

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

LPA No.1535 of 2011 (O&M)

Date of decision: October 16, 2015

Mohinder Parshad Singla

...Appellant

Versus

The State of Haryana and another

...Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- None for the appellant.

Ms.Kirti Singh, DAG, Haryana.

None for respondent No.2 – School.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 13.05.2011 passed by the Learned Single Judge, whereby, CWP No.14748 of 1990 filed by the petitioner seeking salary at par with his regular counter-parts, has been dismissed.

The facts, as pleaded by the appellant, are that he was appointed as a Commerce Lecturer in the Mahadev Desai Senior Secondary School, Faridabad – respondent No.2 on 16.7.1986 in the pay-scale of Rs.780-1250 (Annexure P-1). He availed leave from 8.9.1987 to 5.7.1988 (Annexure P-2) and thereafter re-joined his duties on 6.7.1988. Similarly situated lecturers in the respondent

No.2 School were granted Dearness Allowance in January, 1989, but the appellant was denied the said benefit. Later the lecturers working in the School were given the pay scale of Rs.1640-2900, but the said benefit was also not given to the appellant. He raised his grievance by making representation dated 31.8.1990 (Annexure P-3), in response to which, communication dated 15.9.1990 (Annexure P-4) was sent to him stating that he cannot be given the said benefits since, he is a part time lecturer.

Aggrieved, the appellant filed the writ petition, which has been dismissed by the Hon'ble Single Judge vide the impugned judgment.

The stand of the respondent – School in the written statement was that the appellant was initially appointed as Lecturer in the grade of 700-1050 on 16.7.1986 and had been paid his salary as such for the period from July, 1986 to June, 1987. He proceeded on long leave without pay in September, 1987 and rejoined his service in July, 1988. Vide communication dated 24.11.1988 (Annexure R-2), the Education Department, Haryana informed the respondent – School about the sanction of the post of the part time Lecturer in Commerce on a consolidated pay of Rs.800/- per month. Thereafter, a proposal was sent with the concurrence of the appellant, rather at his instance, to the District Education Officer for sanction of the appointment of the appellant as part-time Lecturer in Commerce vide letter dated 15.12.1988 (Annexure R-3). Along with this was annexed a list of selection panel of 1986. It was further

stated that along with the letter Annexure R-3, a copy of the appointment letter dated 15.12.1988 issued afresh (Annexure R-5) was also sent. It was in response to the said communication that the District Education Officer had granted sanction of appointment of the appellant as part-time Lecturer in Commerce in the respondent School against a consolidated salary of Rs.800/- per month.

The Ld. Single Judge dismissed the writ petition by holding that from the communications placed on record by the parties it is clear that at the time when the management initially gave appointment to the appellant they had not obtained sanction from the Government. From the communication of the DEO it is clear that the Management did not have sanction for a full time lecturer but only for a part time lecturer. The appellant being aware of this did not make a representation till 1990 and kept on receiving the salary of a part time lecturer.

The Ld. Single Judge observed as under:

“From the exchange of communications and the documents filed by both parties, one thing become clear that at the time when the Management was giving an appointment to the petitioner, they had still not obtained the sanction from the Government but on the recommendations of the Selection Committee, the petitioner had been appointed as a lecturer on a scale of 700-1250 with usual allowances sanctioned by the Haryana Government. From the communication given by the DEO, it is seen that the Management had really not obtained a sanction for a full time lecturer in Commerce and the approval had been given by DEO only for a part

time post. The petitioner ought to have known at the time when he was rejoining after leave that he was not treated as a full time lecturer. The petitioner himself must have also known that even the sanction from the Government had not treated him as a full time lecturer. The salary slips, which have been filed by the respondents, showed that initially when the petitioner was being paid his salary, he was shown as a full time lecturer and he was also receiving the same salary as a full time lecturers were receiving. When he rejoined the duty in July 1988, he has signed the register only as a part time lecturer and he had also drawn salary only on such basis. The petitioner ought to have been aggrieved immediately and if he had to wait till he made a representation in the year 1990 under Annexure P-3 seeking for a full dearness allowance and describing himself as a full time lecturer, he was deliberately making a suppression of an important fact of which he know fully well. There is nothing to suggest from records that the petitioner worked as a full time lecturer any time after he rejoined the duty on 06.07.1988. If he had rejoined the duty on 06.07.1988 and was also drawing the salary and signing the register as a part time lecturer, he cannot turn around and seek for a mandamus two years later by means of a writ petition that he should be paid salary and granted the allowances similar to the lecturers on full time basis. The parity which he was claiming for, did not simply exist, for, he cannot treat himself on par with the full time lecturers in the school.....”

The Counsel for the appellant is not present. We have heard the Ld. State Counsel and have gone through the records of the case.

In view of the factual position on record as noticed in the order by the Ld. Single Judge, we do not find any infirmity in the order warranting interference in appeal.

Accordingly, the appeal is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

October 16, 2015

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