

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.8192 of 1995

Date of Decision: 01.07.2015

Sushil Kumari and others

....Petitioners

Versus

The State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. R.K. Malik, Sr. Advocate
with Ms. Rimple Sohi Kadyan, Advocate
for the petitioners.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The petitioners were working as J.B.T. Teachers in District Kurukshetra and their grievance in the previous writ petition was that the selection grade was admissible on total cadre strength but it was being granted on permanent strength alone. The petitioners approached this Court by way of filing **CWP No.11913 of 1992**, which was disposed of vide Order dated 12.05.1994 with a direction to the petitioners to file a representation and to the respondents to consider the same in accordance with law.

In compliance of the order passed by this Court on the representation made by the petitioners, the petitioners were granted selection grade w.e.f. 01.10.1973 i.e from the date it was due but a

condition was also imposed that the petitioners shall not be entitled to the arrears for the period of more than 38 months preceding the filing of the writ petition. Resultant thereupon, the petitioners approached the respondent-authorities with a plea that the condition of restricting the arrears for a period of 38 months is arbitrary and discriminatory as similarly situated employees were granted arrears for the total period. Some of the teachers were even granted selection grade w.e.f. 01.10.1974 and no such condition was ever imposed on them.

The present petition has been filed for quashing the impugned condition as the benefit of arrears have already been granted to other similarly situated employees and the condition has only been imposed in case of the petitioners, which is not only discriminatory but arbitrary, unfair, unjust and unconstitutional as well and the same is liable to be set aside.

Learned counsel for the petitioner submits that some of the persons even did not approach the Court but still, the respondent-department has granted arrears to them and that too without imposing any condition of 38 months like the case of the present petitioner. Learned counsel also submits that in case, the benefit is to be given then the date of filing of earlier petition should have been considered and the arrears of 38 months be calculated prior to filing of previous writ petition. Learned counsel further submits that it is a settled proposition of law that once a controversy has been settled by the Court or a decision has been taken by the State Government in principle that selection grade is admissible on the total cadre strength and not on permanent posts alone then the State should not impose any condition of 38 months. The petitioners are entitled to get selection grade w.e.f 01.10.1973 and the arrears have wrongly been restricted for 38 months without any justification.

Learned counsel for the respondent-State has raised a

preliminary objection that the petitioners have been granted selection grade in accordance with the Government instructions dated 24.06.1964. The said instructions were challenged by way of filing **CWP No.11913 of 1992** before this Court, wherein, the directions were issued to the respondent to decide the representation of the petitioners in accordance with law.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

The petitioners were granted selection grade w.e.f. 14.09.1994 in compliance of directions issued by this Court and the arrears were restricted up to 38 months prior to the filing of the writ petition. The said condition was imposed in view of decision in LPA No.135 of 1986.

Admittedly, the petitioners have been granted the selection grade on the basis of total cadre strength but their arrears have been restricted for the period of 38 months prior to the date of filing of the writ petition. The grievance of the petitioners is that the other similarly situated employees, who even did not approach this Court, have been granted the benefit of arrears of total period but the petitioners have only been granted the arrears for a period of 38 months preceding to the filing of writ petition. Learned counsel for the petitioners has placed on record the copy of orders passed by the respondent in some of the cases, where the condition of 38 months has not been imposed like the case of the present petitioners. The said orders are annexed as Annexures P-6, P-7 and P-8. This fact has also not been disputed by learned State counsel. The petitioners had earlier approached this Court by way of filing **CWP No.11913 of 1992** which was disposed of with a direction to the respondents to consider the claim of the petitioners for grant of selection grade and to decide the matter by passing a speaking order. The relevant portion of the order dated 12.05.1994 is

reproduced as under :-

“ Accordingly, it is directed that respondents No.2 shall consider the claim of the petitioners for the grant of selection grade in accordance with law. He would decide the matter by passing a speaking order. In case, the petitioners are found entitled to the grant of selection grade, the necessary arrears of salary etc. as may be admissible in accordance with law shall be released to them. The needful shall be done within four months from the date of receipt of a certified copy of this order.

This writ petition is disposed of. In the circumstance of the case, there will be no order as to costs.”

It is also not disputed that the claim of the petitioners was considered and they were granted selection grade but a condition was imposed that they will not be entitled to the arrears for the period of more than 38 months preceding to the filing of writ petition. It is also not disputed that the arrears of the other similarly situated employees were released when it became due as is clear from the orders dated 08.12.1989 (Annexure P-6), 11.03.1993 (Annexure P-7) and 07.07.1994 (Annexure P-8).

Under the similar circumstances in **CWP No.2143 of 1994**, the petitioners were allowed the selection grade on the basis of total strength but the arrears were restricted to 38 months only. In **LPA No.135 of 1986**, the arrears were restricted to three years and two months prior to filing of writ petition.

In the present case, initially the petitioners filed **CWP No.11913 of 1992** for the same relief but the said writ petition was disposed of vide order dated 12.05.1994 with a direction to the respondents to consider the claim of the petitioners and in case, the

petitioners were found entitled for the selection grade to grant the necessary arrears to them in accordance with law. Although, the petitioners were granted selection grade but their claim was restricted for a period of 38 months.

The present petition has been filed on the ground that the petitioners are entitled for arrears of the total period and the condition of 38 months has wrongly been imposed, whereas, no such condition has earlier been imposed in the case of other similarly situated employees. This condition is not only arbitrary and discriminatory but even unjust and the same is liable to be set aside. It is also a settled proposition of law that once an order has been passed by the respondent-authorities wherein the arrears are restricted for a period of 38 months, it cannot be a precedent while allowing or disallowing the claim of the petitioners, whereas, not only in LPA filed under similar circumstances but even in the order passed by the Division Bench, arrears have been restricted to the period of 38 months.

Since, the petitioners have approached this Court by way of filing **CWP No.11913 of 1992** for the same relief and on the basis of those directions, the selection grade has been granted but a condition has been imposed for grant of arrears for the period of 38 months prior to the date of filing the writ petition. No such condition was imposed in the order of disposal of writ petition. The respondent-department cannot adopt a pick and choose method. In some of the cases of similarly situated employees, no such condition has been imposed. Although the order passed by the respondent-authorities cannot be considered as a precedent but the date of filing the earlier writ petition i.e **CWP No.11913 of 1992** is to be considered. The said writ petition was disposed of on 12.05.1994.

Accordingly, the present petition is disposed of with a direction

to the respondents to grant the arrears by considering the date of filing the earlier writ petition i.e **CWP No.11913 of 1992**. The arrears be released to the petitioners within a period of three months from the date of receipt of certified copy of this order.

01.07.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE