

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 17.08.2015

CWP-22066-2012

GANGA RAM PUNIA AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-20079-2012

MAHENDER SINGH AND OTHERS

...PETITIONERS

V/S

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CWP-21846-2011

MADAN LAL & ORS.

...PETITIONERS

V/S

STATE OF HARYANA & ORS.

...RESPONDENTS

CWP-12657-2012

MOHINDER SINGH AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-23231-2012

ABUL HUSSAIN KHAN AND ORS.

...PETITIONERS

V/S

STATE OF HARYANA AND ANR.

...RESPONDENTS

CWP-22204-2012

RAM KALA & ORS

...PETITIONERS

V/S

STATE OF HARYANA & ORS

...RESPONDENTS

CWP-22185-2012

TEJVIR SINGH AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-22186-2012

RAJBIR SINGH & ORS

...PETITIONERS

V/S

STATE OF HARYANA & ORS

...RESPONDENTS

CWP-22210-2012

SUMITRA DEVI AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-22325-2012

OM PARKASH & ORS.

...PETITIONERS

V/S

STATE OF HARYANA AND ORS.

...RESPONDENTS

CWP-22431-2012

SAT NARAIN AND ORS.

...PETITIONERS

V/S

STATE OF HARYANA AND ORS.

...RESPONDENTS

CWP-22518-2012

BIMLA DEVI AND ORS.

...PETITIONERS

V/S

STATE OF HARYANA AND ORS.

...RESPONDENTS

CWP-22610-2012

NARSI RAM AND ORS.

...PETITIONERS

V/S

STATE OF HARYANA AND ORS.

...RESPONDENTS

CWP-22622-2012

PREM CHAND & ORS

...PETITIONERS

V/S

STATE OF HARYANA & ORS

...RESPONDENTS

CWP-23505-2012

JAI INDER PAL AND ORS.

...PETITIONERS

V/S

STATE OF HARYANA AND ANR.

...RESPONDENTS

CWP-2831-2013

SATYA NARAIN & ORS

...PETITIONERS

V/S

STATE OF HARYANA & ORS

...RESPONDENTS

CWP-4534-2013

VISHAN DASS AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-18026-2012

BALWANT SINGH AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-18053-2012

KADAM SINGH AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-7958-2013

DALBIR SINGH AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-8448-2013

DHARAM PAL AND ORS.

...PETITIONERS

V/S

STATE OF HARYANA AND ORS.

...RESPONDENTS

CWP-8543-2001

LAJWANTI AND ORS

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-15785-2012

PREM SINGH & ORS.

...PETITIONERS

V/S

STATE OF HARYANA & ORS.

...RESPONDENTS

CWP-6444-2005

DHARAMPAL & ORS.

...PETITIONERS

V/S

STATE OF HY. & ORS.

...RESPONDENTS

CWP-2991-2006

JAI PARKASH SHARMA & ANR.

...PETITIONERS

V/S

STATE OF HRY. & ORS.

...RESPONDENTS

CWP-14960-2005

SUKHBIR SINGH AND ORS.

...PETITIONERS

V/S

STATE OF HARYANA AND ORS

...RESPONDENTS

CWP-14284-2001

BAL KISHAN ETC.

...PETITIONERS

V/S

STATE OF HARYANA ETC.

...RESPONDENTS

CWP-16999-2006

GYANI RAM AND ORS. ...PETITIONERS
V/S
STATE OF HRY. AND ORS. ...RESPONDENTS

CWP-12602-2001

JIA LAL AND ORS ...PETITIONERS
V/S
STATE OF HARYANA AND ORS ...RESPONDENTS

CWP-24048-2012

RAMAUTAR ...PETITIONER
V/S
FINANCIAL COMMISSIONER, HRY & ORS ...RESPONDENTS

CWP-6316-2014

SUKHDEV SINGH AND OTHERS ...PETITIONERS
V/S
STATE OF HARYANA AND OTHERS ...RESPONDENTS

CWP-11593-2014

SATYA NARAIN & ORS ...PETITIONERS
V/S
STATE OF HARYANA & ORS ...RESPONDENTS

CWP-6913-2014

ASHA RANI & ORS ...PETITIONERS
V/S
STATE OF HARYANA & ORS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Ram Niwas Sharma, Advocate,
Mr. K.L.Dhingra, Advocate,
Mr. Vikas Chatrath, Advocate,
Mr. Rakesh Nagpal, Advocate,
for the petitioner(s).

Mr. Amar Vivek, Additional Advocate General, Haryana,
for the respondents.

AUGUSTINE GEORGE MASIH, J

1. By this order, I propose to decide CWP Nos. 21846 of 2011,
12657, 23231, 22204, 20079, 22066, 22185, 22186, 22210, 22325, 22431,

22518, 22610, 22622, 23505, 18026, 18053, 15785 and 24048 of 2012; 2831, 4534, 7958 and 8448 of 2013; 6316, 11593 and 6913 of 2014; 14960 of 2005; 8543 and 14284 of 2001; 16999 of 2006; 12602 of 2001; 6444 of 2005 and 2991 of 2006 (O&M) as common questions of law and facts are involved in these cases. Pleadings are primarily being taken from CWP No. 22066 of 2012 titled as **Ganga Ram Punia and others vs. State of Haryana and others** and CWP No. 20079 of 2012 titled as **Mahender Singh and others vs. State of Haryana and others**.

2. Petitioners, in these cases, are challenging the action of the respondents denying them one grade increment on promotion to the post of Head Teacher which the petitioners assert they are entitled to under Rule 4.4 (a) (i) and 4.13 of the Civil Services Rules Vol.I Part-I (hereinafter referred to as CSR') as the post of Head Teacher carries higher responsibilities and duties.

3. The facts in brief are that the petitioners were appointed as JBT Teachers. The State Government revised the pay scale of its employees vide Notification dated 07.01.1998 w.e.f. 01.01.1996 and thereafter, vide Notification dated 30.12.2008 w.e.f. 01.01.2006. Petitioners, at the time of revision of pay scales, had already completed 20 years or more regular satisfactory service when they were promoted to the post of Head Teacher. Petitioners, who were promoted prior to 01.01.2006, were fixed in the revised functional scale of ₹ 5500-9000 as per Sr. No. 6 in the First Schedule, Part-I of the Haryana Civil Services (Revised Pay) Rules, 1998. The functional pay scale at the time of pay revision w.e.f. 01.01.1996 was ₹1200-2040 and the revised functional scale was fixed at ₹ 4500-7000, after 10 years of regular satisfactory service ₹ 5450-8000 and after 20 years of

regular satisfactory service ₹ 5500-9000.

4. Under Rule 13 of the Revised Pay Rules, 2008, which came into effect from 01.01.2006, one increment equal to 3% of the pay in the pay band and the existing grade pay was to be allowed in case of promotion after the said date but the said benefit of one grade increment, which the petitioners were entitled to under Rule 4.4 (a) (i) of the CSR was not granted to them on their promotion as Head Teacher although it involves the assumption of duties or responsibilities of greater importance, as provided in an interpretation for the purpose of Rule 4.13. However, the JBT Teachers, who were promoted as Head Teacher prior to 01.01.1996, were granted the benefit of one grade increment under Rule 4.4 (a) (i) of the CSR.

5. It has been asserted that the petitioners were promoted to the post of Head Teacher from the cadre of JBT Teachers on the basis of their seniority. JBT Teachers teach students up to 5th class but after promotion to the post of Head Teacher, it is his responsibility to maintain the discipline among the members of the staff and the students in addition to the duties as a JBT Teacher. The post of Head Teacher assumes the role of a general supervision as also the maintenance of discipline and administration of the school. Thus, the Head Teachers perform the duties and responsibilities of greater importance than JBT Teachers entitling them to the benefit of one grade increment under Rule 4.4 (a) (i) read with Rule 4.13 of the CSR.

6. The reason assigned as to why the respondents have declined the benefit of the claim made by the petitioners for grant of one grade increment on promotion has been culled out in the written statement filed in CWP No. 20079 of 2012, which has been adopted in the other writ petitions, is that the said post does not involve higher responsibility. It has

been asserted that the Head Teachers perform the teaching duties just like the JBT Teachers and are not even granted the power of Drawing and Disbursing Officer with regard to their school, which power is conferred upon and exercised by the Head Master/Mistress of the Government High School or the Principal of the Government Senior Secondary School or the Block Elementary Education Officer, who is nearest to the Government Primary School where a JBT and the Head Teachers are working. However, the assertion of the petitioners that the Head Teachers maintain discipline and administration of the school is not denied.

7. Another ground, which has been taken by the respondents for not granting the benefit, as has been claimed by the petitioners, is Note below Sub-Rule (2) of Rule 15 of the Haryana Civil Services (Assured Career Progression) Rules, 1998 (hereinafter referred to as 'ACP Rules, 1998), according to which, the placement in the first or second ACP Scale does not amount to a functional promotion and, therefore, the presumption of higher responsibility cannot be taken in such placements in the ACP Scale. However, the benefit of fixation of pay corresponding to the placement in the higher pay scale as a consequence of promotion that is presumption of higher responsibility shall be extended at the stage of fixation of pay in the first or second ACP Scale. If the functional pay scale of the promotional post and the ACP Pay Scale drawn by the servant prior to the promotion are identical, his pay will not be fixed in the functional pay scale of promotional post and he will continue to draw the salary at the same stage and his date of increment will also continue to remain the same as before the promotion. Support has also been drawn from para-8 of the Memo dated 02.03.2001 (Annexure R-IV) issued by the Department of

Finance, wherein it is mentioned under Clause (iii) that if an employee is in receipt of first and second ACP scale as a personal measure and then gets promoted and the functional pay scale of the promotional post is equal to or lower than the scale in which he is already drawing his pay as a measure personal to him, his pay will not be re-fixed and will remain at the same stage in the same scale in which he was drawing his pay at the time of his promotion. Reliance has also been placed upon the judgment of the Supreme Court in the case of State of Haryana and another vs. Partap Singh and others, (2006) 10 SCC 251 as also the Division Bench judgment passed by this Court in CWP No. 3790 of 2006 titled as Smt. Neelam Bali and others vs. State of Punjab and others, decided on 06.03.2009 (Annexure R-III) where similar claims made by the similarly placed employees stand dismissed.

8. An objection has also been raised with regard to the belated approach on the part of the petitioners claiming the benefit after an inordinate delay and, therefore, the writ petitions is sought to be dismissed for delay and laches.

9. It is the contention of the counsel for the petitioners that as per the provisions, as contained in Rule 4.4 read with Section 4.13 of the CSR, petitioners having been promoted to a post of higher responsibility are entitled to the grant of one grade increment. Reliance has been placed upon the language of the said Rules apart from the judicial precedents i.e. CWP No. 10770 of 1988 titled as Dev Raj Sehgal and others vs. The State of Punjab and others, decided on 03.02.1995 (Annexure P-2), CWP No. 17301 of 2000 titled as Swarn Singh and others vs. State of Haryana and others, decided on 21.02.2002 (Annexure P-3), against which the SLP preferred by

the State of Haryana stands dismissed by the Supreme Court vide order dated 19.03.2010 (Annexure P-4), CWP No. 3471 of 1999 titled as Ganga Ram Goel and others vs. State of Haryana and others, decided on 05.12.2000 (Annexure P-6), Instructions dated 07.03.1988 issued by the Finance Department, Haryana (Annexure P-11) and Instructions dated 09.01.2004 (Annexure P-12). Reliance has also been placed upon the clarification issued by the Department of Finance dated 29.12.1995 (Annexure P-13), Sr. No. 25 thereof pertaining to grant of additional increments and higher standard pay scale to Groups C & D employees. On the basis of the judicial precedents, it has been asserted that the petitioners being similarly placed as in the case of Swarn Singh (supra), against which the SLP preferred by the State of Haryana stands dismissed, are entitled to the benefit claimed in the present writ petition. Reliance has also been placed upon the judgment passed by me in CWP No. 5301 of 2009 titled as Daya Nand vs. State of Haryana and others, decided on 01.03.2012 where the petitioner had been granted the benefit of an increment of higher responsibility on his promotion from the post of Clerk to that of an Assistant, which was withdrawn by the respondents was quashed.

10. On the other hand, counsel for the respondents has placed reliance upon the judgments passed by the Supreme Court in Partap Singh's case (supra) and Union of India vs. Ashoke Kumar Banerjee, 1998 (3) RSJ 105 apart from placing reliance upon the pleadings in the written statement, as have been referred to above. On the question of delay, he has placed reliance upon the judgment of the Supreme Court in Civil Appeal No. 9849 of 2014 titled as State of Uttar Pradesh and another vs. Arvind Kumar Srivastava and others, decided on 17.10.2014.

11. I have heard the counsel for the parties and with their assistance, gone through the records of the case.

12. At the outset, the objection raised by the counsel for the respondents with regard to the belated approach of the petitioners by way of these petitions requires consideration as the counsel has asserted that the writ petitions deserve to be dismissed for delay and laches, for which reliance has been placed upon the judgment of the Supreme Court in Arvind Kumar Srivastava's case (supra). In the considered opinion of this Court, this judgment of the Supreme Court would not be applicable to the facts of these cases as the basic difference is that those benefits, which were sought by the employees in that case, were one time benefits, whereas in these cases, it is a recurring cause of action. As because of non-grant of increment by the respondents, as has been claimed in these writ petitions, they are incurring losses every month. Further, the claim of the petitioners, in these writ petitions, has been sought to be based upon the Statutory Rules and no third party rights are involved in these cases. No person will be adversely affected nor would it have the effect of depriving any person of an accrued right, which could have accrued by default because of delay on the part of the petitioners. The equities can be settled by restricting or even denying the benefit of arrears because of delay in approaching this Court and, therefore, the assertion of the counsel for the respondents that these writ petitions deserve to be dismissed for delay and laches, stands rejected. For this view support can be derived from the judgment of the Supreme Court in the case of M.R.Gupta vs. Union of India and others, 1996 AIR SC 669.

13. The basic question in these writ petitions which requires to be answered is, whether the petitioners, who prior to their promotion were

drawing the functional pay scale of the post of Head Teacher on the strength of the grant of ACP scales, would be entitled to the grant of an additional increment under Rule 4.4 (a) (i) read with Rule 4.13 of the CSR on their promotion to the post of Head Teacher?

14. The facts in these cases are not in dispute. Petitioners were recruited as JBT Teachers and had been continuing as such till their promotion as Head Teacher. They were granted the benefit of the ACP Scales as per the ACP Rules, 1998. On the basis of the said Rules, the petitioners were drawing the functional pay scale of the post of Head Teacher prior to the date of their promotion as Head Teacher.

15. To understand the facts clearly, reference by way of illustration can be drawn from details as given in the written statement filed in CWP No. 20079 of 2012 Mahender Singh's case (supra) relating to petitioner No. 6-Maha Singh. Maha Singh was appointed as a JBT Teacher and regularized on the said post on 04.05.1968 in the functional pay scale of ₹ 125-250. He was granted higher standard scale of ₹ 1600-2660 w.e.f. 01.01.1994 when the functional pay scale of JBT was ₹ 1200-2040. The higher standard scale of ₹ 1600-2660 was revised to ₹ 5500-9000 w.e.f. 01.01.1996 while the functional pay scale of the post of JBT was revised to ₹ 4500-7000. He was promoted on the post of Head Teacher on 01.07.2002. The functional pay scale of the post of Head Teacher was ₹ 5500-9000 on the said date of promotion of Maha Singh. Since he was already drawing the higher standard scale of ₹ 5500-9000 w.e.f. 01.01.1996 in lieu of functional pay scale of ₹ 4500-7000 of the post of JBT Teacher, he was not granted the one grade increment relying upon the Note below Sub-Rule (2) of Rule 15 of the

ACP Rules, 1998. The said Note reads as follows:-

“Note: The placement in the first or second ACP scale as the case may be does not amount to a functional promotion and therefore the presumption of higher responsibility cannot be taken in such placements in the ACP scale. However, still the benefit of fixation of pay corresponding to the placement in the higher pay scale as a consequence of promotion that is presuming the higher responsibility shall be extended at the stage of fixation of pay in the first or second ACP scale, as the case may be. Therefore, if the functional pay scale of the promotional post and the ACP pay scale in which the Government servant is drawing his pay prior to the promotion are identical, his pay will not again be fixed in the functional pay scale of the promotional post which is identical to the ACP scale in which he was drawing his pay before promotion. He will continue to draw the salary at the same stage and his date of increment will also continue to be the same as before the promotion.” (emphasis supplied)

It may be noted here that this Note is not under challenge and thus, is binding upon the petitioners. The above Note was clarified by the Finance Department, Haryana, vide Memo No. 5/4/2001-5PR(FD) dated 02.03.2001 (Annexure R-IV), after thorough discussion, in para-8 thereof it is stated as follows:

“8. In view of the foregoing discussions it is clarified as under:--

- (1) Wherever an employee gets promoted from the functional

scale of the feeder post to the functional scale of the promotion post, his pay will not be fixed at the stage next above.

- (ii) Wherever an employee, at the time of his promotion, is drawing his pay in a scale other than the functional scale of the feeder post (by way of first or second ACP or any other reason as a measure personal to him) and the functional scale of the promotion post is higher than the scale in which he was drawing his pay prior to his promotion, his pay will be fixed at the stage next above in the functional scale of the promotion post.
- (iii) Wherever an employee is in receipt of first or second ACP scale as a personal measure and then gets promoted and the functional pay scale of the promotion post is equal to or lower than the scale in which he is already drawing his pay as a measure personal to him, his pay will not be re-fixed and will remain at the same stage in the same scale in which he is drawing his pay at the time of his promotion as clarified under the Note below Sub Rule (2) of Rule 15 of the ACP Rules, 1998.”

Illustrations were also enclosed with this clarification letter.

Illustration II explains the case of a JBT Teacher/Head Teacher in these instructions, which reads as follows:-

“Illustration II: The case of a JBT Teacher/Head Teacher:

The functional pay scale prescribed for the post of a JBT Teacher and Head Teacher in the Primary Schools have been

as under:-

<i>Sr. No.</i>	<i>Post</i>	<i>Functional Pay Scale As on 01.01.1986</i>	<i>1st Higher Standard Pay Scale</i>	<i>2nd Higher Standard Pay Scale</i>
1.	JBT	1200-2040	1400-2600	1600-2660
2.	Head Teacher	1400-2600		
		As on 01.01.1996		
3.	JBT	4500-7000	5450-8000	5500-9000
4.	Head Teacher	5500-9000	6500-9900	6500-10500

Assuming-A’ was appointed as a JBT Teacher as on 1.4.1975. His pay was fixed in the functional scale of Rs. 1200-2040 as on 1.1.86. He was granted the 1st ACP of Rs. 1400-2600 as on 1.1.94 on completion of 10 years service as a JBT Teacher. While placing him in this pay scale, even though he continued to remain a JBT Teacher, his pay was fixed at the stage next above. He completed 20 years service as a JBT Teacher as on 31.3.95 and thus became entitled to be placed in the 2nd Higher Standard Scale of Rs. 1600-2660 as on 1.4.1995. Here again, even though he continued to remain as a JBT Teacher, his pay was fixed at the stage next above in the 2nd Higher Standard Scale of Rs. 1600-2660. His pay was fixed in the 2nd ACP of Rs. 5500-9000 as on 1.1.96 under the ACP Rules. Now, he was promoted as a Head

Teacher of a Primary School on, say, 1.10.98. The functional pay scale for the post of a Head Teacher of the Primary School is Rs. 5500-9000 in which he is already drawing his pay on the day of his promotion by way of his placement in the 2nd ACP. Thus on his promotion as Head Teacher in the scale of 5500-9000, his pay will not be re-fixed in terms of Note below Rule 15 (2) of the ACP Rules, 1998.

Again, the rationale is that he had already been granted this benefit twice earlier at the time of grant of 1st and 2nd ACP even though there was no change in his duties and responsibilities of higher nature and he cannot be granted triple benefit.”

16. A perusal of the above would leave this Court with only one conclusion that as per the ACP Rules, 1998, once an employee on a feeder post has reached the stage of the functional pay scale of the promotional post on the basis of grant of ACP scale, he is not entitled to re-fixation of his pay in the functional pay scale of the promotional post, which is identical to the ACP Scale drawn by the said employee. He will continue to draw the salary at the same stage and his date of increment will also continue to be the same as before his promotion.

17. An argument has been raised on behalf of the counsel for the petitioners that the benefit under the ACP Rules, 1998 is distinct from that of the Civil Service Rules and the right which has accrued under the Civil Service Rules would entitle an employee to the benefit of the said Rules.

This contention of the counsel for the petitioners cannot be accepted as the

general Rules cannot prevail over the special Rules. Since the Special Rules i.e. ACP Rules, 1998 cover and clarify the position with regard to the grant of fixation of pay when an employee is ultimately promoted to the post from the feeder cadre after availing of the ACP Scales, the said Rules would have an over-riding effect over the Civil Service Rules, which are general Rules. The petitioners, therefore, would not be entitled to the benefit of Rule 4.4.

(a) (i) and 4.13 of the CSR.

18. Counsel for the petitioners have heavily relied upon the various judgments, which have been passed by this Court where, on promotion, the employees have been granted the benefit of higher increment under Rule 4.4 of the Civil Service Rules. Dev Raj Sehgal's case (supra) would not be applicable to the present case as it pertains to the situation, which was prevalent prior to the coming into force of the ACP Rules, 1998. The Division Bench judgment of this Court in Swaran Singh's case (supra) (Annexure P-3) would not hold the field in the light of the authoritative judgment of the Supreme Court in Partap Singh's case (supra) although the SLP preferred by the State of Haryana stands dismissed on 19.03.2010. The order reads as follows:-

“ O R D E R

Delay condoned.

Heard learned counsel for the parties.

In the facts of these cases, we are not inclined to exercise the Court's jurisdiction under Article 136 of the Constitution.

The Special leave petitions are dismissed.”

Similar is the position with regard to the judgment in Ganga Ram Goel's case (supra).

19. As regards the judgment passed by this Court in Daya Nand's case (supra), suffice it to say that this Court proceeded to rely upon the judgment of the Division Bench of this Court in Swaran Singh's case (supra). The judgment passed by the Supreme Court in Partap Singh's case (supra) was not brought to the notice of the Court nor were the relevant Rules/Instructions of the respondent-State.

20. Reliance placed by the counsel for the petitioners on the instructions dated 07.03.1988 (Annexure P-11) and its clarification dated 07.03.1988 as also on instructions dated 29.12.1995 (Annexure P-13) which is a clarification of letter dated 08.02.1994 of the Finance Department, are totally misplaced after coming into force of 1998 Rules. These instructions/clarifications will have no effect and would not be applicable to the claims of the employees which arise and accrue after the 1998 Rules became effective. The petitioners admittedly were promoted after coming into force of the ACP Rules, 1998, which would be applicable to their case and thus, would govern their rights and liabilities.

21. The Hon'ble Supreme Court in Partap Singh's case (supra) was dealing with the appeal preferred by the State of Haryana challenging the judgment of this Court where the respondents were appointed as JBT Teachers in the Haryana Education Department. They, either acquired qualifications during their service or possessed the higher qualification at the time of their appointment as JBT Teachers and were granted the higher grade of the post of JST/Social Study Master on the basis of their qualification as per the notification dated 23.07.1957. They sought fixation of pay by grant of one grade increment under Rule 4.4 of the CSR on account of discharge of duties of higher responsibility from the date of

actual promotion as Social Studies Master. The Notification dated 23.07.1957 was subsequently modified by the State of Haryana vide Notification dated 09.03.1990. The effect thereof was that the acquisition of higher qualification would not entitle the JBT Teachers the benefit of higher pay scale i.e. Masters Pay Scale. The benefit of one grade increment under Rule 4.4. of the Civil Service Rules was not granted to them on the plea that since they were already granted the pay scale of Masters while working on lower post of JBT Teachers without they having been appointed or promoted to the post of Masters, they cannot claim fixation of pay in terms of Rule 4.4 of the CSR.

21.A This plea of the State was not accepted by this Court, which resulted in filing the appeal before the Supreme Court. The Hon'ble Supreme Court in para-7 of the said judgment referred to the provisions of Rule 4.4 of the CSR and held as follows:-

“7. Learned counsel for the appellants strenuously submitted that once the respondents while working as JBT teachers having been granted higher pay scale of Masters and now the regular promotion order was issued, it would not be possible to grant them one more increment while fixing their pay in the promotional post of Master. The submission of learned counsel for the appellants appears to be justified. Since the respondents herein were already functioning in the pay scale of Masters and it was nothing but regularization of their pay which they were not entitled to because of the change in the policy but they were allowed to continue and now when the regular promotion is sought to be given to them they cannot get the double benefit of

fixation of pay. As per the rejoinder affidavit filed on behalf of the State Government by Sh. Dayal Singh Sangwan, Budget Officer (Schools) in the Directorate of Secondary Education, Haryana, it appears that the respondents on acquiring the higher qualifications were granted one additional increment though they were not entitled because by that time the policy has been changed in 1990 but nobody challenged the earlier judgments by which the Court allowed them to continue in the functional pay scale of Masters. Now, because of regular promotion order being issued for the post of Masters, it only amounts to regularization of the pay scale which they were already drawing i.e. pay scale of Masters. Thus, granting of one more increment because of regularization of the respondents by promoting them to the post of Masters, would not entitle them the double benefit, though they have already got one increment on acquiring the higher educational qualifications and now on regular promotion being given in the Masters' pay scale in which they were already working, they cannot claim another benefit. Rule 4.4 reads as under:

"4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay

is regulated as follows:-

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold lien on such a post, had his, lien not been suspended-

(i) when appointment to the new post involves the

assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 4.13) than these attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his, substantive pay in respect of the old post;

(ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay.

(iii) when appointment to the new post is made on his own request under rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay."

The above rule says that when appointment to the new post involves the assumption of duties or responsibilities of greater importance than those attaching to such permanent post,

the incumbent will draw as initial pay the stage of time scale next above his substantive pay in respect of the old post meaning thereby that the promotion which involves responsibilities of greater importance than in that case the incumbent will draw as initial pay the stage of time-scale next above his substantive pay in respect of the old post. That means he will be entitled to one increment in the old post. But in the present case, the respondents are already drawing the pay scale of the post of Master i.e. higher post. As such, where is the question of granting them one increment further now? Under rule 4.4 it could have been possible to grant them fixation if they were continuing in the old scale of JBT teachers and on their promotion to the post of Master, then certainly they would have been entitled to fixation of pay giving them the initial-pay the stage of time scale next above their substantive pay in respect of the old post. But they are already fixed in the pay scale of higher post of Master which though legitimately they were not entitled to because of the change in the policy but they continued in the higher pay scale despite the change in the policy and the Government did not take any further steps to put the house in proper order. Be that as it may, since the respondents were drawing the higher pay scale on acquiring higher educational qualifications, i.e. the Master's pay scale, and now only regular orders have been passed, promoting them as Master, there is no question of again fixing them next above their substantive pay in respect of the old post. They are not

holding the old post any more and they were not drawing the salary of JBT teachers i.e. the old post. Therefore, there is no question of granting them the initial pay the stage of time scale next above their substantive pay in respect of the old post.”
(emphasis supplied)

