

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

CWP No. 2462 of 1995

Date of decision: 4.4.2016

Dr. MK Bandlish & ors.

... Petitioners

Versus

The State of Punjab & ors.

... Respondents

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

Present: Mr. DS Patwalia, Sr. Advocate, with
Mr. Gaurav Rana, Advocate,
for the petitioners.

Mr. Harkesh Manuja, Addl.A.G., Punjab.

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

RAJIV NARAIN RAINA, J.(Oral)

1. On March 2, 2016, this Court had passed the following orders:-

“Mr. Patwalia has demonstrated a case for relief based on what the Court has pencil marked in Annex P-1/Pg.16 & 17, Annex P-3/Pg.25, when it uses the word ‘pattern’ and Annex P-8/Pg.80 where word ‘recommendations’ has been used and lastly at para.5/Pg.83, which appears to conclude the case in his favour for entitlement to two additional increments on promotion to higher post.

On this, Mr. Manuja prays that he may be given a day or two to consult record so as to note why the Government used the expression ‘pattern’ in one case and ‘recommendations’ in the other in common matter of fixation of pay

scales and grant of monetary benefits.

List on 04.03.2016.”

On obtaining instructions, learned Additional Advocate General, Punjab is unable to satisfy the Court of the rationale behind the use of the word 'pattern' and 'recommendations' in the moot documents on which the decision of the case lies as to their construction in the context of two additional increments on promotion to higher post. The case is regarding fixation of pay scales and grant of monetary benefits of two increments on promotion to higher post and whether those were legally due and payable to the petitioners. The notification issued by the Third Punjab Pay Commission, dated September 9, 1988 brought into force by the Punjab Government in exercise of powers conferred by proviso to Article 309 read with Clause (3) of Article 187 of the Constitution of India mandate in Rule 2 (2) (d) that employees whose scales have been determined on the recommendations of the University Grants Commission, New Delhi [Commission] shall not be entitled to fixation of pay on promotion in terms of Rule 8 and the next increment to the higher post shall be allowed after the completion of 12 months of qualifying service in that scale. However, by the subsequent notification dated March 12, 1989, Medical Doctors in State Medical/Dental Colleges would take their pay on the “pattern” prescribed by the Commission but not on “recommendations” of the Commission. It may be noted that the pay scales recommended by the UGC were higher than the scales available to Punjab Government employees of the class under consideration. The dichotomy arose when the case of the petitioners was not placed before the Third Pay Commission for review of pay scales.

The case of the petitioners is that there is a vast difference between the terms recommendations and pattern. Recommendations would always be a positive act while pattern reflects a state of things with no fixed moorings. The operative part of the notification dated March 12, 1989 [Annex P-3] is as follows:-

“The pay fixation benefit in the revised scales of pay shall be according to the University Grants Commission pattern and as such the benefit of proficiency step up (Prop) as per State Government instructions will not be available to the teaching staff whose scales of pay have been revised paragraph I above. Similarly the related instructions of the U.G.C. Regarding minimum qualifications, appointments, advance increments on requiring higher qualifications, placement in senior scale/selection grade shall not apply as only the U.G.C. Pay structure is being followed.”

The result of the prescription is that the petitioners have been granted pay scales on the “pattern” of UGC but not on its “recommendations” and therefore the petitioners would become entitled to grant of two additional increments on promotion. The legal position appears to be *a priory* and then this Court would hardly have any hesitation to declare the prayer of the petitioners as perfectly tenable and in accordance with law. The authorities in the respondents have thus singularly failed in their perception of the notifications under consideration to deny the benefit legally due to the petitioners.

As a result, this petition is allowed. The impugned action of not granting two additional increments to the petitioners on promotion is

declared illegal and unlawful. Monetary benefits of two additional increments have to be given to the petitioners which would cascade in changing their last pay drawn certificate and consequently it would result in enhancement of their pay and pension, as the case may be, dependent on whether the petitioners are in service or have retired on superannuation being a mixed bag. The arrears of pay and pension are accordingly are directed to be calculated and paid to them within three months from the date of receipt of certified copy of this order. The prayer for interest on arrears is found untenable and is declined for the reason that it required debate to declare the rights of the petitioners which have remained in a state of flux only to be settled by this Court today at the final hearing.

(RAJIV NARAIN RAINA)
JUDGE

4.4.2016
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