

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.5629 of 2015

Date of Decision: March 26, 2015

Charanjit Singh and others

.....Petitioners

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present:Mr.D.S.Patwalia, Senior Advocate with
Mr.Kannan Malik, Advocate, for the petitioners.

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1. Whether Reporters of Local papers may be allowed to see the
judgment?yes

2. To be referred to the Reporters or not?yes

3. Whether the judgment should be reported in the Digest?yes

Surya Kant, J. (Oral)

The petitioners served/are serving as Art & Craft and PTI Teachers in the Education Department, Government of Punjab. They have laid challenge to the vires of Section 3 of the Punjab Pay Scale of Teachers Act, 2004 (hereinafter referred to as '2004 Act'), as according to them, the aforesaid provision does not stand to the test of Articles 14 & 16 of the Constitution of India. A consequential relief to grant the petitioners pay scale at par with Language Teachers has also been sought.

[2] The facts may be briefly recapitulated.

[3] The Punjab Education Services Class-III (School Cadre) Rules, 1955 came into force vide notification dated 21.06.1957. Under these Rules, the Art & Craft and PTI Teachers were kept at par with Language Teachers like, Hindi,

Sanskrit, Punjabi etc. in the matter of grant of pay-scale. Such a parity continued when erstwhile State of Punjab gave an incentive on higher education by way of additional increments vide Circular dated 23.07.1957. However, vide notification dated 17.02.1989 (Annexure P-3), the State of Punjab granted higher revised pay scales to Language teachers as compared to the pay scale granted to Art & Craft/PTI Teachers. The aforesaid disparity came to be challenged at the instance of petitioners and their associates in a bunch of writ petitions (lead case CWP No.16380 of 1989 (Balbir Singh and others versus State of Punjab and others)). These writ petitions were allowed by a Single Judge vide judgment dated 07.05.2009 holding that once the Third Pay Commission has recommended the pay scale for Art & Craft/PTI Teachers at par with Language Teachers, the State Government could not bring artificial classification between them in contravention of the recommendations made by Pay Commission. Consequently, the notification dated 17.02.1989 was struck down with a direction that Art & Craft/PTI Teachers etc. be granted the same pay scale as was granted to Hindi/Punjabi/Urdu Teachers.

[4] Even before the aforesaid judgment was delivered by learned Single Judge, another notification dated 03.05.1991 (Annexure P-5) was issued further revising the pay-scales and there also Art & Craft and PTI Teachers etc. were kept in the pay-scale lower than that of Language Teachers. The said notification was also set-aside by learned Single Judge vide judgment dated 09.11.2009 passed in CWP No.14262 of 1991 (Harbhajan Singh Dhindsa and others versus The State of Punjab and another) (Annexure P-6), on the analogy of earlier

decision dated 07.05.2009.

[5] The State of Punjab meanwhile preferred LPA No.1044 of 2010 (The State of Punjab and another versus Balbir Singh and others) against the judgment dated 07.05.2009 of the learned Single Judge which was disposed of by a Coordinate Bench vide judgment dated 23.09.2010 (Annexure P-7) granting liberty to the State to move Review Application before the learned Single Judge. That Review Application was, however, turned down by the learned Single Judge vide order dated 04.1.2011 (Annexure P-8).

[6] The State of Punjab again filed LPA No.270 of 2012 (The State of Punjab and others versus Balbir Singh and others) and LPA No.518 of 2012 (State of Punjab and another versus Darshan Kant and others) against the above-cited decisions of the learned Single Judge. A Division Bench of this Court vide order dated 14.08.2012 (Annexure P-8), allowed the appeals and set-aside the judgment of learned Single Judge. Consequently, the notification dated 17.02.1989, which drew distinction between the pay scales of Art & Craft/ PTI Teachers viz-a-viz Language Teachers, was upheld.

[7] The Division Bench held that the recommendations of the Pay Commission were recommendatory in nature and could be deviated by the State for valid reasons. It was also held that there was no discrimination to attract the wrath of Article 14 of the Constitution of India.

[8] It may be mentioned at this stage that having regard to the huge financial implication to which the State was likely to be burdened due to two decisions of the learned Single Judges granting 'pay parity', the State Legislature also stepped in and enacted the Punjab Pay Scale of Teachers Act,

2004. Section 3 of the aforesaid Act, which is assailed in the instant writ petition, reads as follows:-

“....3. Grant of pay scale as per rules and notifications:- Notwithstanding anything contained in any instruction, rules or law for the time being in force and any judgment, decree, order and decision of any Court, Tribunal or Authority, the teachers shall be entitled only to the pay scales of the revised posts held by them, which were granted under the Punjab Civil Services (Revised Pay) Rules, 1988 read with Finance Department Notification No.10/3/89-FPI/953 dated 20th 1989 and the State Government Notification No.11/64/87-2 Edu.6/666 dated the 17th February, 1989, irrespective of their qualifications with effect from the 1st day of January, 1986 and nothing more than that shall be payable to them....”

[8] The Division Bench while allowing the State's appeal vide judgment dated 14.08.2012, also placed reliance on Section 3 of the Act, as reproduced above.

[9] The Division Bench judgment was unsuccessfully assailed by the petitioners and other similarly placed teachers before the Hon'ble Supreme Court as their Special Leave Petition have been dismissed vide order dated 13.01.2015 expressly observing that the said order be not taken as an expression of opinion on the question of validity of the Punjab Pay Scale of Teachers Act, 2004. These observations came to be made by the Hon'ble Supreme Court for the reason that

another Division Bench of this Court vide order dated 30.08.2010, passed in CWP No.14634 of 2009 (Beant Singh and others versus State of Punjab and others), has held Section 3 of the Act intra-vires and the said decision was also referred to before their Lordships though it was not under challenge.

[10] Having lost the above mentioned round of litigation, the petitioners have now questioned the Constitutionality of Section 3 of the Act (ibid).

[11] We have heard Mr.D.S.Patwalia, learned Senior Counsel for the petitioners in support of the prayer made in this writ petition.

[12] In our considered view, the challenge laid by the petitioners in the instant writ petition must fail for more than one reasons. Firstly, the question of validity of Section 3 of the 2004 Act has been gone into by this Court in CWP No.14634 of 2009 (Beant Singh and others versus State of Punjab and others) and relying upon the decisions of the Hon'ble Supreme Court in (i) Madan Mohan Pathak versus Union of India, (1978) 2 SCC 50 and (ii) Virender Singh Hooda versus State of Haryana, (2004) 12 SCC 588, the subject provision has been upheld on the premise that the legislator in exercise of its sovereign powers has merely removed the foundation on which the two decisions by learned Single Judges were rendered and as a result thereof, the judicial pronouncements have been made ineffective. There is no gain saying that under the separation of power doctrine under our Constitution, the competent Legislature possesses the Legislative power to cure the defect or remove the lacuna in law (which includes subordinate legislation or an executive decision carrying force of law) and in this process, the judgment of the Court can be

rendered ineffective. Such a legislative exercise does not amount to sitting over the decision of the Court as an Appellate Authority nor it amounts to over-ruling the Court verdict. A catena of decisions starting from Shri Prithvi Common Mills Limited and another versus Broach Barough Municipality and others, (1969) 2 SCC 283, till the recent decision in State of Tamil Nadu versus State of Karela, AIR 2014 SC 2407, popularly known as Mullaperiyas Dam case and then followed by the latest judgment in S.T.Sadiq versus State of Kerela, 2015 (2) SCALE 69, the legislative power referred to above has been consistently acknowledged except in a case where the singular object of legislative exercise was meant to wriggle out the consequences of an inter se party judgment which has attained finality and has been given effect.

[13] In Virender Singh Hooda's case (supra), the fact and situation was familiar and close to the facts of the case in hand. There also, on the basis of Executive Instructions, the Hon'ble Supreme Court in two cases, namely, (Virender Singh Hooda versus State of Haryana, (1999) 3 SCC 696) and (Sandeep Singh versus State of Haryana and another (2002) 10 SCC 549), allowed the appointments beyond the advertised posts against future vacancies. The State Legislature then enacted the Haryana Civil Services (Executive Branch) and Allied Services and Other Services, Common/Combined Examination Act, 2002, whereby the executive instructions of the years 1957 and 1972 were withdrawn retrospectively. The aforesaid piece of legislation was upheld by the Hon'ble Supreme Court substantially except a proviso whereunder the benefit already granted in compliance of a Court judgment was also sought to be withdrawn.

[14] Such a view has been recently taken by this Court also in CWP No.4212 of 2013 (DLF India Limited and others versus State of Haryana and others) and connected cases, decided on 18.02.2015.

[15] Adverting to the applicability of the above-cited legal principles in the case in hand, it is undeniable that the State legislature possesses the power to legislate on the subject. It is also unquestionable that the power to legislate can be exercised prospectively or retrospectively.

[16] Secondly, the question as to what should be the pay scale of a post commensurate to the qualifications prescribed for such post or the nature of duty to be performed, are the issues which essentially fall within the domain of experts or the Executive. The Court neither possesses such expertise nor it falls within the scope of judicial review to say that the qualification for the post of Language Teacher (like Punjabi, Sanskrit or Urdu) is equivalent to the diploma possessed by an Art & Craft or PTI Teacher. Similarly, it is difficult, if not impossible, for this Court to opine whether nature of duties of both sets of teachers are similar.

[17] Thirdly, it is a case of taking a conscious policy decision by the State to grant higher pay scale to one class of teachers and not to grant the same to others. Such like policy decisions also call for no interference by a Writ Court unless a doubtless case of hostile discrimination or violation of any other constitutional right is made out.

[18] Fourthly, it appears to us that that the instant writ petition is barred by principles of constructive resjudicata. After the 2004 Act had come into force, the petitioners had the opportunity to assail the validity of its Section 3 in the

pending lis, as their previous writ petitions were pending at that stage. No such plea was raised by them. They failed to take up such a plea even at the Appellate stage. Before the Hon'ble Supreme Court also, it is apparent that no such plea was raised by them.

[19] For the reasons afore-stated, we do not find any merit in this writ petition.

[20] Dismissed.

[SURYA KANT]
JUDGE

March 26, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE