

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.7710 of 2019

Decided on: 4th August, 2026

Dalip Kumar and others

...Petitioners

versus

State of H.P. and another.

...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the petitioners:

**Mr. Naresh Kaul, Advocate vice
Mr. P.P. Chauhan, Advocate.**

For the respondents:

**Mr. Vishav Deep Sharma,
Additional Advocate General.**

Jiya Lal Bhardwaj, Judge(Oral)

By way of present petition, the petitioners have prayed
for the following substantive reliefs:-

- "a) *Quash the impugned action of the respondent department whereby they are not releasing scale of Rs. 10300-34800 + Rs. 3200/- Grade Pay on completion of two years of service in terms of notification issued by State Government on 27.09.2012 (**Annexure A-1**) and as clarified vide letter dated 30.01.2013 (**Annexure A-2**) and also not giving the pay scale of Rs. 10300-34800 + Rs. 3200/- Grade Pay to them from the date of initial appointment, being arbitrary, malafide and illegal;*
- b) *Direct the respondents to release the scale of Rs. 10300-34800 + Rs. 3200/- Grade Pay on completion of two years of service in terms of notification issued by State*

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

*Government on 27.09.2012 (**Annexure A-1**) and as clarified vide letter dated 30.01.2013 (**Annexure A-2**) and also to pay scale of Rs. 10300-34800 + Rs. 3200/- Grade Pay to them from the date of initial appointment alongwith arrears thereof with interest thereon @ 18% pa;"*

2. Shorn of unnecessary details, the key facts of the case are that the petitioners were appointed as Tabla Vadak from the year 1996 to 2004. The respondent Department was paying the pay scale, to the cadre of Tabla Vadak, of Rs.2000-4020 (as revised with effect from 01.01.1996), Rs.5910-20200+2400/- (as revised with effect from 01.01.2006). However, the Grade Pay was revised to Rs.2800/- with effect from 01.10.2012 in pursuance of revision made by the Punjab Government. It has been averred that the State Government of Himachal Pradesh does not have its own Pay Commission and solely dependent upon the Pay Commission set-up by the Government of Punjab and has always been accepting and implementing the pay scales given by the State of Punjab for corresponding or equivalent posts as per the understanding arrived at between the HP Government and its employees. As per letter dated 21.12.2011 (Annexure A-3), the pay scale of the post of Tabla Instructor/Player was revised from Rs. 4400-7000 (pre-revised) to Rs. 5910-20200+2800 Grade Pay with initial pay of Rs. 11170/- w.e.f 01.01.2006. Further revision of Rs.10300-34800+3200 Grade Pay with initial start of Rs.13500/- w.e.f. 01.12.2011 was granted.

The post of Tabla Vadak is equivalent to the post of Tabla Instructor. It has also been averred that as a matter of fact, there is no post of Tabla Instructor in existence in the State of Himachal Pradesh and the Tabla Vadaks are only discharging dual responsibility of Tabla Vadak as well as Tabla Instructors. No one has been appointed as Tabla Instructor in the State of HP. It has further been averred that one of the petitioners had made various representations to the respondent-Department as well as to other authorities to grant the pay scale of Rs. 10300-34800+Rs.3200 Grade Pay on completion of two years' of service, but without any fruitful results.

3. It has also been averred that the action on the part of the respondent-State is arbitrary, illegal, *ultra vires* and against the Articles 14, 16, 39 (d) of the Constitution of India, de hors the Rules and regulations and against the principle of natural justice. It is a settled principle of law that pay, pension, etc. are property of an employee under Article 300-A of the Constitution of India and the same cannot be withheld arbitrarily. The pay scale policy, Punjab pattern of pay scale revision was invariably followed and as per the long-standing practice, the same are being followed without any deviation till date, and hence, the petitioners are entitled to the same pay scale and as such, sought direction to the respondents to

release them the pay scale of Rs.10300-34800 +Rs. 3200 Grade Pay on completion of two years of service in terms of the Notification issued by the State government on 27.09.2012 (Annexure A-1).

4. The respondents filed reply to the petition and averred that the State of Himachal Pradesh is not bound to follow the Rules and regulations as are applicable to the employees of the State of Punjab or any other State, and if it has adopted the same Rules and regulations, it is not bound to follow every change brought in Rules and regulations in the other states. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **State of H.P. vs. P.D. Attri and others**, (1999) 3 SCC 217.

