

**SUPREME COURT OF INDIA**

Punjab State Power Corporation Limited

Vs.

Rajesh Kumar Jindal

C.A.No.195-198 of 2019

(R.Banumathi and Indira Banerjee,JJ.,)

07.01.2019

**JUDGMENT**

**R.Banumathi,J.,**

SLP(C) No.35109-12 of 2012

1. Leave granted.

2. These appeals arise out of the judgment dated 23.02.2012 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No.264 of 2012 and Order dated 04.05.2012 in LPA 1607-LPA of 2012 dismissing the appeals and the order dated 04.05.2012 in review petition in RA No.LP-16 of 2012 dismissing the review filed by the appellant-Board by holding that the SLP(C) No.10896 of 2011 involving the same issue i.e. parity of pay scale is already pending before the Supreme Court.

3. The parity in the pay scales of two posts - Head Clerks and the Internal Auditors in Group XII of the Punjab State Electricity Board (PSEB) is the subject matter of the issue in these present appeals. Brief facts of the case are as under:-

The Punjab State Electricity Board (PSEB), in exercise of the power conferred under Section 79(c) of the Electricity (Supply) Act, 1948 framed "Punjab Public Works Departments (Electricity Branch) State Service Class-III (Subordinate Posts) Rules, 1958 (adopted by the Board) Amendment Regulations, 1975. The recruitment and conditions of service governing the Head Clerks was introduced on 11.09.1985 which is called the Punjab State Electricity Board Ministerial Services Class-III Regulations, 1985 providing for educational qualifications and minimum experience required for Head Clerks. Initially, the pay scale of Head Clerks was Rs.150-300 and the pay scale of Internal Auditors was Rs.130-240. The pay scale of Internal Auditors was revised to Rs.150-300 w.e.f. 01.08.1963. Head Clerks and Internal Auditors were getting same pay scale of Rs.225-500 from 01.06.1967 and Rs.620-1200 from 01.01.1978. From 21.03.1989, revised scale of pay of regular employees was issued by the PSEB, and w.e.f. 01.01.1986, the scale of pay of the Head Clerks and the Internal Auditors was revised to Rs.1640-2925.

4. Pay Anomaly Committee was constituted by the appellant- Board to review the anomalies in the pay scales of various cadre. That on the basis of the report of Pay Anomaly Committee, the pay scale of both the categories - Internal Auditors and Head Clerks have been improved vide office order No.223/Fin./PRC-1988 dated 03.10.1990. The Internal Auditors have been allowed the revised scale of Rs.1800-3200 w.e.f. 01.01.1986 considering that the posts of Internal Auditors are filled by 55% from direct recruitment and 45% by promotion. The Head Clerks have been allowed the pay scale of Rs.2000-3500 with effect from 01.01.1986 and thus linked the scale of Head Clerk with Superintendent Grade-II under State Government.

5. Aggrieved by the order dated 03.10.1990 issued by the appellant-Board and alleging disparity and violation of Article 14 of the Constitution of India, the respondents preferred Civil Writ Petition No.10117 of 1992 before the High Court of Punjab and Haryana at Chandigarh, contending that the Internal Auditors, Head Clerks as well as Sub Fire Officers belong to same group viz. Group XII and that Internal Auditors were always on par with the Head Clerks being the promotional post from the post of Circle Assistants/ARAs Group XII. It was averred that vide order dated 03.10.1990, the appellant-Board fixed the pay scale of the Internal Auditor at Rs.1800-3200 and of the Head Clerks at Rs.2000-3500 and thus disturbing the parity in the pay scales of two posts which were being maintained for more than two decades. According to the respondents, the pay scale of Rs.1800-3200 had been given to the post of Circle Assistant from which the respondents were being promoted and there is no justification to give the same pay scale to the promotional post as well as feeder cadre. The said revision of pay scale was totally illogical and without any justification.

6. In the counter affidavit filed before the High Court, the appellant-Board contended that though the posts of Head Clerks and Internal Auditors are categorised in Group XII, that cannot be the reason for claiming parity of pay scale. It was averred that the manner of recruitment, nature of duties and responsibilities of both the cadres are entirely different and respondents cannot claim parity of scale of pay. As per PSEB Ministerial Services Class-III Regulations, 1975, the post of Head Clerk is a promotional post and is generally available to the employees after completion of twenty- five years of service; whereas in the case of Internal Auditors, they are partly recruited directly from the market to the extent of 55% and balance 45% from Circle Assistants/ARAs after obtaining option for the purpose. According to the Board, on promotion the Circle Assistant/ARA are also eligible to opt for the cadre of Head Clerk and they cannot contend that they have not been given any opportunity for the post of Head Clerk. It is averred that the exercise of option to go in the channel of cadre of Internal Auditor is a 'preferred option' because of the promotional avenues with higher scales of pay. In view of this position, the Pay Anomaly Committee did not accept the demand of Internal Auditors to give parity with Head Clerks in the matter of pay scale.

7. Sub Fire Officers which is categorised in Group XII approached the High Court by way of Civil Writ Petition No.9294 of 1993 seeking parity in pay scale as that of the Head Clerks and Internal Auditors on the ground that they are included in the same group viz., Group XII. The learned Single Judge vide judgment dated 21.01.2010 allowed the CWP No.9294 of 1993 filed by the Sub Fire Officers by holding that till some point of time, persons working as Head Clerks, Head Clerk-cum-Divisional Accountants and Internal Auditors were given same scale of pay and

therefore, parity of scale of pay cannot be denied to the Sub Fire Officers when the scales were increased for other three classes of persons within Group XII.

8. Against the order dated 21.01.2010 in CWP No.9294 of 1993, the appellant-Board preferred LPA No.713 of 2010 which came to be dismissed by the judgment dated 28.09.2010. Aggrieved by the judgment dated 28.09.2010, the appellant preferred SLP(C) No.10896 of 2011 before this Court wherein, notice was issued and the same was pending for consideration before this Court.

9. The learned Single Judge of the High Court by its order dated 11.11.2011 allowed the Civil Writ Petition No.10117 of 1992 filed by the respondents-Internal Auditors claiming parity of pay scale with the Head Clerks on the erroneous assumption that the respondents are Sub Fire Officers or similarly situated as Sub Fire Officers who are seeking parity of wages with other persons. The learned Single Judge relying on the judgment in CWP No.9294 of 1993 dated 21.01.2010 allowed the writ petition without going into the merits of the contention of either of the parties. Appeal (LPA No.713 of 2010) preferred by the appellant-Board also came to be dismissed on the ground that SLP (C) No.10896 of 2011 is pending before the Supreme Court.

10. In these appeals, we are concerned with the question of parity of pay scale between the Head Clerks and the Internal Auditors. Though various contentious issues arose for determination between the parties, learned Single Judge as well as the Division Bench of the High Court proceeded under the erroneous footing as if the respondents are placed on par with Sub Fire Officer and held that the issue is covered by the judgment in CWP No.9294 of 1993 and that the issue is pending before the Supreme Court in SLP(C) No.10896 of 2011. Since the writ petition was filed way back in the year 1992 and the lis is pending between the parties for more than twenty-six years, we have proceeded to consider the matter on merits without remitting the matter back to the High Court. We have heard the parties at length.

11. We have heard Mr. Nidhesh Gupta, learned Senior counsel appearing for appellant-Board at length and Mr. Saravpreet Singh, learned counsel appearing for the respondents. The learned Senior counsel Mr. Nidhesh Gupta has inter alia made the following submissions:-

- Appellant-Board is competent to revise the pay scales in terms of Regulation 3(g) of Punjab State Electricity Board (Revised Pay) Regulations, 1988 in relation to any post specified in Column No.2 of the Schedule.
- Internal Auditors who have been directly recruited as Internal Auditors against an open advertisement have consciously applied for the post in the pay scale of Rs.1800-3200 cannot raise a plea that they will have to be placed on par with Head Clerks.
- Promotional avenues available to the Internal Auditors are far more in comparison to the promotional avenues which are available to the Head Clerks; the pay scales which are available in the promotional position are sharply higher compared to the Head Clerks and exercise of option as Internal Auditor is a “preferred option”.

- Internal Auditors cannot claim parity with Head Clerks on the premise that they are in Group XII; though there were only four cadre in the year 1988 in Group XII, seven more posts were added in Group XII by Finance Circular No.44/89 dated 15.06.1989. Thereafter, vide Finance Circular No.45/89 dated 26.06.1989, there were further increase of seven posts in Group XII and total fourteen posts were added to Group XII. For all these posts, mode of recruitment, qualifications, nature of duties and responsibilities are entirely different and merely because the posts are mentioned in one cadre, they cannot claim parity of scale of pay.
- If parity of pay scale is to be extended to the posts merely on the ground that they are categorised in one Group irrespective of the mode of recruitment, qualifications, nature of duties and responsibilities, it will lead to huge financial repercussion causing huge financial loss to PSEB which is a public service-oriented institution.

