

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

CWP-9918-2013 (O&M)
Date of decision : 01.05.2015

Jaswant Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jai Vir Yadav, Advocate,
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

JITENDRA CHAUHAN, J.

Prayer in the present petition filed under Articles 226 and 227 of the Constitution of India, is for issuance of a writ in the nature of certiorari, for quashing/setting aside of order dated 06.01.2012, (Annexure P-4) whereby, the petitioners had been denied the benefit of step up of pay at par with their junior counter-parts belonging to the reserved category and further for issuance of directions to the respondents to step up their pay at par with their junior employee, Smt. Angoori Devi, along with all consequential benefits.

The learned counsel for the petitioners, at the very outset,

states that the department is maintaining a separate seniority lists of male and female JBT teachers which is against the Haryana Primary Education (Group-C) District Cadre Rules, 1994. He refers to the order dated 30.11.2010, passed by a Division Bench of this Court in CMA No.22911 of 2000 in CWP No.9253 of 1997, captioned as ***Jiwan Dass and others Vs. State of Haryana etc.*** to contend that the same is judgment in rem and thus, applicable to the present petitioners as well. It may be noticed that earlier, the present application was treated as a Review Application on the oral statement made by the State counsel on 2.3.2001 and the order passed by this Court on 6.8.1998 was recalled. The said order became subject matter of challenge before the Hon'ble Supreme Court in Civil Appeal No.361 of 2003. The Hon'ble Supreme Court vide order dated 1.12.2009 set aside the order dated 2.3.2001 passed by this Court and remitted the matter back to this Court for decision of CM No.22911 of 2000 afresh in accordance with law.

On the other hand, the learned State counsel vehemently opposes the assertion made by the learned counsel for the petitioner. He cites ***Chairman, U.P. Jal Nigam Vs. Jaswant Singh, 2007(1) S.C.T. 224*** and ***Nadia Distt. Primary School Council Vs. Sristidhar Biswas, 2007(3) S.C.T. 506***, to contend that the petitioners are guilty of long delay and latches, thus, their claim deserves to be ignored outrightly. However, on merits, he is unable to controvert the claim so

raised.

Heard.

The petitioners joined the Education Department, Haryana, as JBT Teacher in the year 1963 (on different dates) and were promoted as Head Teacher in the years 1993 to 1996 (on different dates). Admittedly, all the petitioners were senior to Smt. Anguri Devi, whose position in the seniority list was 364. The grouse of the petitioners is that Smt. Angoori Devi, despite being junior to the petitioners, was given the benefit of reservation, i.e. preparation of separate seniority lists of male and female JBT teachers. However, in Jiwan Ram's case (*supra*), it has clearly been set out that though there is a separate cadre for men and women in respect of their categories of the posts in the school cadre but in respect of JBT teachers, there is a joint seniority list even as per the Punjab Educational Service Class-III (School Cadre) Rules, 1955, as well as the Haryana Primary Education (Group-C) District Cadre Rules, 1994. The case of the petitioners is squarely covered by the above dictum of law.

As far as the delay in raising the claim by the petitioners is concerned, in ***Gurdip Singh (Subedar) V. Union of India, 1997(3) S.C.T. 414***, this Court has held as under:-

“6. The petitioner was admittedly discharged from the Army on September 5, 1969. His

claim for disability pension had been rejected vide order dated April 24, 1970. He had filed an appeal after many years which was rejected vide order dated December 12, 1977. The two representations submitted thereafter was rejected vide orders dated June 8, 1978 and March 11, 1981. Even thereafter, the petitioner had waited for 15 years before approaching this Court. Apparently, the petition is highly belated. However, the courts have been reluctant to reject a citizen's claim for pension on the ground of delay. The obligation to pay pension is that of the Government. If either on account of ignorance or on account of some other reason, the citizen does not approach the court, the result is that the Government retains money belonging to him. It would be grossly unfair if the Government is permitted to take advantage of the situation in which the employee is placed and his claim for pension was to be rejected only on the ground of delay.....”

The petitioners in the instant case have since retired from service. The learned counsel for the petitioners states that the

petitioners are claiming the step up on the ground that it is affecting their pension. In ***M.R. Gupta Vs. Union of India, 1996(1) S.C.T. 8***, it has been held that:-

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which

has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

As regards the arrears, law has been very clearly set out in ***Gujjar Singh Vs. Chairman, Pepsu Road Transport Corporation, 2005(4) S.C.T. 67***, it has been held thus:-

“We have considered the submissions made by the learned counsel very anxiously. It is a matter of record that the pay scales of the employees of the PRTC were revised keeping in view the revision of

pay scales of the employees of State of Punjab and also Punjab Roadways. It is also a matter of record that the pay scales admissible to the employees of PRTC were identical to the pay scales which were enjoyed by the same category in Punjab Roadways. It is also a matter of record that the employees of the Punjab Roadways have been granted arrears of the revised scales with effect from 3.11.1989, although the pay scales were initially revised with effect from 1.1.1986. The factual position has been noticed by the division Bench in the case of Papinder Vir Singh (supra) and following the judgment of the earlier Division Bench of this Court in Ram Murti's case (supra), the petitioners therein were granted revised pay scales with effect from 1.1.1986 instead of 3.11.1989. This relief has already been granted to the petitioners. However, in view of the judgment in Ram Murti's case (Supra), the petitioners would be entitled to the arrears of the difference between the revised and the unrevised pay scales with effect from 3.11.1989 till 31.10.1998. However, keeping in view the delay caused by the petitioners in approaching

the respondents, the actual financial benefits shall be restricted to a period of 3 years and two months prior to the date of submission of representation by the petitioners to the Corporation.”

In view of the above discussion, the present petition is disposed of with a direction to the respondents that the pay of each of the petitioners be stepped-up at par with Smt. Angoori Devi, from the date she started drawing more pay than the respective petitioners as well as to re-fix their pension accordingly. However, the arrears will be restricted to the extent of 38 months prior to 01.09.2011, i.e. the date of filing of earlier civil writ petition No.16239 of 2011, titled as “Jaswant Singh and others Vs. State of Haryana and others”.

Disposed of.

01.05.2015

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(JITENDRA CHAUHAN)
JUDGE