

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

LPA No. 1575 of 2014

DATE OF DECISION : 11.12.2015

Dr. Brij Bhushan Sharma

.... APPELLANT

Versus

The Managing Committee, Arya College, Panipat and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present : Mr. R.K. Malik, Senior Advocate, with
Mr. Vijay Dahiya, Advocate,
for the appellant.

Mr. R.K. Chopra, Senior Advocate, with
Ms. Ekta Arora, Advocate,
for respondent No.1.

Mr. Lokesh Sinhal, Addl. A.G., Haryana,
for respondents No.2 and 3.

Mr. Pritam Saini, Advocate,
for respondent No.4.

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SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 29.04.2014 passed by the learned Single Judge dismissing the writ petition (CWP No. 19429 of 2010) filed by the appellant herein challenging the proceedings/letter dated 24.11.2009/ 24.12.2009 rejecting his claim to consider his previous service for the purpose of seniority and re-fix his seniority over and above the private

respondents.

In the present case, the appellant was initially appointed as Lecturer in Hindu College, Sonapat, a Government aided private college, on 10.10.1980. He worked there up to 28.08.1986. Thereafter, he was appointed as Lecturer in Arya College, Panipat, on 29.08.1986, another Government aided private college. It was a fresh appointment of the appellant made by Arya College, Panipat, adopting a regular recruitment process. The appellant was appointed in the pay scale of a Lecturer. However, on a representation submitted by the appellant, his pay was protected while taking into account the period of his earlier service in Hindu College, Sonapat. Resultantly, he started getting more salary than the salary of the private respondents. Thereafter, on the ground that he was getting more salary, the appellant moved another representation to re-fix his seniority over and above the Lecturers, who were already working in the College at the time of his appointment. In the Governing Body meeting of Arya College, Panipat, held on 24.11.2009, the said claim of the appellant was rejected and he was accordingly informed vide letter dated 24.12.2009 (Annexure P-5). Against the said proceedings/letter, the appellant filed the writ petition (CWP No. 19429 of 2010), which was dismissed by the learned Single Judge vide order dated 29.04.2014, while observing as under :-

“Admittedly, the petitioner was appointed as Lecturer in Hindu College, Sonapat on 10.10.1980 and had remained there up to 28.08.1986. Thereafter, he

was appointed as Lecturer in Arya College, Panipat on 29.08.1986 and was confirmed on the said post in the year 1987. The seniority of the Lecturers was determined on 12.02.1986 and no objection was raised by the petitioner which shows that he was satisfied with his seniority. On the basis of representation made by the petitioner, his pay was protected but his claim of seniority was rejected vide orders dated 10.01.2003 and 04.04.2003. Those orders were never challenged by the petitioner. On perusal of documents on the file, it appears that the petitioner was granted pay scale of ₹ 3000-5000 w.e.f. 29.08.1986 and his pay was protected in the revised pay scale of ₹ 2200-4000. As per guidelines dated 08.12.2000 issued by the Government of Haryana granting revised pay scales to the teachers of Universities and Colleges, it was provided that the services rendered in other colleges can be counted for placing a Lecturer in the senior scale/selection grade and the petitioner was granted the benefit of those guidelines. The pay scale of ₹ 3000-5000 was granted to the petitioner on the basis of his previous service. The argument of learned counsel for the petitioner that the petitioner is entitled for re-fixation of his seniority on the basis of higher pay scale, does not carry any weight as the higher pay scale was granted on the basis of earlier service which was considered for the purpose of protection of pay and the same cannot be considered for the purpose of seniority. Learned counsel for the petitioner has not been able to convince the Court that initially the petitioner was not appointed in the pay scale of ₹ 3000-5000, whereas, he was appointed in the pay

scale of ₹ 700-1600 which was subsequently revised to ₹ 2200-4000. The services of the petitioner were confirmed on 29.08.1987, whereas, the services of respondents No.4 to 7 were confirmed w.e.f. 19.10.1983, 17.10.1984, 12.11.1984 and 23.11.1984, respectively and on the basis of date of confirmation, they have been declared senior to the petitioner. It is also clear from the record that the petitioner was granted pay scale of ₹ 3000-5000 only on 08.11.2001 by granting benefit of previous service for the purpose of pay only and not for the purpose of seniority. It is clear that the seniority of a person is to be considered on the basis of length of service and as such, the petitioner is not entitled for benefit of seniority on the basis of higher pay scale which has been granted on the basis of earlier service. Even from perusal of regulations relied upon by learned counsel for the petitioner, it is clear that the seniority is not to be determined on the basis of higher pay scale.”

Against the said order, the instant appeal has been filed.

We have heard learned counsel for the parties and have gone through the impugned order passed by the learned Single Judge.

At present, services of the appellant and the private respondents are being governed by the Haryana Affiliated Colleges (Security of Service) Act, 1979, which was enforced on 23.03.1979. Under this Act, no rules were framed regarding seniority up to the year 1993. However, it is the case of the appellant that a person, who is senior in scale of pay shall always be senior to the persons, who are in lower pay scale. In this regard, learned

counsel for the appellant is relying upon Appendix XIV of the regulations framed by the Kurukshetra University, wherein it has been provided that for purposes of preparation of seniority list of teachers in Non-Government recognized colleges, a person in a senior scale of pay shall always be senior to the persons in the lower pay scale.

In our opinion, this contention of learned counsel for the appellant has rightly been rejected by the learned Single Judge, as Hindu College, Sonapat, where the appellant earlier served for about six years, is a different institution under a different Management; and Arya College, Panipat, is an institution under another Management. The appellant while working in Hindu College, Sonapat applied to Arya College, Panipat, for the post of Lecturer through a regular recruitment process. After his appointment, he was granted the pay scale of Lecturer. At that time, the private respondents were already working there for the last three/four years. Undisputedly, they were senior to the appellant. However, on a presentation made by the appellant, his pay was protected while taking into account the period of his earlier service in Hindu College, Sonapat, and he started getting more salary. Merely because the appellant was getting more salary, he cannot be deemed to be senior to the private respondents, who were already working in the College at the time of appointment of the appellant. On the basis of earlier service rendered by the appellant in Hindu College, Sonapat, only his pay was protected and he was not given the benefit of

previous service towards seniority in the new institution. There is no such rule that while protecting pay of a person in a new institution on account of the service rendered by him in another institution, he should also be given the benefit of previous service towards seniority in the new institution. The learned Single Judge has rightly come to this conclusion. As far as the regulations framed by the Kurukshetra University, as relied upon by learned counsel for the appellant, are concerned, the same are applicable for inter-se seniority of the Lecturers who are appointed in an institution at the same time and are granted the higher scale on account of acquiring some higher qualification etc. These regulations are not applicable to a person, who joins the institution by way of direct recruitment and then claims protection of seniority on account of service rendered by him in the previous institution. If this contention is accepted, it will lead to injustice to those Lecturers who were already working as such for many years, when the appellant joined the new institution on his fresh recruitment.

In view of the above, we do not find any illegality in the order passed by the learned Single Judge.

Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

December 11, 2015
ndj

(SHEKHER DHAWAN)
JUDGE