12. Learned counsel for the respondents Mr. Saravpreet Singh submitted that posts of Internal Auditors being in Group XII, who were on par with Head Clerks should be given parity of pay scale as that of Head Clerks, irrespective of the promotional avenues available to the Internal Auditors. It was submitted that the Internal Auditors were always treated on par with Head Clerks being the promotional post from the post of Circle Assistants/ARAs and when so, there was no justification to disturb the parity in the pay scales of two posts which were being maintained for quite some time. Contention of the respondents is that there was a parity of pay scales of the posts of Internal Auditors and Head Clerks for about two decades and while so, the order dated 03.10.1990 issued by the appellant-Board revising the pay scale of Head Clerks from Rs.1640-2925 to Rs.2000-3500 has disturbed the long-standing parity of pay scales of the posts of Head Clerks and the Internal Auditors. It is their contention that where the parity in the pay scales of two posts has been maintained over a period of time then, if the pay scale of one post is revised, the said pay scale is to be maintained for other post also and disturbing such parity would be arbitrary and violative of the Article 14 and Article 16 of the Constitution of India. Much arguments were advanced on the retrospective operation of the order dated 03.10.1990 (w.e.f. 01.01.1986) contending that such retrospective operation has caused serious prejudice to the Internal Auditors who have been promoted between the year 1986 to 1990.

13. In the light of the submissions, several issues arise for determination inter alia are as under:-

- Whether the Internal Auditors are entitled to claim parity of pay scale with Head Clerks and Head Clerk-cum-Divisional Accountants irrespective of the nature of recruitment, qualifications and nature of duties and responsibilities?
- Can the Internal Auditors claim equity of pay scale, merely because they are in the same group (Class-XII) irrespective of the nature of work and the internal qualification for recruitment. In view of the promotional avenues available to the Internal Auditors and the high pay scales which are available in the promotional position, opting for Internal Auditors, is it not a “preferred option”?

- When there are about fourteen posts categorised in Group XII, can Internal Auditors claim parity of pay scale with the Head Clerks merely because they were categorised in Group XII?

14. Ordinarily, the courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission etc. The aggrieved employees claiming parity must establish that they are unjustly treated by arbitrary action or discriminated. In *Kshetriya Kisan Gramin Bank v. D.B. Sharma and Others*<sup>1</sup>, this Court held as under:-

“7. The next question that arises for consideration is, as to what extent the High Court would be justified in exercise of its extraordinary jurisdiction under Article 226 to interfere with the findings of an expert body like the Equation Committee. In *State of U.P and Others v. J.P. Chaurasia and Others*<sup>2</sup>, this Court unequivocally held that in the matter of equation of posts or equation of pay, the same should be left to the Executive Government, who can get it determined by expert bodies like the Pay Commission, and such expert body would be the best judge to evaluate the nature of duties and responsibilities of the posts and when such determination by a commission or committee is made, the court should normally accept it and should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration....”

15. In *S.C. Chandra and Others v. State of Jharkhand and Others*<sup>3</sup> this Court held as under:-

“33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd*<sup>4</sup>.

35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

36. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide *Govt. of W.B. v. Tarun K. Roy and Others*<sup>5</sup>.” The same view was reiterated in *Union Territory Administration, Chandigarh and Others v. Manju Mathur and Another*<sup>6</sup>; *State of Haryana and Others v. Charanjit Singh and Others*<sup>7</sup> and in *Hukum Chand Gupta v. Director General, Indian Council of Agricultural Research and Others*<sup>8</sup>.

16. Observing that granting parity in pay scales depends upon the comparative evaluation of job and equation of posts, in *Steel Authority of India Limited and Others v. Dibyendu Bhattacharya*<sup>9</sup>, this Court held as under:-

“30 the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.”

17. Mode of recruitment of Head Clerks and Internal Auditors and the qualifications:- In the light of the above principles, let us consider the claim of Internal Auditors claiming parity of pay scale with Head Clerks. The mode of appointment and the minimum educational and other qualifications and experience required for Head Clerk are as under:-

Sr. No.	Name of Post	Method of appointment	Minimum educational and other qualifications	Minimum Experience	Remarks
12	Head Clerk	By promotion from Circle Assistant/ARAs., who opt for promotion as Head Clerk	After having qualified Departmental A/Cs, Examination for Ministerial Establishment, If not already done or specially expected	Three year's service as Circle Assistant/ Asst. Revenue Accountant	-

18. Internal Auditors have been promoted from the Ministerial Cadre i.e. from the post of Circle Assistants/ARAs, who had opted for the post of Internal Auditor were to be allowed the scales in the Ministerial Cadre considering the post of UDC as induction post. The posts of Internal Auditors are filled by 55% from direct recruitment and 45% by promotion who have opted for promotion to come to the Revenue Cadre. The mode of appointment and the minimum educational and other qualifications and experience required for the post of Internal Auditor are as under:-

