

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13856 of 1997 (O&M)

Date of Decision: 11.04.2016

Swaranjit Kaur and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nitin Rathee, Advocate,
for the petitioners.

Mr. Vaibhav Sharma, DAG, Punjab.

Mr. Gulshan Sharma, Advocate,
for respondents No.4 & 5.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. In the previous litigation initiated by the petitioners against the State Government and the school in which they were appointed i.e. respondent No.4 – The Malwa Khalsa Senior Secondary School, Ferozepur City the same had resulted in setting aside of the termination order passed by the employer on the insistence of the Director Public Instructions Schools, Punjab commanding respondent No.4 to dispense with the services of the petitioners for the reason that they did not hold the requisite diploma to be appointed as JBT teachers since those diplomas were earned from the State of Haryana which had been de-recognized for jobs under the Punjab Government. These orders of the Government and clarifications issued are

at Annex R-1 & R-2 respectively dated May 29, 1984 and February 10, 1989. The termination orders were passed on May 02, 1992 against both the petitioners.

2. The question of de-recognition of diplomas obtained from Haryana came under the judicial scanner of this Court before the Full Bench in **Neelam Kumari v. State of Punjab and others**, 1993 (1) Services Law Reporter, 666 which covered the case in favour of the petitioners. People like the petitioners were declared eligible. As a result, they were reinstated to service by following the law in *Neelam Kumari's* case by orders of the learned Single Judge dated September 20, 1993 passed in CWP No.7346 of 1992 by the petitioners, the text of which judgment has been placed at Annex P-9.

3. It is common ground that the monetary benefits flowing from setting aside of the termination order have been handed over to the petitioners in implementation of the orders dated September 20, 1993. However, the monetary benefits have been made to run from the date of the judgment. The petitioners claim they have a right to those benefits from the past service.

4. In the present writ petition, the limited prayer is that the petitioners should also be held entitled to arrears of salary w.e.f. May 03, 1992 i.e. the date next following the order disengaging them from service and October 17, 1992 by virtue of setting aside of the termination orders with retrospective effect. For this proposition, Mr. Rathee cites recent decision of the Supreme Court in **Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Limited and others**, AIR 2016 SC 157 where the

Supreme Court granted back wages to the appellant which had been wrongly denied by applying the principle of “no work no pay” in a case where the order of retirement of the appellant had been set aside by the High Court but back wages were denied to them. This error in the proceedings before the High Court was corrected and consequential benefits granted by holding that the principle “no work no pay” does not apply.

5. I do not see how this case promotes the cause in hand where the facts are entirely different. This is not a case of mere setting aside of the termination order. It was a more complex issue to resolve which a Full Bench had to be constituted to examine the decisions of the Government taken in 1984 and 1989 de-recognizing diplomas obtained from the State of Haryana for employment in the State of Punjab as teachers. The issue had to be decided by the Full Bench which declared the law that diplomas obtained from Haryana through recognized universities and institutions irrespective of State of origin were legal to bring the law in line with the mandates in Part-III of the Constitution of India.

6. Therefore, the petitioners do not have a fundamental or civil right to arrears of salary for the period claimed and the respondents committed no error in implementing the orders of this Court dated September 20, 1993 from the date when the petitioners joined service under Court directives as JBT teachers in respondent No.4-School. Though the decision of the respondents is broadly a good one to deny arrears of salary but in view of the fact that the legal position was in a state of flux and inchoate the same had to be determined by the Full Bench after full debate the petitioners cannot assert rights prior to the declaration of the law. As a

result, the arrears are not to be paid from the date of joining but from the date when the learned Single Judge declared rights of the petitioners on September 20, 1993.

7. Accordingly, the petition is allowed in part. The claim for arrears of salary prior to September 20, 1993 is rejected. However, a declaration is given that the petitioners would have a right to arrears of salary from September 20, 1993 and not from October 18, 1993 when the order was implemented qua reinstatement to service for wrongful termination. With this minor change, the petition is disposed of. The arrears of salary with effect from the date of the judgment and the date of joining shall be calculated and paid to the petitioners within six weeks from the date of supply of copy of this order. The petitioners would be entitled to interest @6% simple on the amount representing salary for the period decreed under this order. The element of interest will be calculated and paid with the principal amount within the time allowed.

(RAJIV NARAIN RAINA)
JUDGE

11.04.2016
manju