22. Counsel for the petitioners has made a valiant effort to distinguish the judgment passed by the Supreme Court in Partap Singh’s case (supra) by asserting that the Supreme Court came to a conclusion that the employees (respondents therein) were not entitled to the grant of pay scale of higher post of Master because of the change of policy of the Government and, therefore, were not entitled to the benefit of Rule 4.4 of CSR but the same is not the position here as the petitioners admittedly continued on the post of JBT Teachers and were entitled to and have been granted the ACP Scales as per their entitlement under the ACP Rules, 1998 and, therefore, would be entitled to the benefit of one grade increment under Rule 4.4 of CSR. This contention of the counsel for the petitioners cannot be accepted in the light of the findings recorded above as regards their entitlement of one grade increment under Rule 4.4 of the Civil Service Rules as the special Rules i.e. ACP Rules, 1998 shall prevail over the general Rules i.e. the CSR.

23. Further, the claim of the petitioners cannot be accepted in the light of the judgment of the Supreme Court in Ashoke Kumar Banerjee’s case (supra). This was a case where a Junior Engineer in the CPWD, who was drawing a senior scale of Rs. 1640-2900, was granted the higher scale of Assistant Engineer i.e. Rs. 2000-3500 in terms of the letter dated 22.03.1991. On his promotion to the post of an Assistant Engineer, he

sought the benefit of Fundamental Rule 22(1)(a)(i). FR 22 is similar in language to Rule 4.4 of CSR and the purpose, intent and effect is the same. It has been mentioned in the judgment that as per the letter dated 22.03.1991 while granting the higher grade, it was not to be treated as a promotional benefit but a non-functional benefit. A mention was also made that the benefit of FR 22(1)(a)(i) will not be admissible while fixing the pay in the higher grade. This benefit, on completion of 15 years of service by granting the scale of promotional post, was to avoid frustration in the Junior Engineers who would otherwise stagnate for want of vacancies in the next promotional post. Same is the intention and purpose of the ACP Rules, 1998, Note to Sub-Rule (2) of Rule 15 of the ACP Rules, 1998 (reproduced above) has a similar effect.

23.A The Hon'ble Supreme Court proceeded to hold as follows:-

“8. In our view, the respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs. 2000 - 3500 when he is promoted on 1.8.1991 as Assistant Engineer. This is because as on 1.8.1991, he is not being fitted into the "time-scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another

condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says:-

"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more." (emphasis supplied)

24. Reference, at this stage, may be made to the Division Bench judgment of this Court in Smt. Neelam Bali's case (supra), on which reliance has been placed by the respondents. In the said judgment, the Bench, relying upon Partap Singh's judgment of the Supreme Court, rejected the claim of grant of one increment on promotion to the post of higher responsibility under Rule 4.4. of CSR on the ground that the petitioners were drawing the same pay scale as that of the promotional post prior to the date of promotion on having been granted the benefit of ACP scale while working on the post of JBT. This position exists in these writ petitions also.

25. This clinches the issue in favour of the respondents as their stand is correct and deserves acceptance while the claim, as projected in these writ petitions, merit rejection.

26. The question as posed in para 13 above is answered as follows:-

The petitioners are not entitled to the grant of an additional increment under Rule 4.4 (a) (i) read with Rule 4.13 of the CSR on their promotion to the post of Head Teacher as they were drawing the functional pay scale of the promotional post of Head Teacher prior to their date of promotion on the strength of grant of ACP Scales.

27. In view of the above, finding no merit in these writ petitions, the same stand dismissed.

Parties to bear their own costs.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

August 17, 2015

pj