

Sr.No.303

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

1. CWP-10269-2010(O&M)

Makhan Singh and othersPetitioners

vs.

State of Haryana and anotherRespondents

2. CWP-12673-1998(O&M)

Decided on:- 23.09.2015

Anil Bhatia and othersPetitioners

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr.D.S.Patwalia, Sr. Advocate
with Mr. Bikramjit Singh Patwalia, Advocate,
for the petitioners in CWP-10269-2010.
Mr. G.S.Bal, Sr. Advocate
with Mr. Sewa Singh and Ms. Manju Sharma, Advocates
for the petitioners in CWP-12673-1998.
Mr.Hitesh Pandit, Addl. AG, Haryana.

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Mahesh Grover, J

By this order, I will dispose of above-said two writ petitions bearing
CWP Nos.10269-2010 and 12673-1998 as they involve commonality of law
and facts.

All the petitioners herein were working as Instructors in the

Vocational Education Institutes (hereinafter for short 'VEIs') having the

qualification of Post Graduates i.e M.Com with 50% marks which were the prescribed requisite. The respondents re-designated the post of Instructors as Lecturers by virtue of the order dated 24.10.2007 to treat them in the same pay scale. On 11.06.2008, a notification was issued taking over the administrative control and assets of 31 VEIs and transferring them to the Education Department. Subsequent to this, vide orders dated 24.02.2009 and 15.04.2009, the services of the petitioners were sent to the School Education Department to form a separate cadre and a separate seniority list. For the purposes of references, relevant portion of the order transferring the services of the petitioners to the Education Department to retain a separate cadre and treating them on probation for a period of two years is extracted here below:

“5. All the staff being transferred from Industrial Training and Vocational Education Department to the School Education Department will continue to remain in separate cadres distinct from cadres of School Education Department even in case of similar subjects/duties.

xxx xxx xxx xxx xxx xxx xxx

8. They will remain to probation for a period of two years from the date of joining in the Department. The period of probation can be extended in accordance with the existing rules on the subject. For assessing their performance during the period of probation their work and conduct will be taken into consideration. If his/her work and conduct during the probation period is not found satisfactory

his/her services will be terminated without assessing any reason.”

The dispute centres around the disparity of pay admissible to the Lecturers of the Education Department and the ones admissible to the petitioners who were transferees into the Education Department from the Vocational Education Institutes. This action is perceived by them to be discriminatory on the ground that they possess the same qualification as Lecturers of the Education Department and perform similar duties rather more onerous ones than the ones being performed by the Lecturers of the School Education Department. According to the petitioners, the fundamental rules of parity of pay have to be determined with regard to the qualification and the nature of duties which being similar cannot result in a different pay structure for two sets of employees within the same institution.

In CWP-12673-1998 it has been specifically averred that virtually a common seniority list is being retained for effecting promotion the post of Vice Principal which fact has remained un-controverted in the reply.

The respondents do not deny the factual aspects of the petitioners working as Lecturers in the Vocational Education Institutes; their consequence merger (which they prefer to term as transfer) and the fact of their being in a separate cadre but plead difference in educational qualifications. Even though the reply would not sustain their argument in

Court.

In the reply, the Educational qualification for posts of Lecturer in School Education Department has been given out as follows:-

- “ i)M.A/M.Sc./M.Com with at least 50% marks from recognized University;
- ii) Certificate of having qualified School Teachers Eligibility Test (STET).
- iii)Hindi up to Matric”

The aforesaid is the very same qualification that the petitioners possess except the certificate of School Teachers Eligibility Test qua which it is stated that the same would be inapplicable to them as this prescription came subsequently in the year 2008.

Reliance has been placed on a judgment rendered by this Court in **CWP-6266-2010 titled Raghbir Singh and others v. State of Haryana and others** as also the decision rendered by the Hon'ble Supreme Court in **State of Haryana and another v. Ram Chander and another AIR 1997 SC 2468** where it was observed as under:-

“ It becomes, therefore, obvious that even though earlier in the State service Lecturers in higher secondary schools who were having first or second class degrees like M.A. 1st Class or 2nd Class were having higher pay scale of Rs.600-1100/- as compared to Trained Graduate Teachers who were having lesser pay scale of Rs.525-1050/-, they were now sought to be treated at par in so far as a uniform revised pay scale of

Rs.1640-2900/- was suggested for all of them. Thus so far as Lecturers in higher secondary schools were concerned, earlier distinction in the pay scales on the basis of first or second class Post Graduate Degrees was sought to be done away with and these Lecturers were to be treated at par with Post Graduate Teachers of Central Government. When we turn to column 2 of Entry 3 we find that under Central Government Post Graduate Teachers were all given a uniform hike in pay scale of Rs.1640-2900/- meaning thereby the distinction between Post Graduate Teachers having 2nd class or 1st class M.A. Degree and those having a Pass Class Post Graduate Degree was given a go by and it is this uniform hike in pay scale which was recommended for acceptance of the State Government by the Pay Revision Committee. It is of course true, as submitted by learned counsel for appellants, that these recommendations were not necessarily binding on the State authorities and it was open to them to suitably modify the pay scale which could be revised for different categories of employees in their discretion. Even though that is so When we turn to the Revised Pay Rules themselves we find that the appellants in their own discretion and wisdom have accepted the aforesaid recommendations of the Pay Revision Committee and have done away with the difference between the pay scales of 1st Class or 2nd Class Post Graduate Degree holder Lecturers in higher secondary schools and the Pass Class Post Graduate Degree holder Lecturers in higher secondary schools wherever they may be working and teaching standard 11 and 12 students. It has to be kept in view

that both these classes of teachers have a common employer, State of Haryana. Respondents may be working as Teachers teaching higher secondary students of Class 11 and 12 in technical institutes while their counterparts who are styled as Lecturers may be teaching similar class of students in standard 11 and 12 in higher secondary schools. Both of them, therefore, must be treated to be on par and were in fact treated to be on par by the appellants themselves while promulgating the Revised Pay Rules and making available to them revised pay scales as will be seen presently.”

On perusal of the aforesaid, I am of the view that the stand of the respondents cannot be sustained in the eyes of law for the simple reason that the petitioners were designated as Lecturers and had similar qualification as the ones possessed by the Lecturers in the School Education Department. The petitioners having been absorbed in the Education Department would be entitled to similar treatment in matters of pay particularly when there is no distinction between the functions being discharged by both the sets of employees. It has been stated that the petitioners are teaching higher classes of 11th and 12th whereas Lecturers in Education Department were teaching classes 9th to 12th.

The functionality aspect, therefore, being similar along with the Educational qualification, there would be no justification with the respondents to deny parity in pay scales particularly when this aspect has

been specifically dealt with by the Hon'ble Supreme Court to negate a similar stand.

In the case relied upon by the petitioners in CWP-6266-2010, this Court had granted parity of pay scales of the Lecturers of the Vocational Institutes with those of the Educational Departments even though there was a difference in qualifications. In that case the petitioners therein had been equated in terms of pay scale with Lecturers of School cadre but denied them further revision on the ground of higher qualification.

The cases in hand would be on better footings as there is no distinction between the two sets of employees either in terms of education or in terms of functionality.

Consequently, these two writ petitions are allowed and the action of the respondents in creating distinct pay scales for the petitioners to that of the respondents is held to be discriminatory. As a result thereof, the petitioners would be held entitled to the same pay scales as admissible to the Lecturers of the Education Department. The respondents are directed to grant all consequential benefits to the petitioners resulting from such parity. The arrears be restricted to a period of 38 months prior to the filing of the writ petitions.

23.09.2015**mamta****(MAHESH GROVER)****JUDGE**