Sr. No.	Name of Post	Method of Appointment	Minimum Educational and other qualification	Minimum Experience	Remarks
6.	Internal Auditor	i) By direct appointment (55% of vacancies)  ii) By promotion from amongst ARAs/Circle Assistants who opt for	B.A. IInd class with Honours in Economics or Statistics or Commerce  OR B.Com IInd Class  OR Intermediate Cost and	Three year's service as Circle Assistant/AR A/JDC put together out of which as	-

		promotion as Internal Auditor (45% of vacancies)	Works Accountant or Intermediate Chartered Accountant.  After having qualified Departmental Accounts Examination for Ministerial Establishment, if not already done or specially exempted.	minimum of one year service shall be as Circle Assistant/ARA.	
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19. The pay scale prior to 01.08.1963 of Head Clerks was higher than the pay scale of Internal Auditors i.e. pay scale of Head Clerks was Rs.150-300 and pay scale of Internal Auditors was Rs.130-240. The pay scale of Internal Auditors was Rs.130-240 and it was subsequently revised to Rs.150-300 with effect from 01.08.1963 on par with the Head Clerks. The pay scales of Head Clerks and Internal Auditors remained intact upto the year-1986 revision. But the pay scale of Head Clerks was revised from Rs.1640-2925 to Rs.2000-3500 on the recommendation of the Pay Anomaly Committee formed by the Board to review the anomalies in the pay scales of 1986 revision linking the scale of Head Clerks with the Superintendent Grade-II under the State Government. As discussed infra, the pay scale of Internal Auditors was revised from Rs.1640-2925 to Rs.1800-3200 and after nine years of service to Rs.1880- 3300 i.e. scale of Revenue Accountant and after sixteen years of service Rs.2000-3500 as per Secretary (Finance) Office No.244 dated 15.02.1991 considering the post of Internal Auditor Order as induction post in the basic pay scale of Rs.1800-3200 for direct recruits.

20. Burden of proof on the person claiming parity of pay scale:-

Ordinarily, the scale of pay is fixed keeping in view the several factors i.e. (i) method of recruitment; (ii) level at which recruitment is made; (iii) the hierarchy of service in a given cadre;

(iv) minimum educational/technical qualifications required; (v) avenues of promotion; (vi) the nature of duties and responsibilities; and (vii) employer's capacity to pay, etc.

21. It is well settled that for considering the equation of posts and the issue of equivalence of posts, the following factors had been held to be determinative:-

(i) The nature and duties of a post;

(ii) The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;

(iii) The minimum qualifications, if any, prescribed for recruitment to the post; and

(iv) The salary of the post (vide *Union of India and Another v. P.K. Roy and Others*<sup>10</sup>).

22. After referring to P.K. Roy's case, this Court, in SAIL, held as under:-

“25. In *State of Maharashtra and Another v. Chandrakant Anant Kulkarni and Others*<sup>11</sup> and *Vice-Chancellor, L.N. Mithila University v. Dayanand Jha*<sup>12</sup>, a similar view has been reiterated observing that equal status and nature and responsibilities of the duties attached to the two posts have to be taken into consideration for equivalence of the post. Similar view has been reiterated in *E.P Royappa v. State of T.N. and Another*<sup>13</sup> and *Sub-Inspector Rooplal and Another v. Lt. Governor Through Chief Secretary, Delhi and Others*<sup>14</sup>, wherein this Court following the earlier judgment in P.K. Roy AIR 1968 SC 850 held that the salary of the post alone may not be a determining factor, the other three criterion should also be fulfilled.”

23. The burden of proof in establishing parity in pay scales and the nature of duties and responsibilities is on the person claiming such right. The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they

are entitled to parity of pay scales. After referring to number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court, in SAIL, held as under:-

“22. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of “equal pay for equal work” as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts.

The burden of establishing right and parity in employment is only on the person claiming such right. (Vide *U.P. State Sugar Corpn. Ltd. and Another v. Sant Raj Singh and Others*<sup>15</sup>, *Union of India and Another v. Mahajabeen Akhtar*<sup>16</sup>, *Union of India v. Dineshan K.K*<sup>17</sup>, *Union of India and Others v. Hiranmo Sen and Others*<sup>18</sup>, *Official Liquidator v. Dayanand and Others*<sup>19</sup>, *U.P SEB and Another v. Aziz Ahmad*<sup>20</sup> and *State of M.P and Others v. Ramesh Chandra Bajpai*<sup>21</sup>”).

24. Nature of duties and responsibilities of Head Clerks are different from the Internal Auditors:- The duties and nature of work of Head Clerks and Internal Auditors are entirely different. Head Clerk works under XEN, Drawing and Disbursement Officer and there is only one Head Clerk in the Division Office. Head Clerk is the Head of the establishment in the Divisional Office and total work of the establishment is under the control of the Head Clerk. The Head Clerk disburses the salaries and other payments of the Sub-divisions and Division Offices and also maintains the leave and other miscellaneous works for the Sub-divisions and the Division Offices and discharges administrative functions and thus, has more responsibilities. Per contra, Internal Auditor works under the control of Chief Auditor. Duty of the Internal Auditor is to audit the billing of the Revenue Department of the Sub-division Office which includes billing of domestic supply to large supply. Internal Auditors work in the Sub-division and there can be one or more Internal Auditors as per quantity of work.

25. It is thus well settled that it is the duty of an employee seeking parity of scale of pay to prove that the educational qualifications required for both the posts, mode of recruitment and the nature of work performed by them are one and the same. There are neither pleadings nor any material

produced by the respondents to prove that the nature of work performed by the Internal Auditors is similar with that of the Head Clerks. In the writ petition, respondents have claimed parity of pay scale only on the ground that they were categorised in Group XII along with the Head Clerks. Merely on the ground that the cadre of Internal Auditors are placed in Group XII along with the Head Clerks, cannot be a ground for seeking parity of pay scale.

26. Considering the differences in the nature of duties and responsibilities performed by the Head Clerks and Internal Auditors, Pay Anomaly Committee decided to allow the revised scale for Internal Auditor at Rs.1800-3200 with benefit of promotional increments and Rs.2000-3500 for Head Clerks. Merely because Internal Auditors are categorised in Group XII along with Head Clerks, the Internal Auditors cannot claim parity as the nature of duties and responsibilities of Internal Auditors are different from Head Clerks.

27. Report of the Pay Anomaly Committee:- The Pay Anomaly Committee was constituted by the appellant-Board vide its Office Order No.179/Fin./PRC-1988 dated 22.08.1989 to consider the pay anomalies of various categories of employees in the revised scale of pay w.e.f. 01.01.1986. Considering the post of Internal Auditors, the mode of recruitment (55% from direct recruitment and 45% by promotion from amongst ARAs/Circle Assistants), nature of work and the promotional avenues available to the Internal Auditors, the Pay Anomaly Committee took the view that Internal Auditors be allowed revised scale of pay of Rs.1800-3200. The relevant portion of the report of the Pay Anomaly Committee reads as under:-

“Revenue/Accounts Wing:

“Presently the posts of Internal Auditors are being filled up with 55% through direct recruitment and 45% by promotion from amongst A.R.As/Circle Assistants. As per promotional channel available for Revenue/Accounts Cadre in the PSEB, A.R.As/Circle Asstt are promoted either as Internal Auditor, Head Clerk or Head Office Asst. as per option available for them. Internal Auditors get promotion as Revenue Accountant and then finally as Revenue Supdt. On accounts side, A.R.As/Circle Asstt., after passing SAS Part-I Examination, may at their option, get promotion as Divisional Accountant. He can, however, opt immediately after passing the SAS Part-I Examination to come over as Revenue Accountants (which option shall be final). The Divisional Accountants get promotion as SAS Accountant which post is to be handled by SAS Parts-I & II passed personnels and involves higher duties and responsibilities. Since the Punjab Govt. has allowed revised scale of Rs.1800-3200 for Circle Assistants and Rs.2000-3500 for S.A.S. Accts. The Committee felt it necessary to devise promotional scale of I.A.s R.As and Revenue Suptt. between the revised scale allowed to Circle Assistants (Rs.1800-3200) and SAS Accountants (Rs.2000-3500). It has, therefore been decided by the Committee to allow the revised scale as under:-

Rs.1800-3200 with benefit of promotional increment(s) being higher post than that of Circle Asstt./Assistant Revenue Accountant as Circle Asstt./Assistant Revenue Accountants will get promotion as Internal Auditor in the same scale.

28. Considering the Pay Anomaly Committee Report 08/1990, appellant-Board revised the existing scale of pay of Internal Auditors from Rs.1640-2925 to Rs.1800-3200 with the benefit of promotional increment to Circle Assistants/ARAs on their promotion to the post of Internal Auditors. By the same order, the existing scale of pay of the post of Head Clerks was revised from Rs.1640-2925 to Rs.2000-3500.

29. Considering the grievances of its employees, second Pay Anomaly Committee was constituted vide Office Order No.48/ENG- 30(25) by the appellant-Board. PSEB Employees Federation raised the grievance about the disparity in the pay scale of Head Clerks and Internal Auditors. Considering the grievances, Pay Anomaly Committee took the view that having regard to the nature of duties and responsibilities attached to the posts and skill involved in the

performance of the job, the nature of duties of Head Clerks and the Internal Auditors and the promotional avenues available to them are entirely different and that there is no parity of the categories of Revenue Accountants/Divisional Accountants and Internal Auditors with the Head Clerks and that they cannot claim parity. The relevant portion of the report of Second Pay Anomaly Committee reads as under:-

“4.1 The Committee has reviewed the position with regard to the agenda put up to the Pay Anomaly Committee by the Secretary Pay Revision Committee and nature of duties of each category of employees, qualifications prescribed and time-bound scales allowed to direct recruitees where the recruitment through direct recruitment or by qualifying D.A.E. etc. and make its recommendations/observation as under:-

i) The Pay Anomaly Committee has already considered the representations of the employees and did not recommend any improvement in the scale of Divisional Accountant/Revenue Accountant and Internal Auditor, that there is no parity of these categories with Head Clerk as their nature of duties are different, promotional channel is different and the induction posts has been made for directly recruited 55% Internal Auditors and Revenue Accountants who have been deployed as Revenue Acctt; after they have passed SAS Part-I Examination. The Head Clerk is a promotional post/category and they are genially promoted after putting a long service of about twenty-five years in the Ministerial Cadre from the post of LDC/UDC, Circle Asstt;/A.R.A. etc. whereas the Divisional Accountants are posted when they qualify the D.A.E. of SAS Part-I. The

Divisional Accountants have also been allowed time-bound scales which is not available to the post of Head Clerk.

ii) On the promotion from Circle Asstt;/ARA to the post of H.O. Assistant & Internal Auditor in the same scale of Rs.1800-3200, benefit of promotional increments is available.

iii)

iv) In the Ministerial Cadre, the H.O. Cadre or amongst the Circle Asstt;/ARA who opt for the post of H.O. Assistant. The post of Head Clerk is filled up amongst the Circle Asstt;/ARAs who opt for the post of Head Clerk. The post of Internal Auditor is filled up 55% by direct recruitment and 45% amongst Circle Asstt;/ARAs who opt for the post of Internal Auditors.

v) The scale of H.O. Assistant and Head Clerks have been revised on the pattern of Punjab Govt; and these categories are traditionally linked with the State Govt; whereas the categories of Internal Auditors, Revenue Acctt; Divisional Accountants are exclusively PSEB categories.

vi) Nature of duties of the Head Clerk and the Internal Auditor/H.O. Assistant are not identical. So the Pay Anomaly Committee separated the scales considering the nature of duties and promotional channels etc;

5.1 The Committee is of the view that the option may be given to the employees who have been promoted between 01.01.1986 to 03.10.1990 (the date of office order vide which scale of Head Clerk revised) as H.O. Assistant & Internal Auditor for the post of Head Clerk, provided some vacancies are available in the cadre of Head Clerk. Till the vacancy is falling due, they will be H.O. Assistant or Internal Auditor, as the case may be, but on the appointment as Head Clerk they will be given the seniority as would have been if he would have exercised their option as Head Clerk in the first instance on promotion from Circle Asstt;/ARA. The financial implication would be nominal.

5.2 The Committee recommends that the scales already allowed by the Board on the recommendation of Pay Revision Committee and further improved on the recommendation of Pay Anomaly Committee may not be further improved otherwise this would create number of complications, demand from other categories for further revision of their pay scales also. The cases filed by the Divisional Accountant & Internal Auditors in the Punjab & Haryana High Court be defended by the Board on the basis of record and regulations of the Board [Underlining added].”

30. Internal Auditors cannot claim parity:- Grievance of the respondents is that there was a parity of pay scale of the posts of Internal Auditors and Head Clerks for about two decades and while so, the order dated 03.10.1990 revising the pay scale of Head Clerks from Rs.1640-2925 to Rs.2000-3500 has disturbed the long-standing parity of pay scales of the posts of Head Clerks and the Internal Auditors. It is their contention that where the employer has been maintaining parity in the pay scales of two posts over a period of time then, if the pay scale of one post is revised, the said parity of pay scale is to be maintained and disturbing such parity would be arbitrary and violative of the Article 14 and Article 16 of the Constitution of India.

31. Though the above arguments of the respondents appear to be attractive, when considered in the light of the well settled principles, we find no merit in the contention. Equation of posts and revision of pay scale is within the domain of the Government. The matter should be left to the discretion and expertise of the Pay Committee and the Government to take the decision on the scale of pay/revision of pay scale by considering the nature of duties and responsibilities. As pointed out earlier, the Pay Anomaly Committee has given elaborate reasons for revising the pay scales of the Head Clerks at Rs.2000-3500 and Internal Auditors at Rs.1800-3200. The conclusion arrived at by the experts/Pay Anomaly Committee are not susceptible to judicial review and the courts are not to interfere with the decision of the Government which is based on the opinion of the experts.