5. It has further been averred that as per the judgment passed by the Hon'ble Supreme Court in **Civil Appeal No. 9124 of 2014**, titled, **State of Himachal Pradesh and another vs. Tilak Raj**, it has been held that without going into the nature of work done by the persons working in different states and in different Departments belonging to different employees, one cannot jump to the conclusion that all these persons are doing similar type of job and are performing the same kind of responsibility. It has also been averred that the grant of pay scale is the prerogative of the Government, as has been held by the Hon'ble Supreme Court in **P.U. Joshi and others vs. Accountant General, Ahmedabad**

and others, (2003) 2 SCC 632 and other judgments and thus prayed for dismissal of the petition.

6. The petitioners did not controvert the pleas raised in the reply since no rejoinder was filed.

7. I have heard the learned counsel for the parties and also perused the record carefully.

8. The entire case set-up by the petitioners is on the basis of a letter dated 21.12.2011 (Annexure A-3) issued by the Government of Punjab, Department of Finance, wherein the Tabla Instructor/player has been granted the Grade Pay of Rs. 3200. As per the judgment rendered by the Hon'ble Supreme Court referred to above, more particularly, in **P.D. Attri's** case, (supra), it has been held that even if in the past, the State Government was following the pay scale as granted to the employees of Punjab Government, the employees in the State of Himachal Pradesh cannot claim parity on the basis of the past practice. It has been held that each State has its own individualistic way of governance under the Constitution and one State is not bound to follow the Rules and regulations applicable to the employees of the other state.

The relevant para of the judgment reads as under:-

"5. The case of the respondents is not based on any Constitutional or any other legal provisions when they claim parity with the posts similarly designated in the Punjab and

Haryana High Court and their pay-scales from the same date. They do not allege any violation of any Constitutional provision or any other provision of law. They say it is so because of "accepted policy and common practice" which, according to them, are undisputed. We do not think we can import such vague principles while interpreting the provisions of law. India is a union of States. Each State has its own individualistic way of governance under the Constitution. One State is not bound to follow the rules and regulations applicable to the employees of the other State or if it had adopted the same rules and regulations, it is not bound to follow every change brought in the rules and regulations in the other State. The question then arises before us is whether the State of Himachal Pradesh has to follow every change brought in the States of Punjab & Haryana in regard to the rules and regulations applicable to the employees in the States of Punjab and Haryana. The answer has to be in negative. No argument is needed for that as anyone having basic knowledge of the Constitution would not argue otherwise. True, the State as per "policy and practice" has been adopting the same pay scales for the employees of the High Court as sanctioned from time to time for the employees of the Punjab and Haryana High Court and it may even now follow to grant pay scales but is certainly not bound to follow. No law commands it to do so."

9. After passing the aforesaid judgment, the Hon'ble Supreme Court in **P.U. Joshi's** case (supra) has held that the questions relating to constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of

qualifications and other service conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State. Therefore, in view of the above, the Court can not equate the pay scales or grant the pay scales as granted to the employees working in the Punjab State.

10. The above view has consistently been followed by the Hon'ble Supreme Court as well as by this Court that the grant of pay scale and pay depends on many factors and even, it has been held that in case in one of the wing of the State Government, the employees were granted a particular pay scale holding the similar post, the employees in another Department of the State government cannot claim the same pay scale simply on the designation of the post. For the purpose of granting the pay scale and grade pay, many factors such as qualifications, mode of recruitment, duties, functions and responsibilities of the post have also to be seen. Reference in this regard is made to the judgment of Hon'ble Supreme Court in ***Union of India vs. Indian Navy Civilian Design Officers Association and another*** (2023) 19 SCC 482, relevant paragraph whereof reads as under:-

"17. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an

acceptable reason for pay differentiation. It is also well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the executive, and the courts or tribunals cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service."

11. Therefore, in view of the above pronouncements, this Court cannot grant the relief as claimed by the petitioners simply on the basis of the pay scale granted by the Punjab government.

12. Consequently, I do not find any merit in the present petition and same is accordingly dismissed. No order as to costs. Pending applications, if any, also stand disposed of.

4th August, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge