinder Singh and

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CHANDIGARH (SURESH AHLAWAT)

ADVOCATE

DATE: 10.9.2014 COUNSEL FOR PETITIONERS