32. Conscious exercise of option to go as Internal Auditors:-

On behalf of the appellant-Board, the learned Senior counsel has drawn our attention to the various promotional avenues available to the Internal Auditors and the sharp rise in the scale of pay in such promotional position. The Circle Assistants had been asked to exercise their option to go in the channel of promotion of Head Clerks or in the channel of Internal Auditors. Those who have chosen the channel of Internal Auditors post on 03.10.1990 have consciously chosen to exercise the option of Internal Auditors being mindful of the fact that the pay scale of the Head Clerks is higher than that of Internal Auditors; yet they have chosen to exercise the option of Internal Auditors. Those who have exercised their option for the post of Internal Auditors post on

03.10.1990, in our considered view, cannot make a grievance about their revised scale of pay at Rs.1800-3200 which is not on par with the Head Clerks.

33. Likewise, the Internal Auditors who have been directly recruited as Internal Auditors, have consciously applied for the post of Internal Auditors in the scale of pay of Rs.1800-3200, cannot raise a plea claiming parity of pay scale as that of the Head Clerks, since they have been directly recruited as per advertisement against the post of Internal Auditors.

34. The grievance of the respondents is that since the order dated 03.10.1990 has been given retrospective effect w.e.f. 01.01.1986, those of them who have exercised their option as Internal Auditors between 01.01.1986 to 03.10.1990 are deprived of the parity of pay scale. It was further submitted that had such a disparity of pay scale between the Head Clerks and the Internal Auditors was in force from the year 1986 onwards, the Circle Assistants/ARAs would not have exercised their option for promotion as Internal Auditors and they might have chosen to exercise their option for promotion as Head Clerks. This contention though appears to be attractive, by consideration of the same, it lacks merit for more than one reason. As rightly submitted by the learned Senior counsel for the appellant- Board, exercise of option for promotion as Internal Auditor was a "conscious option". Further, it was always open to the appellant- Board to revise the scale of pay in terms of Regulation 3(g) of the Punjab State Electricity Board (Revised Pay) Regulations, 1988.

35. That apart, while recommending the different pay scales for Head Clerks and Internal Auditors, the Pay Anomaly Committee was conscious about those Circle Assistants/ARAs who have already exercised their option for promotion as Head Clerks between 01.01.1986 to 03.10.1990. The Pay Anomaly Committee in para (5.1) of its report expressed its view that the option may be given to the employees who have been promoted between 01.01.1986 to

03.10.1990 as Head Clerks and Internal Auditors for the post of Head Clerk, provided some vacancies are available in the cadre of Head Clerk. The Pay Anomaly Committee has also expressed its view that once they are appointed as Head Clerks, they will be given the seniority as would have been if they would have exercised their option as Head Clerks in the first instance on promotion from Circle Assistants/ARAs. The grievance of the respondents in this regard has been taken note by the Pay Anomaly Committee and as per its view in para (5.1), the same is redressed.

36. Promotional avenues available to the Internal Auditor- Promotional channels which are available against the post of Head Clerk, Internal Auditor and Senior Assistant are as under:-

<b>Head Clerk</b>	<b>Internal Auditor</b>	<b>Senior Assistant</b>
Circle Superintendent	1) Revenue Accountant	1) Superintendent Grade II
	2) Revenue Superintendent	2) Superintendent Grade I
	3) Accounts Officer*	3) Under Secretary
	4) Deputy Chief Accounts Officer*	4) Dy. Secretary
	5) Chief Accounts Officer*	
	*Subject to passing of SAS Part I and Part II Examination	

By perusal of the above, it is seen that the promotional avenues which are available to all the Internal Auditors are far more in comparison to the promotional avenues which are available to the Head Clerks. Therefore, for this reason also, option of Internal Auditors which has been exercised by the Internal Auditors was a "conscious option" exercised by them because of more promotional avenues may available in the channel of Internal Auditors.

37. That apart, the pay scales which are available in the promotional channel for Internal Auditors are also sharply higher than the Head Clerks. A Head Clerk on promotion to a Circle Superintendent receives one additional increment above the scale of Rs.10900- 34800 plus grade pay of Rs.5450 (i.e. available to a Head Clerk). However, in the Internal Auditors channel, further promotion as Accounts Officer will be in the pay scale of Rs.16650- 39100 plus grade pay of Rs.5800. Thereafter, on promotion as Deputy Chief Accounts Officer, he receives one further increment and the grade pay increases to Rs.8500. Thereafter, on further promotion as Chief Accounts Officer, he goes into the scale of Rs.41300-67000 plus grade pay of Rs.9600. Two senior-most Chief Accounts Officers are put in the scale equivalent to Chief Engineer i.e. Rs.41300-67000 plus grade pay of Rs.10500. From submission of the appellant-Board, we find that the increase in the pay scale is much higher on promotion against the post in the Internal Auditor promotional channel. Thus, for the said reason also, the choice of Internal Auditors made by all the persons (including those who have exercised the option between 01.01.1986 to 03.10.1990) is a reasoned choice keeping in view the greater promotional avenues and the higher pay scales which are available.

