

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 4541 of 2012

Date of Decision : September 15, 2015

Varinder Kumar Bhardwaj and another Petitioners

Vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Sandeep Jasuja, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

The petitioners, who are two in number, are 100% blind.

Through respective orders dated 23.11.2011, both the petitioners were promoted from the posts of Music Teachers to the post of Music Masters against vacant posts with effect from the date their juniors had been promoted. However, though they were granted seniority, arrears were denied. The notional fixation of pay and non-grant of arrears is challenged by them through the present petition.

The facts, which are not in dispute, may be briefly noticed.

The petitioners were appointed as Music Teachers on 23.04.1974 and 30.07.1988 respectively. Music Teachers namely Rajnish Kumar, Rajinder Kumar and Jagdish Pal, who were appointed much later than the petitioners as Music Teachers on 28.02.1995, 01.07.1997 and 26.11.1997 respectively, were promoted as Music Masters on 12.04.2004, 27.11.2004 and 29.08.2001 respectively. The petitioners, who had been appointed much earlier to them, and thus senior, were ignored. They represented against such discrimination, but when such representation fell on deaf ears, they were constrained to serve upon the respondents a legal notice, but when that too went unanswered, they knocked the doors of this Court through **C. W. P. No. 20181 of 2009 – Varinder Kumar Bhardwaj and another vs. State of Haryana and others.** In the written statement filed to that petition, the respondents acknowledged the promotion of the above said Rajnish Kumar, Rajinder Kumar and Jagdish Pal, but termed the same as 'inadvertent'. Through order dated 03.03.2011, the above said writ petition filed by the petitioners was disposed of as under :-

“The grievance of the petitioners in the instant petition is that their seniority vis-a-vis private respondents no. 4 to 6 has been wrongly fixed.

The respondents have filed the reply to the averments made in the instant petition and have admitted that the seniority

has been wrongly fixed due to inadvertence and they have already issued notices to the affected persons so as to enable them to rectify the said mistake. Annexures R-1 and R-2 are the notices issued to the affected persons.

After hearing learned counsel for the parties, I am of the considered opinion that the instant petition can be disposed of with direction to the respondents to conclude the exercise by fixing the seniority and the consequent grant of promotion to the petitioners and the other employees by finalizing the said seniority within a period of three months from the date of the receipt of the copy of the order.”

When the above said direction given by this Court was not complied with, the petitioners were again forced to knock the doors of this Court, this time through a contempt petition being **COCP No. 1709 of 2011 – Guddi and others vs. Surina Rajan and others**. During pendency of the Contempt Petition, vide orders dated 23.11.2011, both the petitioners were promoted against vacant posts as Music Masters with effect

from the date their juniors had been promoted i.e. 01.04.2004. Though the petitioners were granted seniority, arrears on account of pay fixation were declined.

It is unfortunate that differently-abled persons like the petitioners, who, as noticed above, are 100% blind, had to approach this Court three times for getting what was due to them. What necessitated them to approach this Court was a highly discriminatory and arbitrary action on the part of the respondents. Persons who were junior to the petitioners by 21 years and 07 years respectively, had been promoted in preference to the petitioners. Once through the order dated 23.11.2011, it was acknowledged by the respondents themselves that the petitioners were entitled to be promoted with effect from the date their juniors had been promoted against vacant posts, there is no reason in law or in fact to deny arrears to them. The petitioners were always willing to work on the promoted posts, but were kept away by the respondents for no fault on their part. In this regard, the following observations by the Apex Court in **Union of India vs. K. V. Jankiraman** reported as **AIR 1991 SC 2010** may usefully be referred to :-

“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "nowork no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away

from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”

In view of the above, the petitioners are held entitled to the grant of arrears with effect from the date they have been ordered to be promoted. The arrears, after calculation, be paid to them within two months from the date of receipt of a certified copy of the order.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

September 15, 2015
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