38. It is also relevant to note that insofar as the direct recruits are concerned, the direct recruited Internal Auditors are entitled to a time-bound promotional scale on completion of nine and sixteen years of service. Time-bound promotional scale of directly recruited Internal Auditors after regular service of nine years is Rs.1900-3300 (unrevised) and after completion of sixteen years of service is Rs.2000-3500 (unrevised). However, no such time-bound promotional scale is available to Head Clerks. Head Clerks are not directly recruited and their appointment as Head Clerk is by promotion only.

39. The only ground urged by respondents-Internal Auditors is that parity of pay scale between the Head Clerks and the Internal Auditors was maintained by the appellant-Board for more than two decades and while so, disturbing the parity is arbitrary and illegal. The Court has to keep in mind that a mere difference in service conditions, does not amount to discrimination. Unless there is complete identity between the two posts, they should not be treated as equivalent to claim parity of pay scale. No doubt, Internal Auditors were earlier placed in the same group namely Group XII; but educational qualifications for the post of Head Clerk and mode of recruitment are different. As submitted by the learned Senior Counsel for the appellant-Board, that in the year 1980, there were only four posts in Group XII but subsequently some posts were added to Group XII and the total fourteen posts which were added to Group XII are:- Punjabi Teacher, Drawing Teacher, Hindi Teacher, D.P.Ed. Teacher, Master/Mistress, Science Teacher, Security Inspector, Modeller Divisional Head Draftsman, Prosecuting Inspector (now Law Officer), Law Officer Grade II, Medical Assistant, Librarian and Fire Officer, etc. For all these posts, source and mode of recruitment, qualifications and nature of work are entirely different. If the contention of the Internal Auditors for claiming parity of pay scale with that of Head Clerks merely on the ground that the post of Internal Auditor was placed in Group XII, then if such parity of pay scale may have to be extended to all other posts, it would have huge financial implication on the finance of the Board which is a service-oriented institution owing to the consumers. As held in *Union of India and Another v. Manik Lal Banerjee* (2006) 9 SCC 643, “it is now a well settled principle of law that financial implication is a relevant factor for accepting the revision of pay.”

40. The learned Single Judge proceeded under the erroneous footing as if the case of Internal Auditors is covered by the case put forth by Sub Fire Officers. The learned Single Judge did not keep in view the counter statement filed by the appellant-Board before the High Court pointing out various distinguishing features of Internal Auditors and Head Clerks on account of which no parity could be granted to the Internal Auditors with the Head Clerks. The High

Court also did not keep in view that the Pay Anomaly Committee did consider the demand of Internal Auditors and had not accepted the demand in view of different nature of duties and various other relevant factors. The learned Single Judge erred in recording that the respondents were in the same category of “Sub Fire Officers” within the same group which have been decided by the earlier judgment dated 21.01.2010.

41. As discussed earlier, merely because various different posts have been categorized under Group XII, they cannot claim parity of pay scale as that of the Head Clerk. All the more so, when the Internal Auditors are appointed 55% by direct recruitment and 45% by promotion from Circle Assistant/Assistant Revenue Accountant. The High Court did not keep in view that the duties, nature of work and promotion channel of Head Clerks and Internal Auditors are entirely

different and that option to seek promotion apparently as Internal Auditors was the “conscious exercise of option”, the impugned judgment cannot be sustained and is liable to be set aside.

42. In the result, the impugned judgment dated 23.02.2012 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No.264 of 2012 and Order dated 04.05.2012 in the review petition are set aside and these appeals are allowed. No costs.

<sup>1</sup>(2001) 1 SCC 0353

<sup>4</sup>(2007) 1 SCC 0408

<sup>7</sup>(2006) 9 SCC 0321

<sup>10</sup>AIR 1968 SC 0850

<sup>13</sup>(1974) 4 SCC 0003

<sup>16</sup>(2008) 1 SCC 0368

<sup>19</sup>(2008) 10 SCC 0001

<sup>2</sup>(1989) 1 SCC 0121

<sup>5</sup>(2004) 1 SCC 0347

<sup>8</sup>(2012) 12 SCC 0666

<sup>11</sup>(1981) 4 SCC 0130

<sup>14</sup>(2000) 1 SCC 0644

<sup>17</sup>(2008) 1 SCC 0586

<sup>20</sup>(2009) 2 SCC 0606

<sup>3</sup>(2007) 8 SCC 0279

<sup>6</sup>(2011) 2 SCC 0452

<sup>9</sup>(2011) 11 SCC 0122

<sup>12</sup>(1986) 3 SCC 0007

<sup>15</sup>(2006) 9 SCC 0082

<sup>18</sup>(2008) 1 SCC 0630

<sup>21</sup>(2009) 13 SCC 0635